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25 January 2021

Clerk to Panel on Constitutional Affairs
Council Business Division 2
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road,
Central, Hong Kong
(Attn: Ms Jasmine TAM)

Dear Ms TAM,

Panel on Constitutional Affairs

The relevant policy bureaux/departments had provided oral responses to the key issues in the written submissions made by deputations/individuals for the Panel on Constitutional Affairs meeting on 16 November 2020 under agenda item (IV) on “Hearing of the United Nations Human Rights Committee on the Fourth Report of the Hong Kong Special Administrative Region in the light of the International Covenant on Civil and Political Rights”. The Panel has requested response in writing which is now prepared 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

Encl.

**Panel on Constitutional Affairs
Meeting on 16 November 2020**

IV. Hearing of the United Nations Human Rights Committee on the Fourth Report of the Hong Kong Special Administrative Region in the light of the International Covenant on Civil and Political Rights

Follow-up Action

After consulting the relevant bureaux and departments, the consolidated response to the key issues raised in the written submissions of deputations/individuals is as follows –

(1) “One Country, Two Systems”

2. Some deputations remarked that ever since the establishment of the Hong Kong Special Administrative Region (“HKSAR”), the Central People’s Government (“CPG”) had been, in accordance with the principle of “one country, two systems” and the Basic Law of the HKSAR of the People’s Republic of China (“PRC”) (“the Basic Law”), upholding Hong Kong’s high degree of autonomy, supporting the HKSAR Government to act according to the law, and respecting Hong Kong’s judicial independence. The HKSAR Government agrees with this statement. Article 1 of the Basic Law clearly states that the HKSAR is an inalienable part of the PRC, underlying the fact that “one country” is the foundation of “two systems”. The HKSAR is a local administrative region which enjoys a high degree of autonomy under “one country, two systems” and comes directly under the CPG. Human rights have been fully safeguarded by law in Hong Kong since its return to the Motherland. As the constitutional document of the HKSAR, the Basic Law has provided constitutional guarantees for our fundamental rights and freedoms. The HKSAR Government attaches great importance to, and unswervingly upholds, the human rights and freedoms enjoyed under the law in Hong Kong.

3. In their written submissions, some deputations asked the HKSAR Government to clarify how it can be ensured that the interpretation of the Basic Law by the Standing Committee of the National People’s Congress (“NPCSC”) would not undermine Hong Kong’s obligation under the International Covenant on Civil and Political Rights

(“ICCPR”) or violate the rule of law principle. The Basic Law is a national law enacted by the National People’s Congress. Like other national laws, the final power of interpretation is vested in the NPCSC. The interpretation mechanism formulated in Article 158 of the Basic Law is very comprehensive and fully reflects the principle of “one country, two systems”. This interpretation mechanism not only ensures that the courts of the HKSAR can exercise independent judicial power, more importantly it also ensures that the Basic Law (as a national law) has a consistent interpretation throughout the country.

(2) Rule of Law

4. Hong Kong’s solid foundation of the rule of law remains intact. Fundamental rights are properly protected under the Basic Law. Hong Kong’s rule of law remains solid. As the core value of Hong Kong society, the HKSAR Government will remain steadfast in upholding the rule of law.

(3) National Security Law

5. Some deputations remarked that “The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region” (“National Security Law”) had brought about significant effect in restoring stability in Hong Kong, while the legitimate rights and freedoms of Hong Kong residents were not affected. That said, some deputations were worried that there could be cases of literary inquisition and that the freedom of speech could be undermined.

On Protection of Rights and Freedoms

6. The fundamental rights and freedoms of Hong Kong residents are guaranteed at the constitutional level in Chapter III of the Basic Law¹. Article 4 of the National Security Law also clearly stipulates that human

¹ Article 27 of the Basic Law, for example, guarantees that Hong Kong residents shall have, amongst others, freedom of speech, association, assembly, procession, demonstration and to form and join trade unions. Article 39 of the Basic Law further provides that the provisions of the ICCPR, the ICESCR and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR. The provisions of the ICCPR as applied to Hong Kong have already been incorporated into local law by the Hong Kong Bill of Rights Ordinance (Cap. 383).

rights shall be respected and protected in safeguarding national security in the HKSAR; the rights and freedoms which HKSAR residents enjoy under the Basic Law and the provisions of the ICCPR and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong, shall be protected in accordance with the law. Any measures or enforcement actions taken under the National Security Law must observe the above principle.

