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Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 16 July 2018**

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

Purpose

This paper summarizes the past discussion of the Panel on Constitutional Affairs ("CA Panel") on the outline of topics for inclusion in the third 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 of PRC would assume responsibility for the international rights and obligations arising from the application of ICERD to the Region.

The first and second reports of the Hong Kong Special Administrative 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 as part of PRC's combined Eighth and Ninth Reports. 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.

5. The second report of HKSAR was submitted to UN on 25 June 2008 as part of PRC's combined 10th to 13th Reports. UNCERD heard the report on 7 and 10 August 2009 and published its Concluding Observations on 28 August 2009.

6. Members may wish to refer to the background briefs [LC Paper Nos. CB(2)796/06-07(05) and CB(2)229/15-16(05)] for the past discussion of the relevant Panels¹ on the first and second reports of HKSAR in the light of ICERD.

The third report of the Hong Kong Special Administrative Region

7. In line with established practices, the Administration published an outline of the topics to be included in the third report of HKSAR under ICERD for public consultation between 19 October and 27 November 2015. The third report of HKSAR has been submitted as part of PRC's combined 14th to 17th Reports to UN, and was made available to the public on 3 April 2017. The related hearing is scheduled to be conducted in August 2018.

Past discussion of the Panel on Constitutional Affairs

8. At the meeting on 16 November 2015, the CA Panel discussed with the Administration and deputations the outline of topics in preparation for the submission of the third report of HKSAR under ICERD. The major issues of concern raised by members at the meeting are summarized below.

Education for non-Chinese speaking students

9. Members urged the Administration to strengthen education support for ethnic minority ("EM") students to help them integrate into the community. They suggested that schools should issue circulars to parents in both Chinese and English so as to cater for non-Chinese speaking ("NCS") parents as well. Members stressed that the Administration should ensure equal opportunities for EMs in Hong Kong and support their integration into the community.

10. The Administration advised that since the 2013-2014 school year, the so-called "designated schools" system had been abolished. Instead, all schools admitting 10 or more NCS students were provided with additional funding. The

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

number of schools admitting 10 or more NCS students had increased from 119 in 2012-2013 to 151 in 2013-2014, and further to 173 in 2014-2015. Dedicated briefing sessions for NCS parents were organized on key subjects such as admission to kindergartens, allocation of Primary One and Secondary One school places, etc. Moreover, the Administration had enhanced the provision of professional support services to kindergartens to facilitate NCS children's smooth transition from kindergartens to primary schools. Schools which admitted a greater number of NCS students were encouraged to engage their NCS students in learning networks or community activities with a view to enhancing interactions with their Chinese-speaking peers and broadening their exposure to Chinese. The Administration considered that the various support measures would enhance NCS students' learning and facilitate their early integration into the local education setting.

11. Some members, however, questioned whether the above measures taken by the Administration could effectively enable EM children to enjoy equal opportunities in education. They considered that the Administration should formulate a comprehensive strategy on enhancing education opportunities for EM children and promoting their social mobility through education. At the request of the CA Panel, the Administration has provided supplementary information on measures to enhance Chinese learning and teaching for NCS students [LC Paper No. CB(2)611/15-16(01)].

Support measures for ethnic minorities

12. Some members urged the Administration to step up efforts to address the long standing problems encountered by EMs living in Hong Kong, such as issues relating to refugees stranded in Hong Kong and EMs in poverty. They enquired whether and how the Administration would monitor the implementation of the Administrative Guidelines on Promotion of Racial Equality ("the Guidelines") as the Guidelines had no binding effect. Noting that webcams were installed at service units of the Social Welfare Department ("SWD") for providing interpretation service to EMs by way of three-way video conferencing with the interpreters of the relevant support service centre ("SSC"), some members raised concern that SWD had never requested such service.

13. The Administration advised that the Guidelines were issued in 2010 to provide general guidance to bureaux/departments ("B/Ds") and public authorities to promote racial equality and ensure equal access by EMs to public services in key areas concerned. Application of the Guidelines had been extended from 14 B/Ds and public authorities in 2010 to 23 in 2015. Relevant B/Ds and public authorities had drawn up checklists of measures in accordance with the Guidelines that would assist in promoting racial equality and equal access to key

public services and enhance the transparency of their work. The implementation of the Guidelines, which was last reviewed in late 2014, had been smooth according to the feedback provided by relevant B/Ds. At the request of the CA Panel, the Administration has provided supplementary information on the outcome of its review of the implementation of the Guidelines in 2014 [LC Paper No. CB(2)666/15-16(01)].

