

# Government gives an initial response to concluding observations of UN Committee on the Elimination of Racial Discrimination on Hong Kong's Report

A spokesperson for the Constitutional and Mainland Affairs Bureau (CMAB) said today (August 31) that the United Nations Committee on the Elimination of Racial Discrimination (the Committee) had issued its concluding observations 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 (the Convention).

"We note that the Committee expresses its appreciation for the open and constructive dialogue, and also thanks the delegation for the additional oral and written information provided during the consideration of the report.

"In the concluding observations, the Committee welcomes community outreach programmes aimed at ethnic minorities (EMs) and the implementation of the 'Chinese Language Curriculum Second Language Learning Framework' (Learning Framework) in primary and secondary schools.

"We also note that the Committee has raised concerns and made recommendations in a number of areas. We respect the Committee's views and will examine them carefully. Meanwhile, we would like to set out our initial responses to them," the spokesperson said.

## National Human Rights Institutions

The Committee recommends that sufficient structural independence and financial and human resources should be provided to national human rights institutions. We would like to point out that human rights are fully protected by law in the HKSAR, and are enshrined in the Basic Law, the Hong Kong Bill of Rights Ordinance (HKBORO) and other relevant legislation such as anti-discrimination legislation. These are buttressed by the rule of law and an independent judiciary. There is also an existing institutional framework of statutory organisations which help promote and safeguard human rights and eliminate discrimination, including the Ombudsman, the Privacy Commissioner for Personal Data and the Equal Opportunities Commission (EOC). The HKSAR Government's performance in promoting and safeguarding human rights is open to public scrutiny through periodic reports submitted to the United Nations treaty-monitoring bodies and their hearing procedures. The Government's efforts in protecting human rights are also subject to the supervision of the Legislative Council of the HKSAR, the free and vibrant press, and various non-governmental organisations (NGOs).

We would also like to point out that the EOC is an independent statutory

body. Its powers, functions and autonomy in internal governance are protected by law. Members of the EOC comprise representatives with different expertise and from various sectors. To step up the efforts on publicity and education on the Race Discrimination Ordinance (RDO), the CMAB has been providing a recurrent funding of \$4.69 million to the EOC starting from 2014-15 for setting up a dedicated Ethnic Minorities Unit to enhance the EOC's work on promoting equal opportunities and racial integration. In 2014-15 and 2017-18, the CMAB also provided additional funding of \$2 million and \$3 million respectively to the EOC.

#### Race Discrimination Ordinance and related matters

The Committee recommends that all Government functions and powers should be brought within the scope of the RDO. We would like to point out that the RDO binds the Government (section 3 of the Ordinance) and therefore prohibits discriminatory acts of the Government in all the areas specified in the RDO, such as employment, education, the provision of goods, facilities or services, and the disposal or management of premises. In particular, section 27 of the RDO renders it unlawful for the Government to discriminate against a person in the provision of the services of any department of the Government or any undertaking by or of the Government.

Under the HKSAR's legal framework, public bodies are prohibited from practising racial discrimination. The HKBORO prohibits the Government and public authorities from engaging in acts that would entail any form of discrimination on any of the enumerated grounds, including race, colour and language. Discriminatory acts of the Government, including racial discrimination, are subject to the Court's supervisory jurisdiction. Avenues are also available to address complaints against public authorities through the Ombudsman, complaint channels in bureaux/departments (B/Ds), the Legislative Council and others.

Following a comprehensive review of the four anti-discrimination ordinances (including the RDO) in 2016, the EOC made 73 recommendations for the Government's consideration, of which 27 were considered by the EOC as priority items. The HKSAR Government has consulted the Legislative Council Panel on Constitutional Affairs and has decided to take forward eight recommendations of priority. Among them, six are related to the RDO. The legislative proposals will be introduced into the Legislative Council by end-2018. The Government will continue to carefully study the EOC's submissions and consider how to follow up on the other recommendations (including the recommendation of bringing all Government functions and powers within the scope of the RDO) at a later stage while maintaining communication with the EOC.

Meanwhile, it should be noted that the HKSAR Government issued in 2010 the Administrative Guidelines on Promotion of Racial Equality (the Guidelines) to provide general guidance to relevant Government B/Ds and public authorities to promote racial equality and ensure equal access by EMs to public services in key areas concerned, and to take the Guidelines into account in their formulation, implementation and review of relevant policies

and measures. Over the years, the scope of application of the Guidelines has been extended from 14 to 23 relevant authorities. The HKSAR Government will continue to review the public service areas and departments covered by the Guidelines.