7. However, many rights and freedoms recognised in the ICCPR are not absolute, and may be restricted for reasons of national security and/or public order (*ordre public*). The human rights provisions of the Basic Law have not been amended by the National Security Law.

On Rule of Law

8. The notions of constitutionality, respect for human rights, equality before the law, legality and legal certainty are all incorporated in Article 5 of the National Security Law, which provides that the principle of the rule of law shall be adhered to in preventing, suppressing, and imposing punishment for offences endangering national security; a person who commits an act which constitutes an offence under the law shall be convicted and punished in accordance with the law; and no one shall be convicted and punished for an act which does not constitute an offence under the law.

9. Establishing the mechanism for safeguarding national security in the HKSAR will not undermine or replace Hong Kong's existing legal system, and our judicial system continues to be protected by the Basic Law. Apart from providing that the principle of the rule of law shall be adhered to, Article 5 of the National Security Law also provides for the presumption of innocence, the prohibition of double jeopardy, and the right to defend oneself and other rights in judicial proceedings that a criminal suspect, defendant and other parties in judicial proceedings are entitled to under the law.

On the Offence of the National Security Law

10. The National Security Law has clearly prescribed four categories of offences that endanger national security, namely secession, subversion of state power, terrorist activities, and collusion with a foreign country or with external elements to endanger national security. Such offences are narrowly defined in the National Security Law and are similar to those in the national security laws of other jurisdictions. The elements

of the offences, the penalties, mitigation factors and other consequences of the offences are clearly prescribed in Chapter III of the National Security Law. The prosecution has the burden to prove beyond reasonable doubt that the defendant has the *actus reus* and *mens rea* of the offence before the defendant may be convicted by the court.

11. The implementation of the National Security Law has reverted the chaotic situation in Hong Kong over the ten months or so since June 2019, whereby violent acts have substantially reduced, external forces are observed to have diminished, and advocacy of “Hong Kong Independence” continues to subside. With people’s lives returning to normal, our economy and people’s livelihood can revive (except for the reason of the epidemic). The National Security Law has stopped chaos and restored order in Hong Kong, ensuring the smooth and continuous implementation of “one country, two systems” and the long-term prosperity and stability of Hong Kong.

(4) Police’s Enforcement Actions

12. Some deputations and individuals expressed support for the Police in maintaining public order in accordance with the law, and considered that the Government should actively clarify unfounded allegations to the international community. On the other hand, some deputations expressed concerns over the Police’s use of force and the complaint-handling system.

13. As pointed out in the submissions by some deputation and individuals, between June 2019 and early 2020, Hong Kong was haunted by violence, which substantially affected the daily lives of members of the public. Rioters recklessly vandalised shops, restaurants, public facilities, banks and metro stations. They stored smuggled firearms and ammunitions, and made explosives, posing risks of local terrorism. In the numerous violent incidents and clashes, rioters hurled over 5 000 petrol bombs and the Police have seized over 10 000 petrol bombs. Public facilities were damaged at an unprecedented scale. Rioters even attacked police officers and other members of the public, especially those with different political viewpoints.

14. The scale and level of violent illegal acts in the above events were unprecedented. The Police faced immense challenges in law enforcement and in the maintenance of public order. When violent and illegal acts occur, the Police must, in light of the actual situation, make a

professional assessment and take appropriate actions to ensure public safety and public order, as well as to protect citizens' lives and properties.

15. The Police have a set of stringent guidelines on the use of force that are consistent with the international human rights norms and standards. Police officers may use minimum force as appropriate only when such an action is necessary and there are no other means to accomplish lawful duties. Before force is used, police officers will, where circumstances permit, give warnings to the gathering crowd, and give the person(s) involved every opportunity, whenever practicable, to obey police orders. The Police will cease to use force once the purpose of using force is achieved.

16. The level of force to be used by police officers under a particular circumstance depends on the actual situation, including the threat and resistance faced by police officers under the circumstances at the time. If the demonstrators express their views in a peaceful and lawful manner, there would be no need for the Police to use any force to maintain law and order.

17. Arrests are made by the Police based on evidence and strictly according to the laws in force, regardless of the identity, background or political stance of the arrested person.

18. Public opinions and complaints about police enforcement actions are handled under a two-tier police complaints mechanism with independent supervision in Hong Kong. The Complaints Against Police Office ("CAPO"), the operation of which is independent of other units of the Police, will fully investigate each of the complaints against individual Police officers, and will report to and submit an investigation report to the Independent Police Complaints Council ("IPCC"). As an independent statutory body, IPCC will scrutinize CAPO's investigation result and recommendation of each complaint to ensure that the complaint is handled fairly and impartially. If there is any case of breach of the law or discipline, Police will follow up in a serious and impartial manner.

