



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION**

Thirteenth periodic reports of States parties due in 2007

Addendum

CHINA: HONG KONG SPECIAL ADMINISTRATIVE REGION* ** ***

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*** The annexes to the report may be consulted in the files of the secretariat.

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I. GENERAL PROFILE OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

A. Land and people

Population by sex^{1 and 2}

| Sex | Mid 1991 (million) | Mid 1996 (million) | Mid 2001 (million) | Mid 2005 (million) | Mid 2006 (million) | End 2006 (million) |
|--------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Male | 2.9 | 3.2 | 3.3 | 3.3 | 3.3 | 3.3 |
| Female | 2.8 | 3.2 | 3.4 | 3.5 | 3.6 | 3.6 |
| Total | 5.8 | 6.4 | 6.7 | 6.8 | 6.9 | 6.9 |

Population by age group and sex^{1 and 2}

| Age | Sex | Percentage of total population | | | | | |
|-------------------|--------|--------------------------------|-------------|-------------|-------------|-------------|--------------|
| | | Mid 1991 | Mid 1996 | Mid 2001 | Mid 2005 | Mid 2006 | End 2006* |
| Under 15 | Male | 10.8 | 9.7 | 8.5 | 7.3 | 7.1 | 7.0 |
| | Female | 10.0 | 9.0 | 7.9 | 6.9 | 6.6 | 6.6 |
| 15-18 | Male | 3.0 | 2.8 | 2.7 | 2.6 | 2.6 | 2.6 |
| | Female | 2.8 | 2.7 | 2.6 | 2.5 | 2.5 | 2.5 |
| (0-18) | Male | 13.9 | 12.5 | 11.2 | 9.9 | 9.7 | 9.6 |
| | Female | 12.8 | 11.7 | 10.5 | 9.4 | 9.1 | 9.1 |
| 19-64 | Male | 33.4 | 32.9 | 32.5 | 32.4 | 32.3 | 32.2 |
| | Female | 31.3 | 32.7 | 34.6 | 36.1 | 36.5 | 36.6 |
| 65 and over | Male | 3.9 | 4.6 | 5.2 | 5.6 | 5.7 | 5.8 |
| | Female | 4.9 | 5.6 | 6.0 | 6.6 | 6.7 | 6.7 |
| All age groups | Male | 51.1 | 50.0 | 48.9 | 47.9 | 47.7 | 47.6 |
| | Female | 48.9 | 50.0 | 51.1 | 52.1 | 52.3 | 52.4 |

* Provisional figures.

¹ The Population By-census conducted in July to August 2006 provides a benchmark for revising the population figures compiled since the 2001 Population Census. In the above table, population figures from mid-2001 to mid-2006 have been revised accordingly.

² Since August 2000, population estimates have been compiled based on “resident population”. Formerly, they were based on the “extended de facto” approach, which counted all Hong Kong Permanent and Non-Permanent Residents and visitors at a reference time-point. We have revised the population and related statistics for 1996 onwards on this basis.

Educational attainment (population aged 15 and above)³

| Educational attainment | Percentage | | | | | | | | | |
|-------------------------------|------------|--------|-------|--------|-------|--------|-------|--------|-------|--------|
| | 1986 | | 1991 | | 1996 | | 2001 | | 2006 | |
| | Male | Female | Male | Female | Male | Female | Male | Female | Male | Female |
| No schooling/ kindergarten | 7.0 | 21.6 | 7.1 | 18.5 | 5.1 | 13.8 | 4.6 | 12.0 | 4.0 | 9.9 |
| Primary | 30.8 | 27.6 | 26.1 | 24.3 | 22.7 | 22.6 | 20.4 | 20.6 | 17.6 | 18.9 |
| Secondary and above | 62.2 | 50.8 | 66.8 | 57.2 | 72.2 | 63.6 | 75.0 | 67.4 | 78.4 | 71.1 |
| | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

Literacy rate⁴

1984: 85.7%; 1996: 90.4%; 2000: 92.4%; 2001: 92.7%; 2002: 93.1%; 2003: 93.1%;
2004: 93.2%; 2005: 93.6%; 2006: 94.1%.

Percentage of population (excluding mutes) aged five and over by usual language/dialect

| Usual language/dialect | Percentage | | | |
|------------------------|------------|-------|-------|-------|
| | 1991 | 1996 | 2001 | 2006 |
| Cantonese | 88.7 | 88.7 | 89.2 | 90.8 |
| Putonghua | 1.1 | 1.1 | 0.9 | 0.9 |
| Other Chinese dialects | 7.0 | 5.8 | 5.5 | 4.4 |
| English | 2.2 | 3.1 | 3.2 | 2.8 |
| Others | 1.0 | 1.3 | 1.2 | 1.1 |
| | 100.0 | 100.0 | 100.0 | 100.0 |

Crude birth and death rates⁵

| | 1991 | 1996 | 2001 | 2004 | 2005 | 2006 |
|--|------|------|------|------|------|------|
| Crude birth rate (per 1,000 population) | 12.0 | 9.9 | 7.2 | 7.3 | 8.4 | 9.6 |
| Crude death rate (per 1,000 population) | 5.0 | 5.0 | 5.0 | 5.4 | 5.7 | 5.4* |

³ The figures for 1991 and 2001 are derived from the Population Censuses taken in that year; those for 1986, 1996 and 2006 are derived from the respective Population By-censuses.

⁴ The literacy rate refers to the proportion of persons aged 15 and above with educational attainment at primary or above. The figures are derived from the General Household Survey.

⁵ The Population By-census conducted in July to August 2006 provides a benchmark for revising the population figures compiled since the 2001 Population Census. In the above tables, population-related figures from 2001 to 2005 have been revised accordingly.

Expectation of life at birth⁵ (number of years)

| Sex | 1991 | 1996 | 2001 | 2004 | 2005 | 2006* |
|--------|------|------|------|------|------|-------|
| Male | 75.2 | 76.7 | 78.4 | 79.0 | 78.8 | 79.5 |
| Female | 80.7 | 82.7 | 84.6 | 84.8 | 84.6 | 85.6 |

Infant mortality ratio (per 1,000 live births)

| 1991 | 1996 | 2001 | 2004 | 2005 | 2006* |
|------|------|------|------|------|-------|
| 6.4 | 4.1 | 2.6 | 2.7 | 2.3 | 1.8 |

Maternal mortality ratio (number of deaths per 100,000 registered live births)

| 1991 | 1996 | 2001 | 2004 | 2005 | 2006* |
|------|------|------|------|------|-------|
| 5.7 | 3.1 | 2.0 | 4.1 | 3.5 | 0.0 |

* Provisional figures.

Fertility rate⁵

| General fertility rate (per 1,000 women - excluding foreign domestic helpers - aged 15-49) | 1991 | 1996 | 2001 | 2004 ⁶ | 2005 | 2006 |
|---|------|------|------|-------------------|------|------|
| | 45.1 | 37.4 | 26.8 | 25.1 | 26.1 | 27.0 |

Percentage of household heads by sex

| Sex | 1986 | 1991 | 1996 | 2001 | 2006* |
|--------|------|------|------|------|-------|
| Male | 73.0 | 74.3 | 72.8 | 71.2 | 61.6 |
| Female | 27.0 | 25.7 | 27.2 | 28.8 | 38.4 |

* The figures of 2006 Population By-census included all household heads in 2,226,546 domestic households. Among them, there were 344,591 domestic households reported to have more than one household head.

Unemployment rate (%)⁷

| 1987 | 1992 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
|------|------|------|------|------|------|------|------|------|------|
| 1.7 | 2.0 | 6.2 | 4.9 | 5.1 | 7.3 | 7.9 | 6.8 | 5.6 | 4.8 |

⁶ The drop in general fertility rate over the period 1991 to 2004 was associated with a number of factors like marriage postponement, postponement of low-order live births, curtailment of high-order births and unfavourable economic climate.

⁷ Figures are compiled based on the data obtained from the General Household Surveys for the four quarters of the year.

Rate of inflation**Composite Consumer Price Index (CPI)⁸**

| Year | Annual rate of change in CPI (%) |
|------|----------------------------------|
| 1996 | 6.3 |
| 1997 | 5.8 |
| 1998 | 2.8 |
| 1999 | -4.0 |
| 2000 | -3.8 |
| 2001 | -1.6 |
| 2002 | -3.0 |
| 2003 | -2.6 |
| 2004 | -0.4 |
| 2005 | 1.0 |
| 2006 | 2.0 |

Implicit price deflators of Gross Domestic Product (GDP)

| Year | (2000 = 100) | Annual rate of change (%) |
|------|--------------|---------------------------|
| 1996 | 106.3 | 5.8 |
| 1997 | 112.2 | 5.6 |
| 1998 | 112.4 | 0.2 |
| 1999 | 105.9 | -5.8 |
| 2000 | 100.0 | -5.6 |
| 2001 | 98.2 | -1.8 |
| 2002 | 94.8 | -3.5 |
| 2003 | 88.7 | -6.4 |
| 2004 | 85.5 | -3.6 |
| 2005 | 85.2 | -0.4 |
| 2006 | 84.9 | -0.4 |

⁸ The Composite CPI is compiled on the basis of the expenditure patterns of about 90% of Hong Kong households with an average monthly expenditure of HK\$ 4,000 to HK\$ 59,999 in the base period of October 2004 to September 2005. This approximately corresponds to a monthly expenditure range of HK\$ 4,100 to HK\$ 61,500 at 2006 prices.

Gross domestic product

| Year | At current market prices (US\$ million) | At constant (2000) market prices (US\$ million) ⁹ |
|------|--|---|
| 1996 | 158 971 | 149 589 |
| 1997 | 176 314 | 157 079 |
| 1998 | 166 916 | 148 439 |
| 1999 | 163 277 | 154 115 |
| 2000 | 168 757 | 168 757 |
| 2001 | 166 536 | 169 659 |
| 2002 | 163 708 | 172 778 |
| 2003 | 158 467 | 178 581 |
| 2004 | 165 822 | 193 877 |
| 2005 | 177 790 | 208 754 |
| 2006 | 189 794 | 223 466 |

Per capita income

(Per capita GDP for 1996-2006)¹⁰

| Year | At current market prices (US\$) | At constant (2000) market prices (US\$) |
|------|------------------------------------|--|
| 1996 | 24 702 | 23 244 |
| 1997 | 27 170 | 24 206 |
| 1998 | 25 508 | 22 684 |
| 1999 | 24 715 | 23 328 |
| 2000 | 25 320 | 25 320 |
| 2001 | 24 803 | 25 268 |
| 2002 | 24 274 | 25 619 |
| 2003 | 23 544 | 26 532 |
| 2004 | 24 445 | 28 581 |
| 2005 | 26 095 | 30 640 |
| 2006 | 27 678 | 32 589 |

External debt: the HKSAR Government does not incur external debts.