### Training on RDO

In response to the Committee's recommendation that training programmes related to the issue of non-discrimination on the ground of race should be conducted for government officials and civil servants, including law enforcement officials, we would like to point out that the HKSAR Government attaches great importance to human rights training as an effective means to foster understanding and to cultivate respect for racial differences. The Government will continue to provide regular training (including e-learning resources) for government officers at different ranks to enhance their understanding of racial equality and cultural sensitivity. Relevant training on human rights has been organised by the disciplined services as well.

### Racist hate speech and hate crimes

The Committee is concerned about the negative portrayals and hostile statements in traditional and social media targeting EMs, in particular South Asians. We would like to point out that the HKSAR Government does not tolerate racist views of extremist or racist organisations. While we firmly uphold freedom of opinion and expression, the laws of the HKSAR also contain adequate safeguards and provisions to effectively punish or suppress any racist acts of violence.

For example, section 46 of the RDO makes it a criminal offence for a person, by any activity in public, to intentionally incite hatred towards, serious contempt for, or severe ridicule of, another person or members of a class of persons on the ground of race, and which involves threatening physical harm or inciting others to threaten physical harm towards another person, or the property or premises of that other person, and is punishable by a fine of \$100,000 and imprisonment for two years. It should be noted that from April 2013 to March 2018, the EOC has handled 401 complaint cases (including self-initiated investigations) and received 1 814 enquiries in relation to race discrimination under the RDO. None of the 401 cases include any complaints of serious vilification.

In view of the growing incidence and reports of online hate messages, the EOC has held meetings with a major social media service provider, which in turn has brought together NGOs that work with EMs, the abovementioned social media service provider and the EOC in roundtable discussions to discuss ways to combat this growing problem. The EOC is also working with NGOs to ascertain the extent of the issue and consider whether any action can be taken against the perpetrators.

### Poverty alleviation and support for EMs

The Committee is concerned that the percentage of EMs living in poverty has risen in recent years, and that the poverty rates of South Asians overall and Pakistanis specifically were higher than that of the overall population. We would like to point out that the HKSAR Government is keenly aware of the poverty situation of EMs, and has been taking multi-pronged supporting measures to improve their livelihood and facilitate their integration into our community. After policy intervention through different assistance schemes, various poverty indicators fared better than those before policy intervention, which reflected that such measures were effective in helping poor EM families.

The HKSAR Government will continue to strengthen its support for EMs in need to facilitate social integration. To this end, the Chief Secretary for Administration is leading a cross-bureau steering committee to enhance collaboration within the HKSAR Government on support for EMs. The HKSAR Government has also earmarked \$500 million in the 2018-19 Budget for such purpose.

## Education

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The Committee recommends that the smooth integration of non-Chinese speaking (NCS) students in the HKSAR into the education system should be facilitated and the right of children of all ethnicities to inclusive and Chinese-language education should be ensured. We would like to emphasise that the HKSAR Government is committed to encouraging and supporting the early integration of NCS students (notably EM students) into the community. Parents of NCS students are encouraged to arrange for their children to study in schools with an immersed Chinese language environment as early as possible to facilitate their mastery of the Chinese language.

All eligible children, irrespective of their race or place 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 priority consideration given to parents' preference. Both systems comprise a discretionary places stage in which parents are free to apply to schools they prefer and a central allocation stage for students not yet admitted to any school at the discretionary places stage. Ethnicity of students is not a factor in the operation of the school places allocation systems.

While some schools may still have relatively more NCS students compared with schools in other districts, due to various reasons including their location in districts where relatively more NCS people reside and parents' tendency to arrange for their younger children to study in the same school with their older siblings, it is noteworthy that the number of public sector and Direct Subsidy Scheme schools admitting NCS students has increased from about 590 in the 2013/14 school year, when the so-called "designated schools" system was abolished, to about 620 in the 2017/18 school year, which covers about two-thirds of the schools in total. The Education Bureau has been actively encouraging schools with a relatively high concentration of NCS students to form learning circles with schools admitting a larger number of

Chinese speaking students with a view to exposing NCS students more to Chinese through learning activities outside school and interaction with their Chinese speaking peers.

The Committee also requests that the HKSAR describes in its next periodic report information contained in school textbooks on the historical presence and contributions of EMs in the territory with a view to ascertaining the treatment of EMs in educational curricula. We would like to point out that the historical presence and contributions of ethnic minorities in the HKSAR is already covered in the existing school curriculum of the HKSAR. An example is the Core Module (9) "One World One Family" of the Life and Society Curriculum at the junior secondary level, which teaches students about social inclusion and building a harmonious, caring and inclusive society. In our revised junior secondary History curriculum, the "contributions of Europeans, Americans and other ethnic minorities to Hong Kong" topic will be added. School textbooks are produced by publishers in the market in accordance with the curriculum promulgated by the Government. The relevant textbooks drafted by publishers will cover these topics.