19. IPCC published in May 2020 a "Thematic Study Report on the Public Order Events arising from the Fugitive Offenders Bill since June 2019 and the Police Actions in Response", setting out 52 recommendations. The HKSAR Government attaches great importance to the IPCC recommendations which are being followed up by a task force personally supervised by the Secretary for Security. The task force will continue to supervise and support the Police in following up the IPCC

recommendations in order to further improve Police practices and procedures in handling large-scale public order events (“POEs”).

20. The Police will continue to report to IPCC its follow up actions in accordance with the statutory mechanism under the IPCC Ordinance. The improvement recommendations put forward in the IPCC report will help the Police to learn from experience, review and improve Police’s strategy in handling large-scale POEs and enhance law enforcement.

(5) Prosecution Matters

21. Some deputations took the view that, from enforcement by the Police to prosecution by the Department of Justice (“DoJ”), the HKSAR Government has used endless tactics to keep reporters away from the truth so that the public does not know the truth. Article 63 of the Basic Law expressly provides that “The Department of Justice of the Hong Kong Special Administrative Region shall control criminal prosecutions, free from any interference.” The prosecutors of DoJ have always been discharging this constitutional duty independently and professionally, without fear or favour. Prosecutorial decisions are based on an objective assessment of all admissible evidence and applicable laws, made strictly in accordance with the Prosecution Code which is available to the public. No one should interfere or attempt to interfere with independent prosecutorial decisions.

22. The Prosecution Code provides clear, consistent guidelines and principles for carrying out prosecution work. It is the responsibility of the prosecutors to apply the highest of professional standards in handling all criminal cases. The HKSAR Government must point out that prosecutors will not be influenced by any investigatory, political, media, community or individual interests. All prosecutorial decisions are based on admissible evidence, applicable laws and the Prosecution Code, without political consideration. Cases will not be handled any differently owing to the political beliefs or background of the persons involved. Prosecutions would only be commenced if there is sufficient admissible evidence to support a reasonable prospect of conviction.

(6) Combating Trafficking in Persons (TIP)

23. A number of deputations expressed concerns about combatting TIP. TIP is a heinous crime that has never been tolerated in Hong Kong. The Government has always attached great importance to combatting TIP, addressing this evolving global issue by adopting multi-pronged measures in respect of victim identification, law enforcement, prosecution, victim protection, enhancement in staff training, and forming partnership with local and overseas stakeholders, etc.

24. Currently there is no sign indicating that Hong Kong is being actively used by syndicates as a destination or transit point for TIP. Between 2017 and 2019, nearly 20 000 initial TIP victim screenings were conducted by various law enforcement agencies and the Labour Department (“LD”). Among them, only 30 persons were identified as TIP victims. The small number and percentage of victims identified reinforce our observation all along that TIP is never a prevalent problem in Hong Kong.

25. Notwithstanding the above, the HKSAR Government has all along been combatting TIP in an all-out and proactive manner. In 2018, we established a high-level inter-bureau/departmental Steering Committee, and promulgated the Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong, with all initiatives therein firmly in place by end 2019.

26. On the other hand, although Hong Kong does not have a single piece of legislation prohibiting TIP, we have a package of various legislation to combat relevant crimes comprehensively and effectively. This approach has served Hong Kong well, and the Court of Final Appeal in a ruling handed down early 2020 indicated that the Government is not obligated to put in place a specific offence to combat TIP.

(7) Non-refoulement Claims

27. Moreover, some organisations expressed views on the screening procedures of non-refoulement claims by the HKSAR Government. Broadly speaking, following judgments by the Court of Final Appeal in two relevant judicial review (“JR”) cases, the number of new non-refoulement claims received by the HKSAR Government in 2014 and 2015 quadrupled that of the preceding years. To tackle the problem, the Government commenced a comprehensive view of the handling of non-

refoulement claims in 2016, and various measures implemented so far have yielded certain progress. In particular, the backlog of claims pending screening by the Immigration Department (“ImmD”) had essentially been cleared by early 2019, from the peak of over 11 000 at one point to the present 500 cases; whereas the number of appeals pending handling by the Torture Claims Appeal Board (“TCAB”) also dropped from the peak of over 6 500 to about 1 700 in end November 2020. It is expected that TCAB will be able to complete the handling of pending appeals by mid-2021 at the earliest.