⁹ Using the exchange rate of the respective year to convert the GDP at constant (2000) market prices.

¹⁰ The Population By-census conducted in July to August 2006 provides a benchmark for revising the population figures compiled since the 2001 Population Census. In the above table, per capita GDP figures for 2001 to 2005 have been revised accordingly.

Ethnic composition of the Hong Kong population

Population by ethnicity in 2006

| Ethnicity | Males (‘000) | Females (‘000) | Both sexes (‘000) | % share in total (%) |
|-------------|-----------------|-------------------|----------------------|-------------------------|
| Chinese | 3 195 | 3 327 | 6 522 | 95.0 |
| Non-Chinese | 78 | 265 | 342 | 5.0 |
| Of which: | | | | |
| Filipino | 6 | 107 | 112 | 1.6 |
| Indonesian | 1 | 87 | 88 | 1.3 |
| White | 24 | 13 | 36 | 0.5 |
| Indian | 10 | 10 | 20 | 0.3 |
| Nepalese | 8 | 8 | 16 | 0.2 |
| Japanese | 7 | 7 | 13 | 0.2 |
| Thai | 1 | 11 | 12 | 0.2 |
| Pakistani | 6 | 5 | 11 | 0.2 |
| Others | 14 | 19 | 33 | 0.5 |
| Total | 3 273 | 3 591 | 6 864 | 100.0 |

B. General political structure

1. Constitutional document

1. In accordance with the provisions of Article 31 and sub-paragraph 13 of Article 62 of the Constitution of the People’s Republic of China (PRC), and the relevant decisions of the National People’s Congress (NPC) adopted at the Third Session of the Seventh NPC on 4 April 1990, the Hong Kong Special Administrative Region of the People’s Republic of China (HKSAR) was established on 1 July 1997. The Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (“the Basic Law”) came into effect on 1 July 1997. Among other things, the Basic Law provides that, under the principle of “One Country, Two Systems”, the socialist system and policies are not practised in the HKSAR and Hong Kong’s previous capitalist system and way of life will remain unchanged for 50 years. A copy of the Basic Law is at Annex I.

2. To fully realise the principle of “One Country, Two Systems”, the Basic Law sets out the broad framework of the relationship between the Central Authorities and the HKSAR (Chapter II); the fundamental rights and duties of Hong Kong residents (Chapter III); the political structure of the HKSAR (Chapter IV); the economic, financial and social systems of the HKSAR (Chapters V and VI); the conduct of the HKSAR’s external affairs (Chapter VII); and the interpretation and amendment of the Basic Law (Chapter VIII).

3. Among other matters, the Basic Law provides that:

(a) Other than defence and foreign affairs, the HKSAR shall exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication. The power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal established in the Region;

(b) The executive authorities and legislature of the HKSAR shall be composed of permanent residents of Hong Kong;

(c) The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravenes the Basic Law, and subject to any amendment by the legislature of the HKSAR;

(d) National laws shall not be applied in the HKSAR except for those listed in Annex III to the Basic Law and that the laws listed therein shall be applied locally by way of promulgation or legislation by the Region. The Standing Committee of the National People's Congress may add to or delete from the list of laws in Annex III after consulting the Committee for the Basic Law of the HKSAR and the HKSAR Government;

(e) The HKSAR is authorized to conduct external affairs on its own, and may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organisations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields;

(f) The HKSAR remains a free port, a separate customs territory and an international financial centre. The HKSAR Government shall, on its own, formulate monetary and financial policies, safeguard the free operation of financial business and financial markets, and regulate and supervise them in accordance with law. There shall be free flow of capital. The HKSAR issues and manages its own currency;

(g) The HKSAR formulates its own policies on the development of education, science, culture, sports, labour and social services, and Hong Kong residents have the freedom of religious belief;

(h) Hong Kong residents enjoy a wide range of freedoms and rights and this will be dealt with under the section of "General Legal Framework Within Which Human Rights Are Protected"; and

(i) The provisions of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

2. System of Government

General Structure

4. The Chief Executive of the HKSAR is the head of the Region, and is accountable to the Central People's Government and the Hong Kong Special Administrative Region in accordance with the provisions of the Basic Law. The Executive Council assists him in policy-making. The Legislative Council of the HKSAR is the legislature of the Region. The HKSAR has also established District Councils which are not organs of political power. The District Councils are consulted on district administration and other affairs. There is an independent judiciary.

Chief Executive

5. The Basic Law provides that the Chief Executive of the HKSAR shall be selected by election or through consultations held locally and be appointed by the Central People's Government. The method for selecting the Chief Executive shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

6. Annex I to the Basic Law further provides that if there is a need to amend the method for selecting the Chief Executive for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive and they shall be reported to the Standing Committee of the National People's Congress for approval.

7. The election for the third term Chief Executive, whose term of office would commence on 1 July 2007, took place on 25 March 2007.

Executive Council

8. The Executive Council assists the Chief Executive in policy-making. Under Article 56 of the Basic Law, except for the appointment, removal and disciplining of officials and the adoption of measures in emergencies, the Chief Executive shall consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, making subordinate legislation, or dissolving the Legislative Council. The Chief Executive in Council also determines appeals, petitions and objections under those ordinances that confer a statutory right of appeal. If the Chief Executive does not accept a majority opinion of the Executive Council, he shall put the specific reasons on record.

9. The Council normally meets once a week. It is presided over by the Chief Executive. As provided for in Article 55 of the Basic Law, Members of the Executive Council are appointed by the Chief Executive from among the principal officials of the executive authorities, Members of the Legislative Council and public figures. Their term of office shall not extend beyond the expiry of the term of office of the Chief Executive who appoints them.

Legislative Council

10. The powers and functions of the Legislative Council are specified in Article 73 of the Basic Law. These include enacting, amending or repealing laws in accordance with the provisions of the Basic Law and legal procedures; examining and approving budgets introduced by the government; approving taxation and public expenditure; receiving and debating the policy addresses of the Chief Executive; raising questions on the work of the government; debating any issue concerning public interests; endorsing the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court; and receiving and handling complaints from Hong Kong residents.

11. Article 68 of the Basic Law provides that the Legislative Council of the HKSAR shall be constituted by election. The method for its formation shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage. Annex II to the Basic Law and the relevant decision of the National People's Congress at its Third Session on 4 April 1990 prescribe the composition of the Legislative Council during its first three terms as follows:

| Membership | First-term 1998-2000 (two years) | Second-term 2000-2004 (four years) | Third-term 2004-2008 (four years) |
|---|--|--|---|
| (a) Elected by geographical constituencies through direct elections | 20 | 24 | 30 |
| (b) Elected by functional constituencies | 30 | 30 | 30 |
| (c) Elected by an election committee | 10 | 6 | - |
| Total | 60 | 60 | 60 |

12. For the third term Legislative Council, the HKSAR is divided into five geographical constituencies of four to eight seats. 30 seats are returned from 28 functional constituencies, each of which represents an economic, social, or professional group which is substantial and important to the HKSAR.

13. The third Legislative Council Election was held on 12 September 2004. The present (third term) Legislative Council assumed office on 1 October 2004.

14. Annex II of the Basic Law provides that, if there is a need to amend the method for forming the Legislative Council after 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive and they shall be reported to the National People's Congress for the record.

District Councils

15. Eighteen District Councils were established in the HKSAR to advise the government on district affairs and to promote recreational and cultural activities, and environmental improvements within the districts. A District Council is composed of elected members, appointed members, and, in the case of District Councils in rural areas, the chairmen of Rural Committees as ex-officio members. For the second term District Councils (2004-2007), the HKSAR is divided into 400 constituencies, each returning one elected member. In addition, there are 102 appointed members and 27 ex-officio members.

16. In the light of population increase in two districts, the number of elected seats in the District Councils increased from 400 to 405 for the third term District Councils commencing on 1 January 2008.

The structure of the Administration

17. The Chief Executive is the head of the Government of the HKSAR. If the Chief Executive is not able to discharge his duties for a short period, such duties shall temporarily be assumed by the three Secretaries of Departments, namely the Chief Secretary for Administration, the Financial Secretary, or the Secretary for Justice, in that order of precedence. The Government of the HKSAR comprises a Department of Administration, a Department of Finance, a Department of Justice, and various bureaux, divisions, and commissions.

18. There are currently 12 bureaux, each headed by a Director of Bureau, which collectively form the Government Secretariat. With certain exceptions, the heads of government departments are responsible to the Secretaries of Departments and Directors of Bureaux. The exceptions are the Commissioner of the Independent Commission against Corruption, the Ombudsman and the Director of Audit, who function independently and are directly accountable to the Chief Executive.

19. Following the implementation of the accountability system on 1 July 2002, the Chief Secretary for Administration, the Financial Secretary, the Secretary for Justice, and the 12 Directors of Bureaux are no longer civil servants. They are political appointees directly responsible to the Chief Executive and are accountable to him for the success or failure of matters falling within their policy portfolios. They are appointed to the Executive Council. Together with the non-official members of the Executive Council, they assist the Chief Executive in policy-making. Under the accountability system, the civil service continues to remain permanent, meritocratic, professional and politically neutral.

The judicial system of the HKSAR

20. The legal system is firmly based on the rule of law and a Judiciary, which is independent of the executive authorities and the legislature.

21. Article 19 of the Basic Law provides that the HKSAR shall be vested with independent judicial power, including that of final adjudication. The courts of the HKSAR shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Hong Kong shall be maintained. The

courts of the HKSAR shall have no jurisdiction over acts of state such as defence and foreign affairs. The courts of the Region shall obtain a certificate from the Chief Executive on questions of fact concerning acts of state such as defence and foreign affairs whenever such questions arise in the adjudication of cases. This certificate shall be binding on the courts. Before issuing such a certificate, the Chief Executive shall obtain a certifying document from the Central People's Government.