#### Refugee Convention and Non-refoulement Claims

The Committee recommends that Hong Kong should adopt comprehensive laws on refugee status in conformity with the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (the Refugee Convention). We would like to point out that the Refugee Convention has never been applicable to Hong Kong. We maintain a firm and long-established policy of not determining refugee status and not granting asylum under the Refugee Convention. The situation of Hong Kong is unique compared to many other places in the world. Being a compact city (with a size of about 1 100 sq km) with population density amongst the highest in the world, a long coastline, a liberal visa regime, a very large number of visitors, and a well-developed transportation network connecting to all parts of the world, Hong Kong is particularly vulnerable to the ill effects of illegal immigration. We do not see any change to the circumstances of Hong Kong that justify a departure from our position of not applying the Refugee Convention to Hong Kong.

That said, the Government will continue to screen non-refoulement claims under the unified screening mechanism, which observes the high standards of fairness required by our courts to ensure that no claimants will be removed to another country where he/she would face a genuine and substantial risk of being subjected to such harms as torture or cruelty, inhuman or degrading treatment or punishment, etc. We will also continue with the comprehensive review of the strategy of handling non-refoulement claims, with a view to improving screening procedures through legislative amendments and removing rejected claimants from Hong Kong as soon as possible.

#### Trafficking in Persons (TIP)

The Committee also recommends that Hong Kong adopt comprehensive laws that prohibit all forms of TIP. We would like to point out that Hong Kong

combats TIP through various pieces of local legislation, encompassing over 50 offences such as physical abuse, false imprisonment, criminal intimidation, unlawful custody of personal valuables, child abduction, child pornography and exploitation of children, illegal employment, etc. Our comprehensive package of safeguards against TIP is comparable to a composite human trafficking law found in other jurisdictions. Since March 2018, we have begun implementing an Action Plan to tackle TIP and to Enhance Protection of Foreign Domestic Helpers in Hong Kong, which contains over 30 measures in areas of victim identification, investigation, enforcement, prosecution, victim protection and support, prevention, and partnership with different stakeholders. A Steering Committee chaired by the Chief Secretary for Administration was established in March 2018 to ensure full and timely implementation of the Action Plan with sufficient resources.

In 2017, following continued expansion of the victim screening mechanism to more police districts, and further to the Customs and Excise Department, the number of vulnerable persons screened under the mechanism has increased by 87 per cent, from 2 515 in 2016 to 4 710 in 2017. Among them, only nine persons were identified as TIP victims, i.e. less than 0.2 per cent of the screenings conducted. This is consistent with the fact that TIP is not prevalent in Hong Kong. Making any judgment that Hong Kong has not been taking the initiative to identify and protect TIP victims because of the low number of victims identified does not correctly reflect the true and actual situation of Hong Kong.

#### Foreign domestic helpers (FDHs)

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In response to the Committee's concern on the protection for FDHs, we would like to stress that the HKSAR Government has been fully committed to protecting the rights and interests of FDHs in Hong Kong. Apart from the various measures introduced to promote the rights of FDHs, the above-mentioned Action Plan has further strengthened our efforts to enhance the protection for FDHs. We do not tolerate any abuse of FDHs and will investigate promptly any complaints received. Regarding the live-in requirement for FDHs, this policy has been the cornerstone of the HKSAR Government's labour policy of according priority to local workers in employment. Foreign workers are only admitted if there is a confirmed shortage of local workers in a particular sector. Importation of live-in FDHs has been allowed in order to meet the shortage of local full time live-in domestic helpers. To safeguard the rights of FDHs, the HKSAR Government has required employers to provide their FDHs with free, suitable and furnished accommodation with reasonable privacy. Employers' applications for employing FDHs may be refused if the requirement cannot be met. As for the "two-week rule", it is necessary for maintaining effective immigration control and helps to prevent FDHs from job-hopping frequently and working illegally in Hong Kong after premature contract termination. Appropriate flexibility is also allowed to cater for special circumstances.

#### Response to the Committee

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The HKSAR's next report under the Convention is due in 2023. It will contain the Government's detailed response to the Committee's recommendations.

## Background

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The hearing of the Committee on China's report was held on August 10 and 13. The HKSAR Government team attended it as part of China's delegation.