14. As regards SSCs for EMs, the Administration further advised that the Home Affairs Department provided support services to facilitate the integration of EMs into the community, including funding non-profit-making organizations to operate six SSCs and two sub-centres for EMs to provide a range of services for them. One of the centres, namely the Centre for Harmony and Enhancement of Ethnic Minority Residents ("CHEER"), which was operated by the Hong Kong Christian Service, also provided general interpretation and translation service. Under the Guidelines, relevant B/Ds should take appropriate measures to ensure equal access by EMs to public services. Relevant B/Ds might choose any interpretation and translation service providers which could meet their specific needs, including but not limited to CHEER. The Administration explained that instead of video conferencing, some B/Ds would use three-way telephone conference calls with the interpreters of CHEER to handle enquiries of EMs where appropriate. Apart from interpretation services, B/Ds and public authorities might also employ other appropriate measures to facilitate access of EMs to public services having regard to their respective circumstances.

Protection of foreign domestic helpers

15. Some members expressed concern about the "two-week rule" and the "live-in requirement" for foreign domestic helpers ("FDHs") and urged the Administration to review on a yearly basis the continued need for imposing the requirements. They pointed out that some FDHs dared not report their cases to the Police or the Labour Department ("LD") even though they had been abused or exploited by their employers as they were worried that, under the "two-week rule", they might have to return to their places of origin if their contracts were terminated prematurely. He also noted that some FDHs were not provided with reasonable living condition and had very long working hours.

16. The Administration advised that LD attached great importance to protecting the rights and benefits of FDHs. FDHs were encouraged to report their cases to LD if they considered their rights and benefits had been infringed. LD had also strengthened the publicity and educational efforts to increase FDHs' awareness of their rights. According to the Administration, the "live-in requirement" was the cornerstone of the HKSAR's policy of importing FDHs. It was the HKSAR Government's established policy that, as in many other

jurisdictions, priority of employment should be given to the local workforce, and the importation of FDHs was allowed to meet the acute shortfall of full-time live-in domestic helpers locally. Furthermore, the Government also needed to take into account the employers' affordability in providing separate accommodation to their FDHs, the risks of allowing FDHs to live out, as well as issues such as the pressure on private housing and public transportation, etc. The Government considered it necessary to retain the "live-in requirement" for FDHs. The Administration further advised that the "two-week rule" was necessary for effective immigration control. Its purpose was to allow sufficient time for FDHs to prepare for their departure instead of facilitating them to find new employers.

17. Some members enquired whether FDHs who had been victims of domestic violence could apply for extension of stay in Hong Kong. The Administration advised that FDHs who had been abused should report their cases to the Immigration Department ("ImmiD"). If there was evidence that an FDH had been abused or in the event that an FDH had to stay in Hong Kong to settle labour dispute, flexibility would be exercised by the ImmiD to extend the FDH's stay to enable him/her to wait for the conclusion or determination of the case. Relevant publicity leaflets were published by ImmiD in various EM languages. At the request of the CA Panel, the Administration has provided supplementary information on statistics on the applications for extension of stay from FDHs who had been victims of domestic violence in 2013 to 2015, including the number of cases approved and the period of extension granted [LC Paper No. CB(2)633/15-16(01)].

Motion passed at the meeting on 22 June 2018

18. During discussion of the Discrimination Legislation (Miscellaneous Amendments) Bill at its meeting on 22 June 2018, the CA Panel passed two motions and one of which was to urge the Government to expeditiously formulate a timetable for implementing the prioritized recommendations under the Discrimination Law Review ("DLR") with respect to the Race Discrimination Ordinance ("RDO"); and study as soon as possible the inclusion of government functions and powers in the next phase of amendments to RDO. Some members pointed out that back in 2009, UNCERD recommended in its Concluding Observations that all Government functions and powers should be brought within the scope of RDO, and the same recommendation was made by the Equal Opportunities Commission under DLR. The Administration has provided a written response to the relevant motion [Annex I to LC Paper No. CB(2)1789/17-18(01)].

Latest development

19. The CA Panel will receive public views on the third report of HKSAR under ICERD at the next meeting on 16 July 2018.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
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**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
	16.11.2015 (Item IV)	Agenda Minutes

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