

# 立法會 *Legislative Council*

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## **Panel on Constitutional Affairs**

**Updated background brief prepared by the Legislative Council Secretariat  
for the meeting on 19 November 2018**

### **Third Report 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 ("the Panel") on 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 10<sup>th</sup> to 13<sup>th</sup> 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 Panels<sup>1</sup> 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 14<sup>th</sup> to 17<sup>th</sup> Reports to UN, and was made available to the public in April 2017. The related hearing was conducted on 10 and 13 August 2018.

### **Major issues discussed regarding the third report of the Hong Kong Special Administrative Region**

8. At its meeting on 16 November 2015, the 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 Panel discussed the third report with deputations and the Administration on 16 July 2018. The major issues of concern raised by members at these meetings are summarized below.

### Inclusion of Government functions and powers within the scope of Race Discrimination Ordinance

9. Some members pointed out that back in 2009, UNCERD had recommended in its Concluding Observations that all Government functions and powers should be brought within the scope of the Race Discrimination Ordinance (Cap. 602) ("RDO"), and the same recommendation was also made by the Equal Opportunities Commission under the Discrimination Law Review. These members urged the Administration to take forward necessary amendments to RDO to cover Government functions and powers so as to address the inadequacies of the existing RDO and help promote racial equality.

10. The Administration advised that RDO bound the Government and therefore, prohibited discriminatory acts and practices of the Government and other public authorities in all the areas specified in RDO, such as employment, education, the provision of goods, facilities or services, and the disposal or management of premises. Besides, the Hong Kong Bill of Rights Ordinance (Cap. 383) prohibited the Government and public authorities from engaging in practices that would entail any form of discrimination, including discrimination

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<sup>1</sup> 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 Panel.

on the ground of race. The Administration considered that the aforementioned proposal should be carefully studied. The Administration has provided a written response which is attached in **Appendix I**.

### Education for non-Chinese speaking students

11. Members urged the Administration to strengthen education support for ethnic minority ("EM") students to help them integrate into the community. Members stressed that the Administration should ensure equal opportunities for EMs in Hong Kong and support their integration into the community.

12. 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 non-Chinese speaking ("NCS") students were provided with additional funding. The 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. The Administration had enhanced the provision of professional support services to kindergartens ("KGs") to facilitate NCS children's smooth transition from KGs 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.

13. Some members, however, questioned whether the above measures taken by the Administration could effectively enable NCS children to enjoy equal opportunities in education. In particular, they expressed concern as to whether the admission procedures of KGs were fair and ensured equal opportunities for all children regardless of their race. Some members suggested that local KGs should not require NCS children to attend admission interviews which were conducted in Cantonese or Putonghua. They also expressed concern as to whether support measures were in place to help EM parents understand local school admission arrangements, and whether schools had adequately trained staff in teaching NCS students.

14. The Administration advised that dedicated briefing sessions on admission to KGs, as well as allocation systems of Primary One and Secondary One school places, etc., had been organized for parents of NCS students. According to the annual reports submitted by schools on the implementation of the "Chinese Language Curriculum Second Language Learning Framework" ("Learning Framework"), it was noted that information on the support measures available in schools would be disseminated to the public through a variety of channels

(including school websites and school notices). The Administration advised that KGs under the new KG education scheme were required to provide information on their admission arrangements (including admission guidelines and application forms) in bilingual version. The Education Bureau ("EDB") would follow up with individual KGs to look into any possible irregularities. EDB would also make referrals if NCS parents had encountered problems in KG admission.

15. Regarding the "Learning Framework" implemented for NCS primary and secondary students from the 2014-2015 school year, some members considered that the Administration should provide teachers with standard teaching materials, guidelines and assessment tools. Some members also suggested that the Administration should formulate the Chinese language as a second language policy.

16. The Administration considered it imperative for NCS students to be proficient in Chinese with a view to integrating into the local community. The Administration advised that to this end, EDB had developed the "Learning Framework" based on the mainstream Chinese Language curriculum. With reference to the "Learning Framework", teachers could set progressive learning targets, learning progress and expected learning outcomes for their NCS students in the reading, writing, listening and speaking domains so that NCS students with diversified learning needs could learn Chinese progressively in a "small-step" approach. EDB had also implemented a series of support measures to facilitate NCS students' mastery of the Chinese language. EDB would continue to review them and refine individual measures where appropriate.

17. Members may wish to note that the Government has put forward a package of new initiatives in the 2018 Policy Address to further enhance the support for EMs. The key initiatives include, among others, supporting NCS students in learning Chinese and assisting those with special educational needs as detailed in LC Paper No. CB(2)56/18-19(01). These initiatives will be rolled out starting from 2019-2020 and will incur an expenditure of over \$500 million.

#### Support measures for ethnic minorities

18. 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.

19. 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 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)].

20. 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. Members may wish to note that the package of new initiatives mentioned in paragraph 17 above includes the following :

- (a) improving the Guidelines for application to all B/Ds as well as related organizations providing services to EMs;
- (b) enhancing interpretation and translation services provided by CHEER and introduce new services in Vietnamese; and
- (c) strengthening services of SSCs for EMs, particularly those services catering for EM new arrivals and youths.

### Protection of foreign domestic helpers

21. 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. They also noted that some FDHs were not provided with reasonable living condition and had very long working hours.

22. 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.

23. 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 ("ImmD"). 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 ImmD 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 ImmD in various EM languages. At the request of the 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)].