22. The courts of justice comprise the Court of Final Appeal, the High Court (which consists of the Court of Appeal and the Court of First Instance), the District Court, the Magistrates' Courts, the Lands Tribunal, the Labour Tribunal, the Small Claims Tribunal, the Obscene Articles Tribunal and the Coroner's Court. The courts hear and determine all criminal trials and civil disputes, whether between individuals or between individuals and Government of the Region.

23. Article 82 of the Basic Law provides that the power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal of the Region, which may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal. Article 83 further provides that the structure, powers and functions of the courts of the HKSAR at all levels shall be prescribed by law.

24. All judges and judicial officers must have qualified as legal practitioners in Hong Kong or in a common law jurisdiction and have substantial professional experience. Article 88 of the Basic Law provides that judges of the courts of the HKSAR shall be appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors.

25. Judges have security of tenure. Article 89 of the Basic Law provides that a judge of a court of the HKSAR may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal and consisting of not fewer than three local judges. The Chief Justice of the Court of Final Appeal of the HKSAR may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in this Law.

C. General legal framework within which human rights are protected

1. Rule of Law

26. The fundamental basis for the protection of human rights is the rule of law maintained by an independent judiciary (see paragraphs 21 to 26 above). The principles that inform the rule of law are:

(a) **Supremacy of the law:** no individual is punishable or can lawfully be made to suffer personally or financially except for a breach of law established before the independent courts. Where, under the law, an official or an authority has discretion to make a decision, that

discretion must be exercised legally, fairly and reasonably. Where it does not do so, the decision must be capable of successful challenge before the courts. The Basic Law guarantees the right of Hong Kong residents to institute legal proceedings in the courts against the acts of the executive authorities and their personnel; and

(b) **Equality before the law:** Article 25 of the Basic Law provides that all Hong Kong residents shall be equal before the law. Article 22 provides that all offices set up in the HKSAR by departments of the Central People's Government, or by provinces, autonomous regions, or municipalities directly under the Central Government and personnel of these offices shall abide by the laws of the Region. Article 14 provides that members of the garrison shall, in addition to abiding by national laws of the PRC, abide by the laws of the HKSAR. Article 35 also provides that Hong Kong residents shall have the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel. No government authority or official, and no individual, in the HKSAR, is above the law. All persons, regardless of race, rank, politics, religion or sex, are equal before the law and subject to the same law. Individuals and the HKSAR Government have the same access to the courts to enforce legal rights or defend an action.

2. Human rights guarantees in the Basic Law

27. Article 4 of the Basic Law provides that the HKSAR shall safeguard the rights and freedoms of residents of the HKSAR and of other persons in the Region in accordance with law. The Basic Law guarantees a wide range of freedoms and rights, including:

- (a) Equality before the law;
- (b) Freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike;
- (c) Freedom of the person; freedom from torture; freedom from arbitrary or unlawful arrest, detention or imprisonment; freedom from arbitrary or unlawful search of the body; and right against arbitrary or unlawful deprivation of life;
- (d) Freedom from arbitrary or unlawful search of, or intrusion into, one's home or other premises;
- (e) Freedom and privacy of communication;
- (f) Freedom of movement within the HKSAR and freedom of emigration to other countries and regions and freedom to travel and to enter or leave the Region;
- (g) Freedom of conscience; freedom of religious belief and freedom to preach and to conduct and participate in religious activities in public;
- (h) Freedom of choice of occupation;

(i) Freedom to engage in academic research, literary and artistic creation, and other cultural activities;

(j) Right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies; right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel;

(k) Right to social welfare in accordance with law; and

(l) Freedom of marriage and right to raise a family freely.

28. Persons in Hong Kong other than Hong Kong residents shall, in accordance with law, enjoy the rights and freedoms of Hong Kong residents prescribed by Chapter III of the Basic Law. In addition, permanent residents of the HKSAR enjoy the rights to vote and to stand for election in accordance with law.

3. Effect of other human rights instruments in Hong Kong Special Administrative Region law

29. According to Article 39 of the Basic Law:

“The provisions of the ICCPR, the ICESCR and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.”

30. In general, and as is usual in common law systems, treaties that apply to Hong Kong (including human rights treaties) do not themselves have the force of law in the domestic legal system of Hong Kong. They cannot directly be invoked before the courts as the source of individual rights. However, the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with international treaties that apply to Hong Kong. The usual method of giving effect in local law to treaty obligations (when these require some change in existing laws or practice) is to enact specific new legislation.¹¹ Where this results in the creation or definition of specific legal rights and where these rights are denied or interfered with (or there is the threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation; or the law may provide criminal sanctions.

¹¹ An example is the Crimes (Torture) Ordinance (Chapter 427 of the Laws of the HKSAR) which was enacted to give effect in Hong Kong to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

4. The Hong Kong Bill of Rights Ordinance

31. The Hong Kong Bill of Rights Ordinance (HKBORO) (Chapter 383 of the Laws of the HKSAR) was enacted in June 1991 specifically to give effect in local law to the provisions of the ICCPR as applied to Hong Kong. It achieves this by setting out a detailed Bill of Rights, the terms of which are almost identical to those of the ICCPR.

5. Adoption of laws: effect on the Hong Kong Bill of Rights Ordinance

32. Article 160 of the Basic Law provides that the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the NPC declares to be in contravention of the Basic Law. In February 1997, the Standing Committee considered that three sections of the HKBORO (relating to the interpretation and application of the Ordinance)¹² had an overriding effect over other laws, including the Basic Law. As such, they contravened the Basic Law and could not be adopted.

33. The non-adoption of these sections has no effect on the protection of human rights in the HKSAR in view of the constitutional guarantee in Article 39 of the Basic Law. The substantive protections in Part II of the Ordinance (which are almost identical to the provisions of the ICCPR) are unchanged. So too are the remedies provided under section 6 for contravention of the Ordinance and the binding effect on the Government and all public authorities under section 7. The full text of the HKBORO is at Annex II.

6. Legal aid

34. Eligible applicants receive legal aid through the provision of the services of a solicitor and, if necessary, a barrister in court proceedings to ensure that any person who has reasonable

¹² The three sections were:

(a) Section 2 (3): “In interpreting and applying this Ordinance, regard shall be had to the fact that the purpose of this Ordinance is to provide for the incorporation into the law of Hong Kong of provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong, and for ancillary and connected matters.”

(b) Section 3: “Effect on pre-existing legislation:

(1) All pre-existing legislation that admits of a construction consistent with this Ordinance shall be given such a construction.

(2) All pre-existing legislation that does not admit of a construction consistent with this Ordinance is, to the extent of the inconsistency, repealed.”

(c) Section 4: “Interpretation of subsequent legislation - All legislation enacted on or after the commencement date shall, to the extent that it admits of such a construction, be construed so as to be consistent with the International Covenant on Civil and Political Rights as applied to Hong Kong.”

grounds for pursuing or defending a legal action is not prevented from doing so by lack of means. Publicly funded legal aid services are provided through the Legal Aid Department and the Duty Lawyer Service.

Legal Aid Department

35. The Legal Aid Department provides legal representation to eligible persons in both civil and criminal cases heard in the Court of Final Appeal, the Court of Appeal, the Court of First Instance, the District Court and the Magistrates' Court (for committal proceedings). Civil legal aid is available for proceedings covering major areas of livelihood of the community ranging from family disputes to immigration matters and to coroner's inquests. Applicants must satisfy the Director of Legal Aid of their financial eligibility (the means test) and of the justification for legal action (the merits test). The grant of legal aid is not subject to a residence requirement. In criminal cases, the Director has discretion to waive the upper limits of the means test if he considers it in the interest of justice to do so. He also has the same discretion in meritorious applications for civil legal aid where a breach of the HKBORO or the ICCPR as applied to Hong Kong is an issue. Subject to the means test (unless waived by a judge), it is mandatory to grant legal aid to an applicant charged with murder, treason or piracy with violence. For other criminal offences, provided the applicant passes the means test, a judge may grant legal aid notwithstanding that legal aid has been refused on merits by the Director.

The Duty Lawyer Service

36. This Service complements the legal aid services provided by the Legal Aid Department. It operates three schemes that respectively provide legal representation (the Duty Lawyer Scheme), legal advice (the Legal Advice Scheme) and legal information (the Tel Law Scheme). The Duty Lawyer Scheme offers legal representation to virtually all defendants (juvenile and adult) charged in the Magistracies who cannot afford private representation. It also provides legal representation to persons who are at risk of criminal prosecution as a result of giving incriminating evidence in Coroner's inquests. Applicants are subject to a means test and merits test, based on the "interest of justice" principle in accordance with Article 14 of the ICCPR and Article 11 of the Hong Kong Bill of Rights. The Legal Advice Scheme and the Tel Law Scheme respectively provide members of the public with free legal advice through individual appointments and taped information on the legal aspects of everyday problems.

Legal Aid Services Council

37. The Legal Aid Services Council, an independent statutory body, was established in 1996. Its role is to oversee the provision of legal aid services by the Legal Aid Department and advise the Chief Executive on legal aid policy.

7. Office of the Ombudsman

38. The Ombudsman - formerly known as the Commissioner for Administrative Complaints (COMAC) - is an independent authority, established under the Ombudsman Ordinance

(Chapter 397).¹³ The Ombudsman investigates complaints of grievances arising from maladministration in the public sector. “Maladministration” includes such things as inefficient, bad or improper administration, unreasonable conduct (such as delay, discourtesy and lack of consideration), abuse of power or authority and unjust or discriminatory procedures. Members of the public can complain directly but the Ombudsman may also initiate investigations on her own volition and may publish investigation reports of public interest. Additionally, the Ombudsman is empowered to investigate complaints of non-compliance with the Code on Access to Information.

39. The enactment of the Ombudsman (Amendment) Ordinance 2001 enhances the independent status of the Ombudsman and enables her to carry out her functions more effectively. The Ombudsman, a corporate sole, is empowered with full autonomy and statutory authority to conduct its own administrative and financial business. The Ordinance specifically makes it clear that the Ombudsman is not a servant or agent of Government.