28. The overall policy objective on handling non-refoulement claims is to ensure that the claims and appeals are handled as efficiently as possible, whilst meeting the high standards of fairness required by law as set down by the Court. Under the Unified Screening Mechanism (“USM”), claimants have every reasonable opportunity to substantiate their claims with sufficient procedural safeguards. For instance, each claimant is provided with publicly-funded legal assistance and professional interpretation services. Claimants disagreed with ImmD’s decision may lodge, without any merits test, an appeal to the independent statutory TCAB.

29. As to whether claimants could continue to receive publicly-funded legal assistance at the appeal stage will be entirely subject to the professional decisions made by their lawyers having regard to the merit of the case. As to whether a claim or appeal is substantiated or not, it depends entirely on the particular facts and merits of the case. So far, about 18 000 claims have been processed under the USM, of which only 1.15% are substantiated. Such a low substantiation rate reflects that most of the claimants in Hong Kong do not have sufficient justifications to substantiate their claims.

30. Those claimants whose appeals have been rejected by TCAB may apply to the Court for leave to apply for JR. The Government has noticed that most of the claimants whose claims have been rejected by ImmD and TCAB will apply for JR in order to delay their removal from Hong Kong. Among the relevant applications which have been processed by the Court of First Instance of the High Court, majority of them were refused leave to JR.

31. Separately, the HKSAR Government must reiterate that the 1951 United Nations Refugee Convention has never been applied to Hong Kong. Illegal immigrants seeking non-refoulement in Hong Kong are not treated as “refugees” or “asylum seekers”, and they will not be allowed to settle in Hong Kong regardless of the result of their claims. Hong Kong is a small place with a dense population and a well-developed transportation network, coupled with our economic prosperity, hence making us particularly vulnerable to the ill-effects of illegal immigrants or economic migrants. The HKSAR Government has no plan to make any change in this respect.

(8) National Anthem Ordinance

32. On the National Anthem Ordinance (“NAO”), a deputation said that the Ordinance did not violate the ICCPR, and that there was no cause for concern of breaching the law inadvertently if one did not misuse the national anthem, nor had any public and intentional act with an intent to insult the national anthem. In fact, the core legislative principle of the NAO is to promote respect for the national anthem, which is the symbol and sign of the country, and provide guidance on the standard, etiquette, and occasions for playing and singing of the national anthem. The NAO prohibits and imposes penalties for the misuse of the national anthem, and for public and intentional acts with an intent to insult the national anthem. The NAO does not unjustifiably restrict the freedom of speech, of association, of assembly, of procession and of demonstration protected under the ICCPR.

(9) Postponement of the Legislative Council (“LegCo”) General Election

33. There are comments that in postponing the LegCo General Election, the HKSAR Government has violated Article 25 of the ICCPR. The HKSAR Government would like to reiterate once again that the postponement of the 2020 LegCo General Election, originally scheduled for 6 September 2020, for a year to 5 September 2021 is to protect public safety and public health as well as ensure elections are conducted openly and fairly. In fact, the COVID-19 epidemic situation and the number of confirmed cases in Hong Kong have been fluctuating since the beginning of 2020, and the third wave of the COVID-19 epidemic was even more severe. As the LegCo performs important and substantive functions and has an annual business cycle, and it will take the Registration and Electoral

Office at least six months to prepare for a general election, coupled with the need to conduct a new round voter registration exercise before the election, it is reasonable and in the public interest to postpone the election for a year.

(10) Qualifications of LegCo Election Candidates and Members

34. Regarding the qualifications of LegCo election candidates and members, a deputation was of the view that the decision made in black box by the NPCSC on 11 November 2020 has seriously undermined the LegCo and electoral systems and contravened the provisions of the ICCPR. The HKSAR Government must point out that as the permanent body of the highest organ of state power, the NPCSC has the authority to interpret and monitor the implementation of the Basic Law, and to handle any constitutional problems arising from the implementation of the Basic Law in accordance with the law. The decision made by the NPCSC in accordance with the law is absolutely legally binding on the HKSAR. Hence, the NPCSC's decision is constitutional, lawful and reasonable. It is also necessary and it complies with the relevant stipulations of the Basic Law. Besides, some deputations pointed out that disqualification of candidates should not be determined by an administrative decision of the Returning Officers, whereas some other deputations opined that the Returning Officers' decision to disqualify candidates complied with the principles of the Basic Law and was not in contravention of the ICCPR. In this regard, the HKSAR Government must point out that the Returning Officers acted in strict accordance with the law and facts in determining whether a person is qualified for being nominated as a candidate. The court has also made rulings on a number of occasions in favour of the constitutionality and lawfulness of the Returning Officers' decisions.

