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Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 16 November 2015**

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

Purpose

This paper provides background information on and gives an account of the discussions held by the Panel on Home Affairs ("HA Panel") and the Panel on Constitutional Affairs ("CA Panel")¹ on 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").

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

¹ With effect from the 2008-2009 legislative session, human right issues were transferred from the HA Panel to be place under the purview of the CA Panel.

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. Members may wish to refer to the background brief (LC Paper No. CB(2)796/06-07(05)) prepared by the Legislative Council ("LegCo") Secretariat for the past discussions of the HA Panel on the first report of HKSAR in the light of ICERD.

Discussions on the second report of HKSAR submitted under ICERD

Outline of topics to be included in the second report

6. In line with established practices, the Administration published an outline of the 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.

7. 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 8 to 12 below.

Race Discrimination Bill and support measures for ethnic minorities

8. 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.

9. 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

10. Some members expressed grave concern about the lack of avenues provided to non-Chinese speaking ("NCS") 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. They also expressed concern that the Vocational Training Council ("VTC") 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.

11. 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

12. 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 of HKSAR

13. On 25 June 2008, CPG submitted to UN its combined 10th to 13th report under ICERD, of which the second report of HKSAR formed a part. 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 CA Panel received views from deputations 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 14 to 18 below.

Judicial cases on violations of ICERD in HKSAR

14. 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 not including such information 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.

Support for ethnic minorities

15. Some members enquired about the measures taken by the 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 in 2009 would also provide interpretation service to ethnic minorities to facilitate their access to public services and critical non-government services. The interpretation service would be provided in 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.

16. 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 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 low level 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.

17. 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. Members may wish to note that according to the supplementary information provided by the Administration vide LC Paper No. CB(2)893/09-10(01), Head of Departments/Head of Grades could apply to the Civil Service Bureau for exemption from the stipulated language proficiency requirement on a case-by-case basis if they encountered recruitment difficulties.

Discrimination against new arrivals from the Mainland

18. 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 tackle 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.

Concluding Observations of UNCERD on the second report

19. UNCERD published its Concluding Observations on 28 August 2009. The CA Panel discussed the Concluding Observations with the Administration on 16 November 2009 and received views from deputations on 11 December 2009. The issues raised by members of the CA Panel are summarized in paragraphs 20 to 23 below.

Inadequacies of Race Discrimination Ordinance (Cap. 602) ("RDO")

20. Some members expressed dissatisfaction with the Administration's refusal to implement UNCERD's recommendations that the HKSAR Government should

extend the scope of the application of RDO to all Government functions and powers, and adopt a race equality plan to ensure effective implementation of RDO. They took the view that in the absence of legislation to bind the Government beyond the limited scope of RDO, taking legal action against the Government under the Hong Kong Bill of Rights Ordinance (Cap. 383) ("BORO") would not only be expensive and time-consuming, but also ineffective.

21. The Administration advised that the relevant BL provisions and BORO prohibited the Government and public authorities from engaging in practices that would entail any form of discrimination including race discrimination. RDO applied equally to the Government as well as the private sector in areas specified in the Ordinance. RDO would not narrow the scope of application of BORO to the Government, nor would it absolve the Government and public authorities from its obligations under BORO. The Administration maintained its view that ICERD contained no express provision for State Parties to adopt a race equality plan.

Education for NCS students

22. Some members expressed concern whether the measures and resources available to assist NCS students in learning Chinese were adequate and whether the measures implemented by the Education Bureau ("EDB") to facilitate integration of NCS students into the local education system were effective. The Administration informed the CA Panel that the number of designated schools for NCS students, which were provided with focused support and a recurrent special grant to support the NCS students, had increased from 15 in the 2006-2007 school year to a total of 26 in the 2009-2010 school year. The after-school support services for NCS students had been reinforced through the establishment of more Chinese Language Learning Support Centres, and the number of venues of the Centres had increased from the initial five to 10 in the 2009-2010 school year. EDB had visited schools with larger NCS intakes for collecting information on the effectiveness of the school curriculum and various support. Members noted that the Panel on Education would further follow up on the support measures for the education of NCS students.

Discrimination against new arrivals from the Mainland

23. Some members expressed regret that new arrivals from the Mainland were excluded from the scope of RDO. They enquired about the avenue for these new arrivals to seek redress. The Administration explained that the protection under RDO applied to new arrivals from the Mainland and all other persons in Hong Kong. As the Administration appreciated the difficulties faced by some new arrivals to adapt to the life-style of a new environment, the Home Affairs

Department, as the co-ordinator, had liaised with various government departments to provide different support services for new arrivals. If new arrivals encountered difficulty in gaining access to public services, they could lodge complaints under the established mechanisms.

Latest development

24. CPG will submit its 14th to 17th combined periodic report under ICERD and HKSAR Government will submit its third report to CPG for incorporation as part of PRC's report. The Administration will consult the CA Panel on an outline of the topics for inclusion in the HKSAR's third report at the next meeting on 16 November 2015.

Relevant papers

25. A list of relevant papers and minutes of meetings which are available on the LegCo website is in **Appendix**.

Council Business Division 2
Legislative Council Secretariat
10 November 2015

**Relevant documents on
Reports of the Hong Kong Special Administrative Region under
the International Convention on
the Elimination of All Forms of Racial Discrimination**

| Committee | Date of meeting | Paper |
|---------------------------------|-------------------------|---|
| Panel on Home Affairs | 12.01.2007 (Item VI) | Agenda Minutes |
| Panel on Constitutional Affairs | 15.12.2008 (Item V) | Agenda Minutes |
| | 15.06.2009 (Item V) | Agenda Minutes |
| | 16.11.2009 (Item V) | Agenda Minutes |
| | 11.12.2009 (Item IV) | Agenda Minutes |