40. Under the Ombudsman Ordinance, the Ombudsman may obtain any information and documents from such persons as she thinks fit. She may summon any person to provide information relating to her investigations and may enter any premises of the organisations under her jurisdiction to conduct investigations.

41. After investigating a complaint, the Ombudsman is empowered to report her opinion and reasons, together with a statement of any remedy and recommendation necessary, to the head of the organisation affected. If the recommendation is not acted upon within a reasonable timeframe, the Ombudsman may report the matter to the Chief Executive. She may also do so if she believes that a serious irregularity or injustice has been done. Such reports are required by law to be laid before the Legislative Council. This helps ensure that the Ombudsman’s recommendations are heard and acted upon.

42. With the exceptions of the Police and the Independent Commission Against Corruption (ICAC), the Ombudsman has jurisdiction over all Government departments of the HKSAR and major statutory bodies. Complaints against these two organisations are handled separately by discrete, dedicated bodies (see paragraphs 45 and 46 below). However, complaints of non-compliance with the Code on Access to Information by the Police and the ICAC remain within the Ombudsman’s jurisdiction.

8. Equal Opportunities Commission

43. The Equal Opportunities Commission (EOC) was an independent statutory body established under the Sex Discrimination Ordinance (SDO) in 1996 to implement the SDO, the Disability Discrimination Ordinance (DDO) and the Family Status Discrimination Ordinance (FSDO). The Commission is responsible for conducting formal investigations, handling complaints, encouraging conciliation between parties in dispute, providing assistance to aggrieved persons in accordance with these ordinances. It undertakes research programmes and

¹³ Formerly known as the COMAC Ordinance.

public education to promote equal opportunities in the community. The Commission is also empowered to issue codes of practice to provide practical guidelines to facilitate public compliance with the laws on equal opportunities.

9. Privacy Commissioner for Personal Data

44. The Personal Data (Privacy) Ordinance (PDPO) provides for statutory control of the collection, holding, processing and use of personal data in both the public and private sectors. Its provisions are based on internationally accepted data protection principles. The Ordinance applies to personal data access to or processing of which is practicable whether they are recorded in electronic, paper file, or audio-visual forms. The Ordinance provides for an independent statutory authority, the Privacy Commissioner for Personal Data, to promote, monitor and enforce compliance with its provisions. The Commissioner's responsibilities include, among others, promoting awareness and understanding of the Ordinance, issuing codes of practice on how to comply with the Ordinance, examining proposed legislation that may affect the privacy of individuals in relation to personal data, and enforcing the Ordinance.

10. Complaints and investigations

The Police

45. The Complaints against Police Office (CAPO) investigates complaints about the conduct and behaviour of members of the police force. The CAPO's investigations are monitored and reviewed by the Independent Police Complaints Council (IPCC). The IPCC is an independent body comprising non-official members appointed by the Chief Executive from a wide spectrum of the community.

The ICAC

46. The Independent Commission against Corruption Complaints Committee (the ICC) - established in 1977 - monitors and reviews the handling by the ICAC of non-criminal complaints against the ICAC and officers of the ICAC. Again, this is an independent committee appointed by the Chief Executive. The ICC comprises mainly members of the Executive and Legislative Councils and a representative of The Ombudsman. Complaints against the ICAC or its officers can be made direct to the ICC as well as the ICAC at any of its offices. The investigation of such complaints is handled by a special unit of the Operations Department of the ICAC. When the unit has completed its investigation of a complaint, its conclusions and recommendations are submitted to the ICC for consideration.

Other disciplined services

47. Other disciplined services departments maintain clear guidelines and procedures for handling complaints. For example, the Correctional Services Department (CSD), which runs HKSAR's prisons, has a Complaints Investigation Unit to manage its grievance redress system for staff, prisoners, and members of the public. These persons may also direct their complaints to the Chief Executive, members of the Legislative Council, the Ombudsman, visiting Justices of

the Peace and other law enforcement agencies such as the ICAC and the Police. The existing complaint channels are considered effective in view of the number and the nature of complaints handled.

48. The Immigration Department applies complaints procedures set out in the Immigration Service Standing Orders made by the Director of Immigration under the authority of the Immigration Service Ordinance. Complaints about abuse of authority or maltreatment by service members can be made to the Director of Immigration and are investigated promptly in accordance with the procedures in the Standing Orders. To ensure that all complaints are properly handled, a Complaints Review Working Party examines the results of investigations, conducts reviews and recommends follow-up action whenever necessary. Persons who consider that they have been improperly treated or that their cases have been mismanaged also have access to the Ombudsman. If there is prima facie evidence that a member of the Immigration Service has committed a criminal offence, the Immigration Service will immediately report the matter to the Police for further investigation. Disciplinary procedures against Immigration Service staff are also governed by the Immigration Service Ordinance and the Immigration Service Standing Orders. Under Section 8 of the Immigration Service Ordinance (Chapter 331), unlawful or unnecessary exercise of authority resulting in loss or injury to any person is a disciplinary offence.

D. Information and publicity

1. Promotion of public awareness of the human rights treaties

49. The Constitutional and Mainland Affairs Bureau¹⁴ of the HKSAR Government is responsible for promoting public awareness of the rights and obligations stipulated in the human rights treaties applicable to Hong Kong. Following the enactment of the HKBORO in 1991, the Committee on the Promotion of Civic Education (CPCE) under the Home Affairs Bureau has been tasked to promote public understanding of the HKBORO and respect for human rights as set out in the various treaties. Human rights have been one of the major emphases of the CPCE's work. Recently, the CPCE has increased its efforts to promote a public understanding of the Basic Law, which provides the constitutional guarantees for human rights protection in the HKSAR. Separately, a Basic Law Promotion Steering Committee - chaired by the Chief Secretary for Administration - was established in January 1998 to guide promotional strategy.

50. In 2002, a joint non-governmental organisation (NGO)/Government forum, the Committee on the Promotion of Racial Harmony, was established to advise Government on the promotion of inter-racial respect and tolerance and matters relating to the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee is serviced by the Race Relations Unit, also established in 2002 under the auspices of the Constitutional and Mainland Affairs Bureau.

¹⁴ Following the reorganisation of Government Secretariat with effect from 1 July 2007, matters related to human rights were transferred from Home Affairs Bureau to the purview of Constitutional and Mainland Affairs Bureau. Matters related to women were transferred from the Health, Welfare and Food Bureau to the Labour and Welfare Bureau.

2. Government publications

51. The Central People's Government of the People's Republic of China is obliged to submit reports in respect of the HKSAR under various human rights treaties (but see paragraph 52 below in relation to the ICCPR). Draft reports are prepared by the Constitutional and Mainland Affairs Bureau and the Labour and Welfare Bureau of the HKSAR Government. The Bureaus consult the Legislative Council and NGOs and address their views in the reports. The final reports are tabled before the Legislative Council - and publish in bilingual format - after the submission by the Central People's Government to the United Nations. Copies are deposited in public libraries and posted on the Internet for public inspection.

3. Reports of the Hong Kong Special Administrative Region in the light of the International Covenant on Civil and Political Rights

52. In November 1997, the Central People's Government of the People's Republic of China announced that, in line with the Joint Declaration and the Basic Law, and considering that China was not yet a signatory to the ICESCR and ICCPR, it would make reference to the provisions of the two Covenants as applied to Hong Kong and transmit reports on the HKSAR to the United Nations. China subsequently ratified the ICESCR in 2001 and the HKSAR's reports form part of China's reports under that Covenant.¹⁵ The Government of the HKSAR is responsible for preparing the reports on the HKSAR in the light of the ICCPR for transmission to the United Nations through the Central People's Government.

II. INFORMATION IN RELATION TO EACH OF THE ARTICLES IN PART I OF THE CONVENTION

A. Article 1 - Definition of racial discrimination

53. Article 1 of the Convention defines the concept of racial discrimination. We have accordingly adopted this definition in our proposed Race Discrimination Bill.

54. In reporting on implementation of this Article, the guidelines contained in the United Nations Manual on Human Rights Reporting, particularly those set out in pages 273 and 274 thereof, advise Parties to:

(a) Discuss their policy with regard to racial discrimination and the legal framework of such a policy;

(b) Provide information on how the Convention and the rights put forward in it become part of the domestic legal order; and

(c) Provide general background information on the reporting State, and make special reference to the demographic composition of the population, and to any problems confronting different ethnic groups.

¹⁵ China's first report was submitted to the United Nations in June 2003 and was heard in April 2005.

55. In regard to (a), our consistent policy is that we are opposed to all forms of discrimination, including racial discrimination. Our commitment to safeguarding equality is clearly enshrined in the Basic Law and in domestic legislation. They are further buttressed by the rule of law and an impartial and independent judiciary. Details of our policy with specific reference to racial discrimination and the legal framework for protection against such discrimination are described in paragraphs 60 to 68 below, as well as in paragraphs 27 to 48 of Part A, under the heading ‘General legal framework within which human rights are protected’.

56. With regard to (b), we are pleased to report, as mentioned in paragraph 53, that in addition to existing protection under the Basic Law and domestic legislation, we have further introduced draft legislation specifically to reinforce protection for individuals against racial discrimination. The domestic legal order in HKSAR for protection of the rights put forward in this Convention is described in detail in paragraphs 27 to 48 of Part A and is further discussed in the context of implementation of Article 2, in paragraphs 60 to 74 below.

57. With regard to (c), the general background information, including the demographic composition of the population in HKSAR, is set out in Part A. We address the issues relating to special groups and ethnic minorities in paragraphs 75 to 104 below.

58. In paragraphs 9 and 24 of the 2001 Concluding Observations, the Committee:

(a) Welcomed “the extensive consultation with civil society in the preparation of, in particular, the part of the State party report pertaining to the Hong Kong Special Administrative Region”; and

(b) Recommended “that the State party’s reports continue to be made readily available to the public from the time they are submitted and that the Committee’s observations on them be similarly publicised.”

59. We are grateful to the Committee for its appreciation and encouragement. We continue to take proactive measures to publicise and to widely disseminate our reports and the Committee’s Concluding Observations. We reported, through the media, the publication of the Committee’s 2001 Concluding Observations shortly after its release and distributed, free of charge, the full text of the observations together with a Chinese translation to facilitate access and understanding by the general public. We promulgated the bilingual version of the observations on the Government website, along with, also in bilingual version, the relevant HKSAR report which had been posted on the web at the time of its submission. We continue to make these reports available to the public, both in printed and electronic media. The same arrangement is made for the present report. Members of the public can obtain printed copies and CD-ROM containing the full text of this report, in English and Chinese, at all district offices, or download it from the Government website as they wish.