(11) Anti-discrimination and Promotion of Equal Opportunities

35. Some deputations and individuals were concerned about issues such as equal opportunities for the ethnic minorities (including enhancing legal protection under the Race Discrimination Ordinance (RDO) (Cap 602)), greater protection against sexual harassment, and legislative measures to prohibit discrimination on the grounds of sexual orientation and identity, etc.

36. Human rights are fully protected by law in Hong Kong. The Basic Law, which serves as the constitutional document of the HKSAR, provides constitutional guarantee for fundamental rights and freedoms of the public, including the right to equality before the law. The Government has spared no effort to building a caring, inclusive and equal society.

37. On legislative front, the Government enacted the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 in June 2020 which enhances protection under the four anti-discrimination ordinances, including prohibiting discrimination of breastfeeding women, harassment between participants in a common workplace, and expanding the scope of protection from racial discrimination and harassment, etc.

38. Some deputations remarked that the application of the RDO should be extended to cover government functions and powers in line with the other three anti-discrimination ordinances. Some deputations considered that this was a loophole of the RDO. As a matter of fact, the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap 383) bind the Government in its exercise of functions and powers, and render it unlawful to discriminate against ethnic minorities. The RDO expressly prohibits the Government to discriminate a person on the ground of race in the prescribed areas, including the provision of services and facilities etc. Nevertheless, the HKSAR Government will continue to study the follow up work in detail and maintain dialogue with the Equal Opportunities Commission. Our current goal is to strive for determination of the way forward for the recommendation within this term of the Government.

39. Some deputations remarked that the Government should proceed with the legislative work to eliminate discrimination on grounds of sexual orientation and identity. However, the issue per se is controversial in society. While some consider that the Government should put in place legislation to protect the sexual minorities, others believe that such legislation would have far-reaching consequences to traditional family values and freedom of religious belief. The Government needs to listen more to views of all sides. The HKSAR Government has established an Inter-departmental Working Group on Gender Recognition. During the consultation period in 2017, more than 18 000 responses were received. The responses also showed that there are indeed different opinions including opposing views. There are also pending court cases. Therefore, the Government must carefully study and take into account comprehensive considerations when embarking upon future work.

40. On the administrative front, the Government strives to safeguard the equal rights of people with different races. To enhance support for people of diverse race, the Government established a Steering Committee, chaired by the Chief Secretary for Administration, in 2018 to co-ordinate cross-bureau and department efforts on the support for ethnic minorities, including the formulation of a series of measures. The total estimated expenditure for these measures amounts to over \$800 million in the four financial years starting from the 2019-20 financial year.

41. Moreover, the HKSAR Government has improved the Administrative Guidelines on Promotion of Racial Equality (“the Guidelines”). Since the new Guidelines came into effect in April 2020, the scope of its application has extended from 23 government bureaux/departments (“B/Ds”) and public authorities to all B/Ds and related organisations, the number of which exceeds 100. The Guidelines have provided guidance to government and related organisations to enable people of Hong Kong, regardless of their race, enjoy equal access to public services. Some deputations commented on the Guidelines, saying that the Government should step up the monitoring of the implementation of the Guidelines and data collection work. The Constitutional and Mainland Affairs Bureau will closely monitor the implementation of the Guidelines and introduce improvement in collaboration with the public authorities as and when required to ensure compliance with the Guidelines.

42. The HKSAR Government has taken various educational and promotional initiatives to eliminate discrimination against people with different sexual orientations and transgenders. For example, on public education and promotion, active efforts have been made to promote the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation and over 360 organisations have pledged to adopt the Code. On supporting services for sexual minorities, a 24-hour hotline, operated by the Tung Wah Group of Hospitals and subsidised by the Government, provides prompt support, counselling and referral services for sexual minorities and their families. Also, sensitivity training resources for medical and healthcare professionals and Government disciplined services have been launched to enhance frontline staff’s awareness on sexual minorities and provide more professional services.