### Human trafficking

24. Some members pointed out that Hong Kong had been placed on the Tier 2 Watch List in the Trafficking in Persons Report published by the State Department of the United States ("the US Report") and there were loopholes in existing law in Hong Kong, including the lack of a criminal offence and penalty that addressed the prohibited concept of forced or compulsory labour.

25. The Administration advised that some contents of the US Report did not reflect the facts in Hong Kong and the Administration had issued a press release to reject Hong Kong's grading in the report. The Administration would pay attention to reports of other countries on Hong Kong and would provide a response if relevant reports did not reflect the facts in Hong Kong. In response to members' concern, the Administration undertook to advise the UN Committee of the new developments in this area, including measures and the Government's efforts in combating trafficking in persons.

### **Latest development**

26. The Panel will receive public views on the outcome of the UN hearing of the third report of HKSAR under ICERD at the next meeting on 19 November 2018.

### **Relevant papers**

27. A list of relevant papers and minutes of meetings which are available on the Legislative Council website is in the **Appendix II**.

**Panel on Constitutional Affairs**  
**Motion passed under agenda item III**  
**“Discrimination Legislation (Miscellaneous Amendments) Bill”**  
**at the meeting on 22 June 2018**

This Panel urges the Government to expeditiously formulate a timetable for implementing the prioritised recommendations 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, so as to address the inadequacies of the existing Ordinance and help promote racial equality.

Moved by: Hon Claudia MO

**Response from the HKSAR Government**

The Government has been committed to eliminating racial discrimination and promoting equal opportunities for ethnic minorities. The Race Discrimination Ordinance (Cap. 602) (RDO), which came into full operation in July 2009, purports to protect all people against discrimination, harassment and vilification on the ground of race. According to the RDO, it is unlawful to discriminate in prescribed areas, including employment; education; provision of goods, facilities, services and premises; election and appointment matters of public bodies; arrangements in relation to barristers and membership of clubs etc. It is also unlawful to racially harass another person (i.e. engaging in an unwelcome conduct, in circumstances in which a reasonable person would have anticipated that the other person would be offended, humiliated or intimidated by that conduct) in these areas.

2. Currently, the RDO binds the Government and specifically prohibits discriminatory acts and practices of the Government in all areas prescribed in the RDO, such as employment; education; the provision of goods, facilities or services; and the disposal or management of premises. Section 27 of the RDO renders it unlawful for any person who provides goods, facilities or services to discriminate against another person in the provision of such goods, facilities or services.



3. In the case of *Arjun Singh v Secretary for Justice* (DCEO 9/2011) decided in May 2016, the District Court held that the prohibition against discrimination in the provision of “services” in section 27 of the RDO includes the activity of the Police in responding to requests for assistance. The District Court could not find any evidence of racial profiling or institutional racism by the Police in that case. On the contrary, the evidence showed that the Police had responded to the plaintiff’s needs as appropriate in the circumstances. Although the District Court held that a person who alleges to have been subject to a racially motivated arrest would not be able to bring a civil claim under section 27 of the RDO, such person would have an effective remedy in the form of a public law challenge that the arrest contravenes the right to equality before the law guaranteed by Article 25 of the Basic Law and Articles 1 and 22 of the Hong Kong Bill of Rights, and may claim damages for trespass or false imprisonment in a civil action.

4. It should be emphasised that the Government has always been prohibited from practising racially discriminatory behaviours under the HKSAR’s legal framework. The Hong Kong Bill of Rights Ordinance prohibits the HKSAR Government and public authorities from practising discrimination on the ground of race. Avenues are also available to address complaints against the Government and public authorities through, for example, the Ombudsman, complaint channels within bureaux and departments, and the Legislative Council, etc.

5. Among the 27 prioritised recommendations in the Submissions to the Government on Discrimination Law Review by the Equal Opportunities Commission, we will first take forward eight recommendations which are less complex and controversial, out of which six are related to the RDO. We plan to introduce the Discrimination Legislation (Miscellaneous Amendments) Bill to the Legislative Council for scrutiny by end-2018.

**Constitutional and Mainland Affairs Bureau**  
**July 2018**

**Relevant documents on  
Third Report 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<br>(Item VI) | <a href="#">Agenda</a><br><a href="#">Minutes</a>  |
| Panel on Constitutional Affairs | 15.12.2008<br>(Item V)  | <a href="#">Agenda</a><br><a href="#">Minutes</a>  |
|                                 | 15.06.2009<br>(Item V)  | <a href="#">Agenda</a><br><a href="#">Minutes</a>  |
|                                 | 16.11.2009<br>(Item V)  | <a href="#">Agenda</a><br><a href="#">Minutes</a>  |
|                                 | 11.12.2009<br>(Item IV) | <a href="#">Agenda</a><br><a href="#">Minutes</a>  |
|                                 | 16.11.2015<br>(Item IV) | <a href="#">Agenda</a><br><a href="#">Minutes</a>  |
|                                 | 22.6.2018<br>(Item III) | <a href="#">Agenda</a><br><a href="#">Minutes</a><br>Annex I to <a href="#">LC Paper No. CB(2)1789/17-18(01)</a> |
|                                 | 16.7.2018<br>(Item III) | <a href="#">Agenda</a><br><a href="#">Minutes</a><br><a href="#">LC Paper No. CB(2)108/18-19(01)</a>             |