B. Article 2 - Policy of eliminating racial discrimination

1. Legal framework

60. Our position in this area remains essentially as described in paragraphs 2 to 5 of the initial report. That is, the Basic Law (the full text of which is at Annex I) offers protection for

fundamental rights and freedoms and safeguards equality before the law and equal protection of the law without any discrimination for all residents and people of Hong Kong. It is complemented by the Hong Kong Bill of Rights Ordinance (HKBORO) (copy at Annex II), which implements in local law the provisions of the ICCPR as applied to Hong Kong. The Ordinance binds the Government and all public authorities and any person acting on behalf of the Government or a public authority. In addition, our three existing anti-discrimination ordinances, namely the Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO) and the Family Status Discrimination Ordinance (FSDO), prohibit discrimination in specific areas in both the private and the public sector.

61. In paragraph 19 of the 2001 Concluding Observations, the Committee requested "... the State party to provide in subsequent reports, inter alia, detailed information on judicial cases relating specifically to violations of the Convention, including in the Hong Kong and Macau Special Administrative Regions, with special reference to the granting by courts of adequate reparation for such violations." We confirm that, to date, there have not been any judicial cases relating to violations of the Convention in Hong Kong. We will update the Committee of changes, if any, at the hearing of this report.

2. Policy of eliminating racial discrimination

62. Fundamentally, our policy remains as explained in paragraph 11 of the initial report. We are committed to the promotion of equal opportunities for all and firmly believe that all forms of discrimination - including racial discrimination - are wrong. At the same time, we believe that each form of discrimination has its own characteristics, including the particular ways in which they may be manifested in Hong Kong. Therefore, the strategies for combatting discrimination must be tailored and appropriate to the particular form of discrimination that they are intended to address. In general, we believe that, in the interest of social harmony, promotion of integration and public education on equality remain the quintessential vehicles for eliminating prejudice and discrimination. Thus, legislation cannot, and should not, take the place of continuing public education for the larger population and of necessary support measures for the minorities who may be discriminated. Any proposals to legislate should also be made open to extensive and comprehensive consultation within the community.

63. In paragraph 17 of the 2001 Concluding Observations, the Committee took note of the on-going consultation being conducted in Hong Kong but expressed concern over:

"... the continuous absence in the Hong Kong Special Administrative Region of legal provisions protecting persons from racial discrimination to which they may be subjected by private persons, groups or organizations."

The Committee particularly recommended that:

"... the existing unsatisfactory situation be thoroughly reviewed and that appropriate legislation be adopted to provide appropriate legal remedies and prohibit discrimination based on race, colour, descent or national or ethnic origin similarly to what has been done with regard to discrimination on the grounds of gender and disability."

64. We have taken careful heed of the Committee's view and recommendation. Against the background of a public consultation conducted in 1997, in which over 80 per cent of the respondents were against legislation, we, in 2001-02, initiated further consultation on the issues with the business community and with non-governmental organizations and other interested parties. It appeared from that consultation that, with Government's continued efforts in raising public consciousness, the general public in Hong Kong was becoming more receptive to the proposal of legislating against racial discrimination. This change of attitude was particularly discernible among those in the business community. This observation was vindicated by the findings of a survey later conducted between February and March 2004, in which about 60 per cent of the respondents supported the introduction of legislation to prohibit racial discrimination.

65. In light of gradual community acceptance, we announced in June 2003 our intention to legislate against racial discrimination and commenced more detailed formulation of proposals on the legal provisions. We put our proposed legislative framework to extensive public consultation in September 2004. By the end of the consultation in February 2005, we received 240 submissions, most of which were in support of our legislative proposal.

66. The Race Discrimination Bill was introduced into the Legislative Council in December 2006.

67. Specifically, the Bill seeks to proscribe racial discrimination and to provide for details of the areas of protection, enforcement mechanism and remedies. We aim to arrive at a regulatory regime which not only satisfies our policy objective and international obligation to combat racial discrimination, but also one which balances the rights and interests of different parties and is reasonable in its justifications, practicable in implementation and acceptable to the people affected. The Bill is divided into nine parts containing 94 clauses. In line with the Committee's recommendation cited in paragraph 63 above, this Bill aims at "protecting persons from racial discrimination to which they may be subjected by private persons, groups or organizations". To ensure parity of treatment, the Bill contains the specific provision that it applies to an act done by or for the purposes of the Government that is of a kind similar to an act done by a private person. In other words, the proposed provisions in the Bill will apply to both the Government and the private sector.

68. The Bill proposes to render unlawful both direct and indirect racial discrimination. It enshrines the internationally accepted principle of proportionality in determining whether there is indirect discrimination. While it does not impose an obligation for affirmative actions, special measures designed for the benefit of ethnic minorities are specifically permitted under the proposed law. As in existing anti-discrimination ordinances in Hong Kong, the Bill covers discrimination in the same six prescribed areas of activity, including particularly education, employment and the provision of facilities and services.

3. Public discussions on the Bill

69. Concurrent with the introduction of the Bill into the Legislative Council, we mounted special publicity to raise public awareness and to encourage discussions on the proposed legislation. We issued a press release and held press briefings to introduce the main features of the Bill. To enhance public understanding, we published an explanatory booklet with Q&As to

explain in layman language the key provisions and their impact on ordinary daily life. This booklet was published in English and Chinese as well as in the four major ethnic minority languages in Hong Kong. We also organised special briefings for interested groups, including those in the ethnic minorities, NGOs, the government's Committee for the Promotion of Racial Harmony, the Ethnic Minorities Forum, the Human Rights Forum and those from the business, employment and education sectors. Government officials also attended media interviews as well as various meetings and discussion fora arranged by local organisations and ethnic communities, both to exchange views and to further explain the detailed provisions and rationale for the proposals.

70. Meanwhile, the Bills Committee of the Legislative Council, which has been formed to examine the Bill, is holding regular meetings with Government officials to discuss the underlying principles and detailed provisions of the Bill. These meetings are open to the public. It has also organised public hearings to receive deputations from members of the public and interested parties. We will continue to provide input to the Bills Committee to facilitate its consideration of the Bill. In the light of the discussions, we will consider the scope for making appropriate amendments or refinements to relevant provisions of the Bill.

71. In line with our established practice in the preparation of reports to UN Treaty Monitoring Bodies, we conducted public consultation within the community in the process of drafting this report. In this connection, a number of community groups and NGOs have expressed views, *inter alia*, on the provisions of the Race Discrimination Bill. Their submissions and representations are forwarded, intact, to the Committee for members' reference and consideration.

72. We value the views of the public and the civil society on the proposed legislation. We shall continue to maintain dialogue with them both to exchange views and to explain the Government's policy. At the time of writing this report, the Race Discrimination Bill is going through due legislative process of consideration by the Legislative Council.¹⁶ We shall report further on progress at the hearing or in a future report as appropriate.

4. Administrative measures to promote racial harmony

73. We firmly recognise that the prosperity of Hong Kong is founded, among other things, on its cosmopolitan nature and the contribution of its people from different background and ethnic origins. In this context, therefore, racial harmony is a particularly important cornerstone for harmony in our society. The HKSAR Government is committed to safeguarding the rights of people against racial discrimination. The Race Discrimination Bill discussed in paragraphs 66 to 72 above is a major stride in our continuous endeavours and commitment in this regard.

74. We also firmly believe that legislation must go hand in hand with public education and support for better integration. We have, over the years, launched various initiatives to promote racial harmony and to assist integration of the ethnic minorities in Hong Kong. We finance and operate an Equal Opportunities (Race) Funding Scheme to support community based projects, publications and campaigns to promote racial harmony. We organise language classes at district

¹⁶ A supplementary note on the Race Discrimination Bill is at Annex III.

level to facilitate integration of members of the ethnic minorities in our community. We fund radio programmes in the languages of the ethnic minorities both for their entertainment and to keep them up-to-date with local news and important government announcements. We sponsor community support teams to provide services to the ethnic minority groups through members of their own community. We have established a Race Relations Unit which, among its many functions and responsibilities, operates a hotline for enquiries and help deal with complaints. It also organises talks and workshops in schools to promote public education on anti-racial discrimination. We also maintain continuing dialogue with ethnic minority groups through our regular liaison, the Committee on the Promotion of Racial Harmony and the Ethnic Minorities Forum. These are just examples of the initiatives taken. A detailed list of our activities as well as the support measures taken in education and employment is at Annex IV. We shall continue to develop and enhance our services as necessary and appropriate.

5. Special groups

75. In this section, we focus on four groups which are the subject of concern both locally and internationally. They are: foreign domestic helpers; refugees, migrants and illegal immigrants from Vietnam (including ex-China Vietnamese illegal immigrants); new residents of Pakistani origin; as well as asylum seekers and torture claimants.

Foreign domestic helpers

76. As at 31 December 2006, some 232,781 people - mostly women - were working in Hong Kong as foreign domestic helpers. The majority were from the Philippines (about 120,788, or 51.9 per cent), 44.7 per cent (about 104,129) from Indonesia and 1.8 per cent (about 4,292) from Thailand. Most of the remaining 1.5 per cent (about 3,572) were from South Asia.

77. We explained in paragraphs 25 to 26 of our initial report the rights, benefits and protection under the labour legislation foreign domestic helpers enjoy. Employers of foreign domestic helpers are required to pay a minimum allowable wage, currently HK\$ 3,400 (US\$ 436) a month. The purpose of this minimum allowable wage is to protect the helpers from exploitation and to ensure that local workers are not undercut by foreign labour. The minimum allowable wage is reviewed regularly, taking into account a basket of economic indicators, such as the prevailing economic situation, household income, per capita GDP and wage movements for local workers in Hong Kong. Arising from such a regular review, the wage level was reduced from HK\$ 3,670 (US\$ 471) to HK\$ 3,270 (US\$ 419) a month in April 2003. However, it was subsequently increased to HK\$ 3,320 (US\$ 426) in May 2005 and to the current level of HK\$ 3,400 (US\$ 436) since May 2006 based on the same principle and mechanism.