(12) Education for Non-Chinese Speaking Students²

43. Under the existing education system, all eligible children, irrespective of their races or places of birth, enjoy equal opportunities in admission to Primary One and Secondary One of public sector schools under the respective school places allocation systems, which are fair and transparent with regard to parental choice. In respect of student support, the Government is committed to encouraging and supporting the integration of non-Chinese speaking (“NCS”) students into the community, including facilitating their early adaptation to the local education system and mastery of the Chinese language.

44. The Education Bureau (“EDB”) has implemented a series of enhanced measures to step up the support for NCS students’ learning of the Chinese language and the creation of an inclusive learning environment in schools starting from the 2014/15 school year. The number of public sector and Direct Subsidy Scheme schools admitting NCS students has increased from about 590 in the 2013/14 school year to about 630 in the 2019/20 school year, which covers about two-thirds of the schools in the territory. Among them, the number of schools admitting 10 or more NCS students in receipt of the additional funding for enhancing support for learning and teaching Chinese has increased by about 45% in the past 6 years. The number of schools admitting less than 10 students in receipt of the additional funding for after-school Chinese learning support has also increased twofold. Starting from the 2020/21 school year, all schools admitting less than 10 NCS students, are provided with the additional funding and application is no longer required. In other words, all schools admitting NCS students are provided with the additional funding for supporting NCS students’ learning of Chinese and creating an inclusive learning environment in schools.

45. To maintain the flexibility and diversity of the kindergarten (“KG”) sector and to provide free choice for parents, KG student admission is all along a school-based matter. To ensure equal opportunities are provided for all children (regardless of their race, gender and ability) to receive education, KGs are reminded via diversified channels that their school-based admission mechanism should be fair, just and open, and in compliance with the RDO as well as circulars and guidelines issued by EDB. If individual NCS children encountering genuine difficulties in seeking admission to KGs, EDB would make appropriate arrangement by

² For the planning of educational support measures, students whose spoken language at home is not Chinese are broadly categorised as NCS students.

referring them to KGs joining the KG education scheme that have vacancies.

46. As regards the learning and teaching of the Chinese language, EDB has, starting from the 2014/15 school year, implemented the “Chinese Language Curriculum Second Language Learning Framework” (“Learning Framework”) in primary and secondary schools. The “Learning Framework” was not meant to be a separate curriculum. It is designed on the basis of the mainstream Chinese Language curriculum and provides steps and methods for learning, teaching and assessment for teachers’ reference in teaching and making flexible adaptation according to the learning progress of NCS students. EDB has provided sufficient training opportunities for teachers of NCS students and diversified school-based professional support services for schools admitting NCS students, with a view to enhancing their professional capability in teaching Chinese to NCS students. EDB has been continuously developing diversified learning and teaching resources such as the “Chinese Language Assessment Tools for NCS Students” and reference materials for teaching to provide guidelines and support for teachers with regard to curriculum planning, learning, teaching and assessment. These resources have been uploaded to EDB webpage and will be updated on an ongoing basis.

47. EDB has been reminding schools to ensure that all NCS students enjoy equal opportunities in learning Chinese as their Chinese-speaking counterparts do, and to avoid providing a simpler and easier Chinese Language curriculum to NCS students, which will limit their opportunities for learning the language.

48. To cater for NCS students’ diverse needs and expectations in the learning of Chinese, starting from the 2014/15 school year, EDB has been offering Applied Learning Chinese (for NCS students) (“ApL(C)”) at the senior secondary level for eligible NCS students to obtain an alternative Chinese Language qualification. NCS students may, taking into account their needs and aspirations, study Chinese Language in the Hong Kong Diploma of Secondary Education Examination or ApL(C). NCS students may obtain internationally recognised alternative Chinese Language qualifications at the senior secondary level.

49. Individuals expressed concern about the arrangements for NCS students’ access to post-secondary education, particularly in respect of the entrance requirement on the Chinese language. EDB would like to point out that student admission falls within the autonomy of the post-secondary institutions, and the institutions adopt the principle of merit-

based selection. Applicants for post-secondary programmes, irrespective of ethnicity and the language spoken at home, have an equal chance of admission so long as they satisfy the stipulated requirements. Applications from local students, including NCS students, are assessed with the same set of criteria. As far as the University Grants Committee-funded sector is concerned, the Joint University Programmes Admissions System accepts alternative Chinese Language qualifications such as General Certificate of Secondary Education for the purpose of satisfying the entrance requirement in respect of Chinese language.

