

**For information  
on 16 November 2009**

**Legislative Council Panel on Constitutional Affairs**

**Hearing of the Report  
of the Hong Kong Special Administrative Region  
under the International Convention On The Elimination Of All  
Forms Of Racial Discrimination**

**Purpose**

This paper informs Members of the outcome of the hearing by the United Nations (UN) Committee on the Elimination of Racial Discrimination (the Committee) on the Report of the Hong Kong Special Administrative Region (HKSAR) under the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention), and the Administration's initial views on the Committee's recommendations.

**Background**

2. The Convention was first applied to Hong Kong in 1969. Since 1 July 1997, it continues to apply to the HKSAR. Under the Convention, States Parties have an obligation to submit to the Committee periodic reports on the implementation of the Convention. The latest report of the HKSAR formed part of the report of the People's Republic of China which was submitted to the Committee in 2008. The HKSAR Report and relevant issues were discussed at the meetings of the Panel on Constitutional Affairs on 15 December 2008 and 15 June 2009.

**Hearing of the HKSAR Report**

3. The Report was considered by the Committee at its hearing held in Geneva on 7 and 10 August 2009. The HKSAR team, comprising officials from the Constitutional and Mainland Affairs Bureau, the Department of Justice, the Security Bureau, the Education Bureau and the Labour Department, attended the hearing as part of the Chinese

delegation. During the hearing, a number of comments and questions were raised by Committee members on the application of the Convention in the HKSAR. The HKSAR team provided its response to the issues. In concluding, the Rapporteur thanked the Chinese delegation, including the HKSAR team, for the constructive dialogue and comprehensive responses provided.

4. The Concluding Observations of the Committee, which contained the Committee's recommendations concerning the HKSAR, were adopted by the Committee on 25 August 2009 and released on 28 August 2009. A copy of the Concluding Observations is at **Annex** (only English version is available up to date). Paragraphs 7 and 27 to 31 of the Concluding Observations are specifically on the HKSAR.

### **Recommendations of the Committee and the Administration's Initial Views**

5. The Committee welcomed the enactment of the RDO, which entered into full operation in July 2009. On the other hand, it raised some concerns and made recommendations in a number of areas. These recommendations and the Administration's initial views are summarised below.

#### **(A) Definition of racial discrimination in the RDO (paragraph 27)**

6. The Committee expressed its concern that the definition of racial discrimination under the RDO is not completely consistent with article 1 of the Convention as it does not clearly define indirect discrimination with regard to language, and it does not include immigration status and nationality among the prohibited grounds of discrimination. It recommended the HKSAR to include the items concerned among the prohibited grounds of discrimination in the RDO.

7. We wish to point out that the RDO defines indirect discrimination in the same manner as the three anti-discrimination ordinances concerning sex, disability and family status respectively. It has incorporated the proportionality test which is in line with the general principle under international human rights jurisprudence. It covers various requirements or conditions, which could include those

involving languages. It is, therefore, not appropriate to highlight a particular requirement or condition, such as language, in the definition.

8. The definition of *ōraceö* in the RDO (i.e. that it means the race, colour, descent, national or ethnic origin of a person) follows the grounds listed in article 1(1) of the Convention. For clarity and certainty in law, the RDO provides that acts done on the ground of nationality and a number of immigration status (e.g. the length of residence in Hong Kong) do not constitute acts done on the ground of *ōraceö*. This would not narrow the definition of *ōraceö* in the RDO. More importantly, the protection under the RDO applies equally to all persons in Hong Kong, regardless of their nationality or immigration status.

9. We, therefore, consider that the definition of racial discrimination in the RDO is consistent with article 1 of the Convention.

**(B) Coverage of Government functions and powers in the RDO (paragraph 28)**

10. The Committee expressed concerns that the RDO only covers certain Government activities and exercise of its powers in its scope of application. It recommended that all Government functions and powers be brought within the scope of the RDO.