78. In addition to the minimum allowable wage, employers of foreign domestic helpers must also provide their helpers with free accommodation and food, free medical treatment and return passage upon expiry or termination of employment contracts. Helpers enjoy the same and full statutory rights and protection (including entitlements of statutory holidays, annual leave with pay and weekly rest, as well as maternity protection and the right to form and join trade unions) as do local workers. Like other imported workers, foreign domestic helpers are informed of their

legal and contractual rights and obligations through the enquiry service and publicity measures of the Labour Department and the Immigration Department. Publicity events reaching out to the community of foreign domestic helpers direct are organised from time to time to disseminate information on their rights and channels to seek assistance when needed.

79. As explained, foreign domestic helpers in Hong Kong enjoy equal and full protection and entitlements under the labour legislation in the same way as local employees. The Labour Department provides free service and assistance to foreign domestic helpers who are underpaid to help recovery of the outstanding wages from their employers. Besides, any employer defaulting wage payment commits a serious offence and is liable, upon conviction, to a maximum fine of HK\$ 350,000 (US\$ 44,872) and imprisonment for three years.

80. Despite the above protection given to foreign domestic helpers, there are still concerns surrounding some of their employment and admission terms. We shall discuss these issues under paragraphs 140 to 150 in relation to Article 5 (e) below.

Refugees, migrants and illegal immigrants from Vietnam (including ex-China Vietnamese illegal immigrants)

81. At the beginning of 2000, some 1,400 Vietnamese refugees (VRs) and Vietnamese migrants (VMs) remained stranded in Hong Kong and it was clear that the chance of overseas resettlement for them had become extremely remote. The HKSAR Government therefore offered local integration to them through the widened Local Resettlement Scheme in February 2000. As an integral part of the scheme, the Pillar Point Vietnamese Refugee Centre, the last such centre in Hong Kong, was closed in a dignified, peaceful and orderly manner in June 2000. As at 31 January 2007, 98 per cent or 1,400 eligible VRs and VMs have applied under the Scheme.

82. In January 1998, the HKSAR Government abolished the port of first asylum policy for Vietnamese arriving in Hong Kong illegally. Thereafter, all new illegal arrivals were classified as Vietnamese illegal immigrants (VIIs) and repatriated to Vietnam after clearance by the Vietnamese government. A total of 598 VIIs arrived in 2006. Like other illegal immigrants, they are normally detained when intercepted, and arrangements are made for their prompt repatriation to Vietnam.

Ex-China Vietnamese (ECVs)

83. In our initial report, we advised that the removal of about 350 ECVs was held in abeyance pending outcome of a judicial review against the HKSAR Government's decision. The case was eventually settled by consent of the parties involved. All the ECVs and their family members were granted permission to stay in Hong Kong except for one missing female ECV.

New residents of Pakistani origin

84. Like the Indian community, the Pakistanis are the oldest and most established of all the minorities in Hong Kong. The early settlers were by and large first brought to Hong Kong by the British to man the Police Force and parts of the armed services. The population of Pakistani settlers in Hong Kong in the past year is listed in the table below.

Pakistani nationals living in Hong Kong¹⁷

| As at end of the year | Permanent resident | Temporary resident | Total |
|-----------------------|--------------------|--------------------|--------|
| 1997 | 9 057 | 4 124 | 13 181 |
| 1998 | 9 419 | 4 837 | 14 256 |
| 1999 | 9 457 | 4 786 | 14 243 |
| 2000 | 9 474 | 4 213 | 13 687 |
| 2001 | 9 848 | 4 072 | 13 920 |
| 2002 | 10 261 | 3 831 | 14 092 |
| 2003 | 10 350 | 3 400 | 13 750 |
| 2004 | 10 879 | 3 069 | 13 948 |
| 2005 | 11 540 | 2 595 | 14 135 |
| 2006 | 11 693 | 2 682 | 14 375 |

85. In July 2006, there were a total of 177,611 non-Chinese new arrivals, representing 2.6 per cent of the population in Hong Kong. Among them, 0.8 per cent were Pakistanis. The median age for Pakistanis was 23, significantly lower than that of the whole population of 39. The most commonly used language for Pakistanis aged 5 and over was Bengali and Urdu (69.6 per cent). A high proportion (63.7 per cent) of them could speak English, but many, perhaps most, could not read or write Chinese. Some 21.7 per cent of Pakistanis aged 15 and over had attended primary education or below (the corresponding proportion for the whole population aged 15 and over was 25.4 per cent). On the other hand, 36.4 per cent of Pakistanis aged 15 and over had attained post-secondary education which was higher than that of the whole population aged 15 and over at 23.0 per cent.

86. The labour force participation rate for Pakistanis was 79.8 per cent for male and 8.0 per cent for female. Some female Pakistanis have proved a more difficult target for outreach and have not responded to approaches from service providers. They seem generally prefer to approach their spouse or clansmen at times of crisis. As they are not prepared to seek help from other local people, many of them are not aware of the welfare services available to them. Taking into account the reluctance of Pakistanis (in particular the female members) in seeking community services, Government and NGOs have adopted a more proactive approach through out-reach work by different stakeholders at the district level and self-help teams

¹⁷ Please note that the figures on foreign residents are derived from a physical count of arrival and departure records maintained by the Immigration Department. Such figures are a breakdown of the number of persons by their nationalities physically present in Hong Kong on a particular date (usually the last day of a month). They do not represent the total number of foreign residents who have residential status here. The figures also vary from time to time because some foreign residents travel frequently on business trips or on vacation overseas.

“*Permanent Residents*” refer to residents whose stay in Hong Kong is not restricted by the Director of Immigration. This category of residents may have the right of abode, right to land or unconditional stay in Hong Kong. “*Temporary Residents*” refer to residents whose conditions of stay in Hong Kong are being restricted by the Director of Immigration.

administered by members of the Pakistani community. We have therefore provided funding for the establishment and operation of a Pakistani Community Support Team. This team is operated by a Pakistani community group in partnership with an experienced local NGO and serves to offer assistance and support services to Pakistani settlers in their own language and in a culturally sensitive manner.

87. About 31 per cent of the working Pakistanis were engaged in “Managers and administrators”, followed by “Associate professionals and Elementary occupations”. As at the end of January 2007, there was a total of 1,213 Comprehensive Social Security Assistance (CSSA) cases involving recipients whose country of origin are Pakistan. To help the able-bodied unemployed CSSA recipients, including Pakistanis, move towards full-time paid employment and be self-reliant, the Social Welfare Department, through the Support for Self-reliance Scheme, provides them with personalised employment assistance and community work opportunities to help them enhance employability and build up self-confidence.

88. To assist their finding employment, the Labour Department provides a wide range of free employment services to help place job-seekers, including Pakistanis, into employment through a network of 12 Job Centres, Telephone Employment Service Centre as well as bilingual Interactive Employment Service on the web. With the specific aim to facilitate Pakistanis to make use of public employment service, the leaflet on “Easy-to-use Employment Services of the Labour Department” has been translated into Urdu. Employment briefings specifically for ethnic minorities are organised regularly at the Job Centres. They are also encouraged to join the Job Matching Programme of the Labour Department for more in-depth interview, career counselling and active job-matching.

Asylum-seekers and torture claimants

89. During public consultation in the preparation of this report, a number of commentators accused the Government of malpractices and failure in its treatment of refugees, asylum seekers and torture claimants. Although the issues raised do not in our view concern racial discrimination, in view of the gravity of the allegations we should explain our policy and practice so as to remove unnecessary misunderstanding and misperception.

90. The issue of asylum seekers and torture claimants in Hong Kong has, in recent years, attracted much attention from certain NGOs. The 1951 United Nations Convention relating to the Status of Refugees does not apply to Hong Kong. The unique situation of Hong Kong, with its small geographical size and a dense population, set against the backdrop of our relative economic prosperity in the region and our liberal visa regime, makes us vulnerable to possible abuses if the said Convention were to be extended to Hong Kong. We thus have a firm policy of not granting asylum and do not have any obligation to admit individuals seeking refugee status under the 1951 Convention.

91. Claims for refugee status lodged in Hong Kong are dealt with by the United Nations High Commissioner for Refugees (UNHCR). The Government has maintained close liaison with the UNHCR to ensure persons whose claims for refugee status have been denied and who have no permission to remain here leave Hong Kong in accordance with the law. According to the UNHCR, there were some 2 370 outstanding refugee status claims involving 2 407 persons as at the end of 2006. However, as refugee status claims are not dealt with by the Government, we do

not have the demographics of refugees and asylum seekers. Some refugee status claimants would also lodge a claim under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) against repatriation to their home countries. As of December 2006, there were some 700 outstanding torture claim cases. A majority of the torture claimants came from South Asian countries, with others coming from Africa. There is a considerable overlap between the population of asylum seekers and torture claimants.

92. Any torture claimant who fails to establish his claim will be removed from Hong Kong in accordance with the local laws. On the other hand, a torture claimant who has established his claim will not be removed to the country where there are substantial grounds for believing that he would be in danger of being subject to torture. His removal to another country to which he may be admitted without the danger of being subject to torture will nonetheless be considered. Furthermore, if subsequent changes in country conditions are such that a torture claim established earlier in respect of a particular country can no longer be substantiated, removal to that country will also be considered.

93. Turning to the specific issues raised, some commentators have accused the Government of arbitrary detention of asylum seekers.

94. We should point out that, in Hong Kong, the fact that a person is an asylum seeker or torture claimant does not by itself lead to that person's prosecution or detention. However, a person found to be in violation of our laws may be liable to such enforcement actions. For example, persons who have entered Hong Kong illegally or breached their conditions of stay may be so liable.

95. In the case of a person put under detention in accordance with our laws who is also an asylum seeker or torture claimant, the Director of Immigration may on a case-by-case basis exercise his discretion to grant the person release on recognizance pending the determination of his claim by the relevant authorities or, for mandated refugee, pending his resettlement elsewhere arranged by UNHCR. As at end January 2007, 73 per cent of those liable to detention for various reasons were granted release on recognizance.

96. The treatment of immigration detainees is governed by respective law. The detention centres are considered fit for accommodation by the respective authority. Channels of complaints are open to every detainee and they are not to be punished for making complaints.