(13) Sex Education

50. In respect of sex education, the related learning elements are included in the Key Learning Areas (“KLAs”), moral and civic education as well as the relevant curricula of subjects in primary and secondary schools alongside curriculum-related life-wide learning (“LWL”) experiences. EDB has been advocating holistic and inter-disciplinary learning experiences for fostering students’ whole-person development, and encouraging schools to plan their curricula and LWL activities systematically for implementing values education (including sex education). Schools have to make reference to EDB’s latest curriculum guides/documents while taking into account their school mission and context as well as students’ needs in planning for their school-based sex education curriculum.

51. EDB will continue to develop learning and teaching resources, organise professional development programmes for teachers to learn about the strategies in teaching issues related to sex education, and maintain ongoing communication with different stakeholders to strengthen the promotion of values education (including sex education).

(14) Human Rights Education

52. Regarding the concerns of certain individuals about human rights education in Hong Kong, EDB adopts a “multi-pronged” approach such as through KLAs/subjects (e.g. Life and Society at the junior secondary level), LWL activities, training for teachers as well as learning and teaching resources, to support schools in the implementation of human rights education. EDB encourages schools to adopt a holistic and cross-curricular approach to deepen students’ understanding of the knowledge related to human rights, and to develop positive values and attitudes,

including respect for others, care for others, responsibility, obligation, civic-mindedness and law-abidingness; and to understand the “rights” and “obligations” of a national citizen. Among them, abiding by the law and fulfilling civic responsibility are the basic requirements to maintain an equal, respectful and harmonious civil society. At the same time, teachers must elucidate to students Article 19 of the ICCPR; human rights may be subject to certain restrictions, including restrictions that are necessary for respecting the rights or reputation of others, safeguarding national security or public order, and public health or morals, etc.

(15) Teacher Registration

53. Teachers play a vital role in passing on knowledge and nurturing students’ character. Their words and deeds have a far-reaching impact on students’ growth. Parents and the community at large expect our teachers to possess not only solid professional knowledge but also high moral standards. Their words and deeds must meet the professional conduct and moral standards generally accepted by the community.

54. If a teacher is found to have professional misconduct, including committing illegal acts, posting on the social media inappropriate messages involving hate or malicious contents and messages that promote violence, deploying inappropriate teaching materials or promoting personal political stance in lessons, the EDB would consider the matter from the perspective of education profession to determine the appropriate follow-up actions.

(16) Foreign Domestic Helpers

55. The HKSAR Government attaches great importance to safeguarding the employment rights of foreign domestic helpers (“FDHs”). Hong Kong labour laws provide FDHs with the same employment rights and protection as those for local workers. Under the government-prescribed Standard Employment Contract (“SEC”), FDHs enjoy additional protection such as free accommodation, free medical treatment, free food (or food allowance in lieu), etc.

56. The LD has all along strived to implement various measures to protect FDHs, such as setting up a dedicated FDH Division in September 2020 to coordinate and implement measures to strengthen the protection of FDHs, to enhance promotion and education, and to provide better support services to FDHs and their employers, etc. Also, LD has maintained a dedicated 24-hour hotline with interpretation service in seven native languages of FDHs³ to provide one-stop support service to FDHs.

57. Some deputations are concerned about LD's work on the regulation of employment agencies ("EAs"), particularly the effectiveness of enforcement and prosecution. The HKSAR Government amended the Employment Ordinance in 2018 to substantially increase the maximum penalties for EAs committing the offences of overcharging of commission and unlicensed operation from a fine of \$50,000 to a fine of \$350,000 and imprisonment for three years. In 2019, LD successfully prosecuted ten EAs. Among the cases involving overcharging of commission, the highest fine imposed was \$92,000, which was five times higher than that imposed on cases involving the same offence before the law was amended. As for unlicensed operation, the highest fine imposed was \$120,000, which was eight times higher than that imposed on cases of the same offence before the law was amended.

58. Prosecution is only one of the means by which LD regulates EAs. LD also takes other enforcement actions and administrative measures to regulate EAs, including inspecting EAs and requiring them to comply with the Code of Practice for EAs ("CoP"). If an EA contravenes the CoP, the Commissioner for Labour may revoke or refuse to issue/renew its licence. LD has increased its inspection target from 1 800 to 2 000 starting from 2018. In 2019, LD revoked or refused to issue/renew the licences of 13 EAs, and issued 46 written warnings and more than 1 000 verbal warnings to EAs which contravened the CoP.