11. In this relation, it is worth noting that the Government is prohibited from practising racially discriminatory acts in the exercise of its functions under the Basic Law and the Hong Kong Bill of Rights Ordinance. In addition, there is an extensive framework of organisations, including the LegCo, Equal Opportunities Commission (EOC) and the Ombudsman, which deal with complaints against a government department. Any racially discriminatory act of the Government is also subject to the court's supervisory jurisdiction. This issue was discussed in detail and we explained our views during the scrutiny of the Race Discrimination Bill in 2008. We do not consider it appropriate to extend the coverage of the RDO to all Government functions in addition to the areas already specified.

12. The Committee also recommended that the HKSAR should adopt a race equality plan to ensure effective implementation of the law,

and the EOC should be strengthened. In this connection, we have drawn up a set of proposed Administrative Guidelines on the Promotion of Racial Equality to provide guidance to relevant bureaux, departments and public bodies to promote racial equality and ensure equal access by ethnic minorities to public services in key areas. We briefed the Panel on the latest progress on the preparation of the Guidelines, as well as the draft checklists of measures drawn up by a number of relevant bureaux, departments and public bodies, at the meetings of 7 July 2009 and 19 October 2009 respectively. We are finalising the Guidelines taking into account views expressed by relevant parties. The bureaux, departments and public authorities concerned are also drawing up the remaining checklists of measures.

13. We have also provided extra resources to the EOC for the implementation of the RDO. These include a special subvention of \$7 million to the EOC for making preparatory arrangements such as conducting public education, publicity and promotion on the RDO. In the 2009/10 financial year, we have provided an additional subvention of about \$5 million to the EOC for recruiting additional staff and organising community activities to implement the RDO and promote racial equality.

**(C) Refugees and torture claimants (paragraph 29)**

14. Whilst noting the planned legislative framework for torture claimants in the HKSAR, the Committee was concerned with the lack of a refugee law as such, including a screening procedure of asylum claims. It recommended the adoption of a law on refugees with a view to establishing a comprehensive procedure for the screening of individual asylum claims. It further recommended that the rights of asylum-seekers to information, interpretation, legal assistance and judicial remedies be guaranteed. It also encouraged our reconsideration of extending to Hong Kong the 1951 Refugee Convention and its 1967 Protocol.

15. The Administration's position has been that given our geographical factors and liberal visa regime, extending the 1951 Refugee Convention and its 1967 Protocol to Hong Kong will make us vulnerable to possible abuses. Asylum claims lodged in Hong Kong are being administered by the United Nations High Commissioner for Refugees (UNHCR) Hong Kong Sub-office and the Administration will provide

support as and when required. As regards torture claimants, the Administration will put forth administrative enhancements to the screening procedures and will present a legislative framework on handling the claims within the 2009/10 legislative session.

**(D) Domestic migrant workers (paragraph 30)**

16. The Committee expressed its concerns on the two-week rule, as well as the live-in requirement and other working conditions (working hours, rest and holiday periods) of domestic migrant workers. The Committee recommended that effective measures be taken to ensure that domestic migrant workers are not discriminated against. It called upon the repealing of the two-week rule as well as the live-in requirement, and that a more flexible approach be adopted for domestic migrant workers in relation to their working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects. The Committee also drew attention to its General Recommendation No. 30 (2004) on discrimination against non-citizens.

17. The Administration's view has been that the two-week rule for FDHs, also applicable to other imported workers under the Supplementary Labour Scheme, is necessary to maintain effective immigration control. It serves legitimate purposes to prevent migrant workers, whose contracts having been prematurely terminated, from overstaying and taking up unauthorised work. The rule does not preclude the concerned workers from returning to Hong Kong to work. In addition, appropriate flexibility has been allowed to cater for special circumstances.

18. As for the live-in requirement, it should be noted that FDHs are imported to meet the shortfall of local live-in domestic workers. For the purpose of meeting this shortfall, the current regime for importing FDHs has been far less restrictive than that for other low-skilled workers. In respect of working hours, the Employment Ordinance (Cap. 57) has provisions on annual leave and rest day arrangements, which apply equally to both local and migrant workers (including FDHs). The Government has also publicised the importance of provision of proper rest periods to all workers.

19. As to the Committee's General Recommendation No. 30 (2004) on discrimination against non-citizens, it should be noted that General Recommendations or General Comments of UN human rights bodies, though not binding, are considered as important reference materials in our formulation and implementation of Government policies. Thus, the Government will take into account General Recommendation No. 30 (2004) in monitoring the "two-week rule" and "live-in" requirement.