97. Some commentators alleged that the Government was not providing enough support to asylum-seekers and torture claimants and that it was depriving these people of basic necessities and denying education for their children pending determination of their claims.

98. There are no grounds for such allegations. On humanitarian grounds, the Government is providing, on a case-by-case and need basis, assistance-in-kind to asylum seekers and torture claimants who are deprived of basic needs during their temporary presence in Hong Kong. The types of assistance offered include temporary accommodation, food, clothing, other basic necessities, appropriate transport allowances, counselling, and recommendation for the waiver of medical expenses at public clinics or hospitals. The types of assistance offered to the individual vary according to the needs and personal situations of the person concerned.

99. Children with no right to remain in Hong Kong, including asylum seekers and torture claimants, are subject to removal and the question of their schooling in Hong Kong therefore does not normally arise. Where removal is unlikely for a considerable length of time, the Education Bureau would arrange schooling for them where appropriate. Where strong compassionate and humanitarian grounds exist, student financial assistance is provided on a case-by-case basis, even though the children concerned are not normally eligible.

100. Some commentators suggested that the Government should expand the scope of legal aid and make it available to torture claims and refugee status determination procedures.

101. Our legal aid policy is to ensure that no one with reasonable grounds for taking or defending a legal action in Hong Kong courts is prevented from doing so because of a lack of means. Legal aid is granted to any person, whether resident or non-resident, who satisfies the relevant criteria under the means test and the merits test.

102. As Hong Kong's legal aid service is an integral part of Hong Kong's legal system, legal aid will only be granted for legal representation in civil and criminal proceedings in the courts of Hong Kong, in accordance with the Legal Aid Ordinance and the Legal Aid in Criminal Cases Rules. Legal aid is therefore not available if no legal proceeding is involved. The Government has no intention to change the existing policy at this stage.

103. Some commentators also alleged that no support was given to asylum seekers or torture claimants who suffered from domestic violence or sexual abuse.

104. Again, this is not true. Victims of sexual, physical assault and related offences, and vulnerable witnesses, enjoy protection under our relevant law irrespective of their residence status. Services are available to all victims of domestic violence and sexual abuse, including asylum seekers and torture claimants. These services include legal and medical assistance, psychological support/counselling, temporary accommodation/shelter, other short-term emergency intervention, etc.

C. Article 3 - No racial segregation or apartheid

105. The position remains as explained in paragraph 61 of the initial report. That is, neither apartheid nor any form of racial segregation is practised in Hong Kong, nor would it be tolerated by Hong Kong's people or Government.

Patterns of settlement

106. In paragraphs 62 to 64 of the initial report, we advised the Committee that some ethnic groups were found to be residing in some localities in greater numbers than in others but there were no marked signs of a trend towards "ghettoisation".

107. The position remains largely the same: members of South Asian communities continue to favour Tsimshatsui, their traditional area of congregation, while the Nepalese community tend to settle in northwestern New Territories near the former British military bases. In recent years, we also see a rise in Pakistani population in the newly-developed areas of Yuen Long, Tin Shui Wai and Tung Chung, likely attributable to new public residential housing being available in those areas. Although the economic factor, along with other reasons such as familiarity and mutual

support, does play a role in determining the settlement pattern, none of the areas are predominantly inhabited by any particular ethnic minority group. Ethnic communities continue to co-exist with the local Chinese majority in a generally peaceful and harmonic manner in different districts of Hong Kong. The Government will continue to actively pursue its policy of integration and encourage the ethnic communities to participate in the general community of Hong Kong.

D. Article 4 - No propaganda or organizations which are based on racial superiority

108. The position remains as reported in paragraphs 65 to 70 of the initial report. That is, the HKSAR and its people do not tolerate views of extremist or racist organizations, and that no such groups exist in Hong Kong. While we firmly uphold the freedom of opinion and expression, our laws also contain adequate safeguards and provisions to effectively punish or suppress any racist acts of violence.

109. When enacted, the proposed Race Discrimination Bill described in paragraphs 66 to 72 of this report will further reinforce existing legislation and render it unlawful for a person or an organisation, by any activity in public, to incite hatred towards, serious contempt for, or severe ridicule of, another person or members of a class of persons on the ground of race. It will also prohibit serious vilification which involves the threatening of physical harm or inciting others to threaten physical harm toward persons of his target, or the property or premises of those persons. Serious racial vilification is a criminal offence under the Bill, and carries a penalty of a fine of HK\$ 100,000 (US\$ 12,821) and imprisonment for two years.

E. Article 5 - Guarantees of rights of everyone without distinction as to race, colour, or national or ethnic origin

1. Article 5 (a) - Equal treatment before tribunals and organs administering justice

110. In Hong Kong, all persons regardless of their race, colour or national or ethnic origin are equal before the law and have equal access to the courts. This is expressly provided for in Article 25 of the Basic Law and Articles 1, 10 and 22 of the Hong Kong Bill of Rights (HKBOR).

111. Legal aid is available to all persons if they meet the means test and that there is justification for legal action. Article 11 of the HKBOR provides that any person charged with a criminal offence is entitled, in full equality, to legal aid where the interests of justice so require and without payment if he himself cannot pay for it. The operation of the legal aid system is explained in paragraphs 34 to 37 of Part A.

Decisions made under the Immigration Ordinance

112. The position remains the same as reported in paragraphs 75 and 78 of the initial report.

113. Concerns have been raised by some commentators on the possible abuse of power by frontline officers of the Immigration Department, that they might have taken decisions in refusing entry or extending visa to individuals based on racial bias.

114. Such speculations are unfounded. To guard against abuse of powers, the Immigration Department has in place established guidelines and procedures for its frontline staff to handle applications. It also provides training to new recruits and in-service immigration staff to foster the culture of courtesy and impartiality in compliance with the law. All staff are trained to treat all members of the public with respect and professionalism irrespective of their race, gender, nationality, age, marital status, pregnancy, family status, religion or disability. General human rights training provided by the Immigration Department also covers topics of the HKBORO and other applicable laws. In addition, there are established review mechanisms and provisions available to members of the public who are aggrieved by actions or decisions of the Immigration Department.

Persons in police custody

115. The position remains as explained in paragraph 79 of the initial report. The rights of detained persons are made known to the detainees, irrespective of their race, colour, or national or ethnic origin. Translation service is also arranged where necessary.

2. Article 5 (b) - Security of person

116. A commentator raised questions on the measures taken by the Police and the Correctional Services Department to prevent racial discrimination. On this, we confirm that staff of the Police and Correctional Services Department act in accordance with the laws of Hong Kong, all binding international conventions and other applicable standards.

117. At the Correctional Services Department, the staff are required to observe the United Nations Standard Minimum Rules for the Treatment of Prisoners. They are also required to treat all persons under the Department's custody equally, with respect and humanity, irrespective of their race, colour, or nationality. A high standard of conduct is maintained through enforcement of the discipline rules prescribed by the law. They are given training on cultural sensitivity and measures against racial discrimination as part of their induction training as well as in-service refresher training organised regularly. They are also required to refresh and update relevant knowledge through in-service training courses.

118. As for the Police, training covering racial sensitivity is already included in the basic training provided to new recruits at both Inspectorate and Police Constable ranks. Training topics include the general subject of prejudice and discrimination and the possible difficulties in policing a multicultural society.

119. At the strategic level, a Working Group on Non-Ethnic Chinese was established by the Police in March 2006 to consider the policing service needs of non-ethnic Chinese in Hong Kong. In addition, at the district level, several Police Formations have developed and undertaken a wide variety of initiatives to address their specific issues related to non-ethnic Chinese. Police officers of non-ethnic Chinese origins are also involved in initiatives to broaden the understanding of different faiths within the Police.

3. Article 5 (c) - Political rights

Elections of the Chief Executive and to the Legislative Council and District Councils

120. The system of elections of the Chief Executive and to the Legislative Council and the District Councils is explained in Part A of this report, paragraphs 6 to 17. All Hong Kong permanent residents aged 18 or above and who ordinarily reside in Hong Kong are eligible to apply to be registered as electors for the Legislative Council geographical constituency elections and District Council elections. The electorate for Legislative Council functional constituencies comprises representatives of major organisations of the relevant sectors and members of professions with well-established and recognised qualifications. The Members of the Election Committee, who form the electorate for the Chief Executive, are returned through election on a sectoral and functional basis and are subject to relevant legal provisions. These provisions make no reference to race, colour or national or ethnic origin.

121. All persons who are registered geographical constituency electors, aged 21 or above and have ordinarily resided in Hong Kong for the three years immediately preceding the relevant election are eligible to be nominated as candidates in District Council elections. To qualify for candidature in the Legislative Council geographical constituency elections, they must be Chinese citizens with no right of abode in any country other than the People's Republic of China.

122. Candidates for election to the Legislative Council functional constituencies must be registered electors in the relevant constituencies or have substantial connection with them. They must also be registered geographical constituency electors and must satisfy the same age and residential requirements as in a geographical constituency election. Article 67 of the Basic Law provides that permanent residents of the HKSAR who are not of Chinese nationality or who have the right of abode in foreign countries may become members of the Legislative Council if so elected, subject to their number not exceeding 20 per cent of the total membership of the Council.

123. Article 44 of the Basic Law provides that the Chief Executive shall be a Chinese citizen of not less than 40 years of age who is a permanent resident of the HKSAR with no right of abode in any foreign country and has ordinarily resided in Hong Kong for a continuous period of not less than 20 years.

124. The laws governing candidature to the Chief Executive, the Legislative Council and the District Council make no reference to race, colour or national or ethnic origin.¹⁸

¹⁸ Non-Chinese permanent residents who wish to acquire Chinese nationality may do so in accordance with Article 7 of the Nationality Law of the People's Republic of China (NLPRC) and the "Explanations of some questions by the Standing Committee of the National People's Congress concerning the implementation of the Nationality Law of the People's Republic of China in the Hong Kong Special Administrative Region".

Equal access to public service

125. The Government is Hong Kong's largest single employer and recruitment is highly competitive. Being an equal opportunities employer, appointments to the civil service are based on open and fair competition. Entry requirements for civil service posts in general are set on the basis of academic or professional qualifications obtained from local institutions or professional bodies (or equivalent), technical skills, work experience, language proficiency, and other qualities or attributes as may be required for particular jobs.