59. Some deputations are concerned about the employment rights of FDHs during the COVID-19 epidemic, such as FDHs' rest day arrangements and whether FDHs who have contracted COVID-19 would be treated less favourably by their employers. During the epidemic, LD has been disseminating information relating to FDH matters⁴ through

³ The dedicated hotline provides service in Chinese and English, and interpretation service in seven native languages of FDHs (i.e. Urdu, Nepali, Punjabi, Hindi, Bahasa Indonesia, Thai and Tagalog). As at end-November 2020, the hotline had received around 12 000 calls.

⁴ Including anti-epidemic guidelines issued by the Centre for Health Protection and

press releases, the dedicated FDH Portal, FDH groups, employer groups, consulates general in Hong Kong, etc., and in multiple languages as far as possible. LD has reminded employers multiple times through press releases to have candid discussions with their FDHs on rest day arrangements. For example, employers may allow FDHs to take their rest days on weekdays instead of weekends so as to safeguard the personal health of FDHs. However, employers must not refuse to grant rest days or compel their FDHs to work on rest days in breach of the Employment Ordinance. The HKSAR Government has also issued a press release to remind employers that they should not terminate or repudiate an employment contract with an FDH who has contracted COVID-19, or they may violate the Disability Discrimination Ordinance.

60. Some deputations considered that the “live-in requirement” might jeopardise the personal safety of FDHs. The “live-in requirement” is the foundation of the policy of importing FDHs to Hong Kong. The long-established policy of the HKSAR Government is to accord priority in employment to the local workforce. Importation of workers should only be allowed when there is proven manpower shortage in specific trades that cannot be filled by local workers. It is on this principle that live-in FDHs have been imported to meet the shortage of local live-in domestic helpers. As such, the HKSAR Government finds it necessary to maintain the “live-in requirement”.

61. To safeguard the rights of FDHs, employers are required under the SEC to provide their FDHs with free and suitable accommodation and undertake to the HKSAR Government as such when applying for an employment visa for FDHs. The application will be refused if the employer fails to meet the requirement. The HKSAR Government does not tolerate any abuse of FDHs. If the employment rights of FDHs are infringed or if their personal safety are under threat, the concerned departments of the HKSAR Government will promptly conduct investigation and strictly enforce the law.

anti-epidemic measures announced by the HKSAR Government, such as the regulations on prohibition of group gatherings and mask-wearing. To promote the information, apart from producing posters and leaflets and partnering with other government departments and organisations, LD has also conducted mobile broadcast in collaboration with other government departments at popular gathering places of FDHs on Saturdays and Sundays.

(17) Age Discrimination in Employment

62. Some deputations put forward proposals for legislating against age discrimination in employment. In considering the proposals, the HKSAR Government has to carefully consider different factors, including any need for such legislation, the impact on the socio-economic situation and labour market structure in Hong Kong, etc. The HKSAR Government does not have any plan to legislate against age discrimination in employment.

63. The HKSAR Government has all long encouraged employers to use consistent selection criteria to assess the abilities of job seekers or employees under the principle of “Count on Talent, Not Age in Employment”. The “Practical Guidelines for Employers on Eliminating Age Discrimination in Employment” issued by LD provides employers with the best practices for eliminating age discrimination in employment. The HKSAR Government would continue to monitor the situation and enhance public awareness and understanding of eliminating age discrimination in employment through various publicity measures.

(18) Combating Domestic Violence and Sexual Violence

64. Some deputations were concerned if the HKSAR Government has provided sufficient support to the victims of domestic violence and sexual violence, especially during the epidemic.

65. To strengthen support for the victims and their families, the HKSAR Government has all along adopted a three-pronged approach, that is, preventive services measures, supportive and specialised services as well as measures to combat domestic violence and sexual violence:

- (a) Preventive Measures: to organise a series of public education and publicity programmes to enhance public awareness of the problems of domestic violence;
- (b) Supportive Measures: the Social Welfare Department (“SWD”) provides various supportive services, such as 24-hour hotline services, housing and financial assistance to the victims in need, etc.; and

- (c) Specialised Services and Crisis Intervention: SWD provides one-stop services to victims by assigning social workers as case managers to provide families affected by domestic violence counselling services and arrange or refer them for support and intervention. A designated social worker is assigned to the victim of sexual violence to provide 24-hour outreaching services and immediate support. The victims of domestic violence or sexual violence can also seek temporary accommodation at refuge centres for women, the Multi-purpose Crisis Intervention and Support Centre or Family Crisis Support Centre.

These 24-hour/emergency services are in operation as usual during the epidemic.

~ END ~