20. In respect of the recommendation for Hong Kong to adopt a more flexible approach in relation to FDHs' working conditions and work requirements, at present migrant workers are entitled to the same rights and benefits as local workers under Hong Kong's labour legislation (including Employment Ordinance and Employees' Compensation Ordinance (Cap. 282)), as well as same access to the free conciliation services provided by the Labour Department and the justice system in case of any employment disputes. Furthermore, the Government has put in place extra protection for FDHs since the early-1970s through a "minimum allowable wage" and a prescribed standard employment contract which compulsorily requires FDH employers to provide FDHs with benefits such as free passage, free accommodation and food (or food allowance), free medical treatment, etc. These benefits are not usually available to local workers.

21. It is noteworthy that, provided that the working conditions and work requirements are not worse than those specified under the labour legislation and the standard employment contract, FDHs (same as local workers) and their employers are free to negotiate on the terms and conditions of their employment, including the hours of work and compensation for overtime work, leave and holiday arrangements, etc.

**(E) Chinese language education for non-Chinese speaking (NCS) students (paragraph 31)**

22. The Committee was concerned about the lack of official education policy for teaching Chinese as a second language for NCS students with an immigration background. It recommended the development of such a policy in consultation with teachers as well as the communities concerned, and intensification of efforts to improve the quality of Chinese language education for immigrant children.

23. The Government's policy is to facilitate the early integration of NCS students into the local education system. Accordingly students studying the local curriculum are required to study Chinese Language and English Language in public sector primary and secondary schools as learning entitlement. Our strategy of curriculum development in every subject including the Chinese Language is to provide a common and flexible curriculum framework for schools to make appropriate adaptation on the curriculum strategies and materials in accordance with the aspirations and ability of students. In other words, we will not introduce an alternative Chinese Language curriculum with separate pre-set simpler contents and lower standards together with assessment for an academic qualification to avoid limiting the range of learning opportunities of NCS students with different needs. That said, as an enhanced support for the NCS students, the Education Bureau (EDB) issued in November 2008 the *Supplementary Guide to the Chinese Language Curriculum for Non-Chinese Speaking Students*. This Guide includes multiple curriculum modes of immersion in Chinese Language lessons, bridging/transition, specific learning purposes and integration, pitching for the appropriate learning level, leading to multiple exits for NCS students.

24. To support schools' implementation of the supplementary guide, the EDB has been developing a series of curriculum resources for NCS students, such as lexical lists for learning Chinese, courseware on Chinese characters and learning software on traditional Chinese virtues, as well as adapted school learning materials in the textbook format. Various courseware and software were distributed to schools and made available to the public in December 2008 and the lexical lists in May 2009. Adapted school learning materials, covering Primary and Secondary levels, were distributed to schools since September 2009 with the full set to be available in June 2010. Furthermore, the EDB has commissioned a research study on the Chinese Language standards of NCS students, which will form the basis for the development of some Chinese Language assessment tools for NCS students. These assessment tools are expected to be completed at the end of 2010. Together with other support measures such as increasing the number of the schools designated for focused support, teacher professional development programmes, on-site support to schools through the partnership schemes with tertiary institutes, setting up the Chinese Language Support Centres

to provide programmes after-school, etc., it is expected that our efforts would have a more sustainable impact on the learning of NCS students.

### **Follow-up actions**

25. As requested in paragraph 40 of the Concluding Observations, the HKSAR will provide information on our follow up to the recommendations in paragraph 30 of the Concluding Observations (i.e. in relation to domestic migrant workers) by 25 August 2010. We will also address all the relevant points raised in the Concluding Observations and in particular provide detailed information in relation to the recommendations in paragraph 28 of the Concluding Observations (i.e. regarding the Race Discrimination Ordinance, race equality plan and the EOC) in our report to be submitted as part of China's next periodic report by 28 January 2013 as requested under paragraphs 41-42 of the Concluding Observations.

**Constitutional and Mainland Affairs Bureau**  
**November 2009**