126. Historically, local and overseas officers were employed on different terms and conditions of service. But in present day circumstances, the need to do so has greatly diminished. Accordingly, we introduced a common set of terms and conditions of service for all appointees so that, since January 1999, all new recruits would be appointed on the same terms of employment regardless of their origin. As at 31 December 2006, the public service comprised about 154,000 officers. The majority of them were serving on local terms (recruited before 1999), followed by those on common/new terms (recruited after 1999). Officers on overseas terms and conditions of service comprised only 0.2 per cent of the civil service.

Permanent residency requirement

127. Article 99 of the Basic Law provides that - with the exception of the provisions regarding foreign nationals in Article 101 - public servants must be permanent residents of the HKSAR. No distinction is made on the grounds of race or nationality: there are permanent residents who are foreign nationals and non-permanent residents who are ethnic Chinese. Article 101 provides that the Government of the HKSAR may employ foreign nationals previously serving in the public service in Hong Kong, or those who have become permanent residents of the HKSAR, to serve as public servants in government departments at all levels, except the principal official posts which should be filled by Chinese citizens among permanent residents of the HKSAR with no right of abode in any foreign country. It also provides that "the Government may employ foreign nationals as advisers to government departments and, when required, may recruit qualified candidates from outside the HKSAR to fill professional and technical posts in government departments". Other than that, access to the public service is open to all suitably qualified persons. Recruitment is based on open and fair competition. Candidates who meet the specified entry requirements (which are based on qualifications and experience) may apply and compete for vacancies.

Language proficiency requirements

128. As an international financial and commercial centre, English is an important working language in Hong Kong, although nearly 95 per cent of the members of the public whom we serve are Chinese. Thus, our long-term policy objective is to develop and maintain a bilingual civil service. To ensure the civil service operates efficiently and effectively in both official languages of Hong Kong, all civil service grades are required to specify Chinese and English language proficiency requirements that are commensurate with the job requirements. Nevertheless, where operational needs so require, individual departments can seek exemption for candidates who do not meet the language proficiency requirements but possess special expertise.

4. Article 5 (d) - Civil rights

(i) Freedom of movement

129. The position is as explained in paragraph 91 of the initial report. That is, the freedom of movement is enshrined in Article 31 of the Basic Law.

(ii) Freedom to leave the territory

130. The position is as explained in paragraph 101 of the initial report. That is, Article 31 of the Basic Law provides that Hong Kong residents shall have freedom to travel and to enter or leave the region.

(iii) Right to residency/right of abode

131. As explained in paragraph 102 of the initial report, Article 24 of the Basic Law prescribes the categories of persons who are permanent residents of the HKSAR and therefore qualified to obtain, in accordance with the laws of the HKSAR, permanent identity cards that state their right of abode. The interpretation of Articles 22 (4) and 24 (2) (3) of the Basic Law as adopted by the Standing Committee of the Ninth National People's Congress at its Tenth Session on 26 June 1999 and the judgments of the HKSAR Court of Final Appeal in the related litigation have established a firm legal basis for the Government to deal with cases concerning the right of abode.

(iv) Right to marriage

132. The position remains the same as reported in paragraph 111 of the initial report. That is, Article 19 of the HKBOR provides, inter alia, that the right of men and women of marriageable age to marry and to found a family shall be recognised. No marriage shall be entered into without the free and full consent of the intending spouses. Freedom of marriage is further protected under Article 37 of the Basic Law. The right is without distinction as to race, colour or national or ethnic origin. Marriage between persons of different ethnic origin is common and well accepted in the HKSAR.

(v) and (vi) Right to own property and inherit

133. The position remains the same as reported in paragraph 115 of the initial report. That is, Article 105 of the Basic Law provides that the HKSAR shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property. The rights in Article 5 (d) (v) and (vi) are also secured by both statute and common law. They - and the laws that enforce them - are applied without discrimination as to race, colour or national or ethnic origin.

(vii) Freedom of thought, conscience and religion

134. The position remains the same as reported in paragraph 116 of the initial report. That is, Article 32 of the Basic Law provides that Hong Kong residents shall have freedom of conscience. Hong Kong residents shall have freedom of religious belief and freedom to preach

and to conduct and participate in religious activities in public. Freedom of thought, conscience and religion is also guaranteed by Article 15 of the HKBOR, which gives effect in domestic law to Article 18 of the ICCPR. Pursuant to Article 1 of the HKBOR, these freedoms shall be enjoyed by all persons regardless of race, colour, or national origin or other status.

135. In paragraphs 117 and 118 of the initial report, we reported a case of dispute over proposals to build a mosque in Fanling, in the New Territories. The dispute arose from the resistance put up by the residents of a housing estate bordering the site of the proposed mosque in view of its proximity to their estate and the potential impact on traffic. Nevertheless, we are pleased to report that the application for a private treaty grant of the site for the building of the mosque was approved in 2005 after consultations with the District Council and the residents concerned.

(viii) Freedom of expression

136. The position remains the same as reported in paragraphs 119 to 120 of the initial report. That is, the freedom of expression is constitutionally enshrined in Article 27 of the Basic Law, which states that Hong Kong residents shall have freedom of speech, of the press and of publication. The freedom of expression is also safeguarded by Article 16 of the HKBOR. And as stated in paragraph 134, Article 1 of the HKBOR provides that the rights recognised in the HKBOR shall be enjoyed without distinction of any kind, such as race, colour, or national or social origin.

(ix) Freedom of peaceful assembly and association

137. The position remains as explained in paragraph 121 of the initial report. The freedom or right to peaceful assembly and to peaceful public procession are fundamental rights guaranteed in the Basic Law and the HKBORO. The HKSAR Government remains firmly committed to the protection of these fundamental rights and freedoms of people in Hong Kong, regardless of their race, colour, or national or ethnic origin.

138. To assist frontline officers in exercising their discretion to regulate public meetings and processions, the Police have widely promulgated the “*Guidelines on the approach to the Public Order Ordinance in relation to public meetings and public processions*” among frontline Police officers. These Guidelines aim to further explain the meaning of important terms and provide additional guidance on the terms used on the limits to Police discretion. They have also been made available on the Police’s website and Divisional Police Report Rooms for public inspection.

5. Article 5 (e) - Economic, social and cultural rights

(i) Employment rights

139. The position on the protection of general employment rights remains broadly as explained in paragraphs 124 to 139 of the initial report, with some developments in selected areas as explained below.

Foreign domestic helpers

140. The position of foreign domestic helpers in Hong Kong has been updated in paragraphs 76 to 80 of this report in relation to Article 2. In the following paragraphs, we further address the concerns raised by some commentators on issues relating to the admission and employment terms of these domestic helpers.

(a) Two-week rule

141. In paragraph 18 of the Concluding Observations, the Committee expressed its concern:

“... regarding the situation of foreign domestic workers in the Hong Kong Special Administrative Region, mainly from the Philippines, Indonesia and Thailand, and the existence of certain rules and practices, such as the so called “two-weeks rule”, which may be discriminatory in effect.”

142. As explained in paragraphs 27 to 33 of the initial report, the “two-week rule” on foreign domestic helpers is imposed to prevent abuse and to deter foreign domestic helpers and imported workers from overstaying and taking up unauthorized work. The same rule applies equally to other migrant workers, such as workers imported under the Supplementary Labour Scheme, irrespective of their countries of origin. It is not based on and does not entail racial discrimination. The rule does not preclude the helpers from working in Hong Kong again after returning to their places of origin and does not lead to additional expenses on the part of the foreign domestic helpers as the passages are paid by their employers. Under exceptional circumstances, such as where the employment contract is terminated due to external transfer, emigration, death or financial difficulties of the employer, or where there is evidence that the helper had been abused, the Immigration Department may allow the helpers concerned to change employer without requiring them to return to their home countries before commencing new contracts in Hong Kong. Moreover, a foreign domestic helper may, if necessary, apply for extension of stay from the Immigration Department to facilitate him/her in pursuing claims in court.

(b) Minimum allowable wage

143. The Government introduced the minimum allowable wage (the wage) for foreign domestic helpers in 1973 to guard against exploitation of these migrant workers, and to ensure that local employees are not undercut by cheap foreign labour. As explained in paragraph 77 of this report (in relation to Article 2), the wage is subject to regular review, a process that takes account of Hong Kong’s overall economic and employment situation against a basket of economic indicators. In February 2003, on the basis of the wage review, a decision was taken to reduce the wage by HK\$ 400 (US\$ 51) (or 10.9 per cent) from HK\$ 3,670 (US\$ 471) to HK\$ 3,270 (US\$ 419) with effect from 1 April 2003. Despite the fact that the wage has since been increased following regular reviews in 2005 and 2006, there have been calls for “reinstatement” of the HK\$ 400 reduction in view of the current level of lowest income among employed persons in the territory.

144. The reduction of the minimum allowable wage in 2003 followed the well-tried and established mechanism of the wage review as outlined in the last paragraph, and reflected the

state of the local economy from the period of 1999-2002. In conducting the review, the Government takes into account the prevailing general economic condition (such as the Gross Domestic Product) and employment situation, as reflected through economic indicators which includes the relevant income movement (such as earnings of elementary employees), price change (such as Consumer Price Index (A)) and labour market situation. The same mechanism and approach was used in 2003 and in previous and subsequent reviews. There is thus no question of “reinstating” the amount reduced.

145. We should highlight that the wage is only a minimum stipulation to prevent abuse of foreign domestic helpers. While employers are not allowed to pay their foreign domestic helpers wages below this level, they may, and many do, offer higher wages to their foreign domestic helpers than that minimum requirement. Moreover, as mentioned above, the wage has also been revised upwards since the reduction in 2003, and at its current level HK\$ 3,400 (US\$ 436) per month, it compares favourably to wages offered to foreign domestic helpers among Asian economies.

(c) Employees Retraining Levy

146. The Employees Retraining Levy, at HK\$ 400 (US\$ 51) per month as stipulated in the Employees Retraining Ordinance (Chapter 423) since its enactment in 1992, was extended to employers of foreign domestic helpers in October 2003. There have been allegations of the Government “abusing” foreign domestic helpers by using the HK\$ 400 (US\$ 51) minimum allowable wage reduction that year to offset the levy imposed on their employers. We wish to clarify that the adjustment of the minimum allowable wage and the imposition of the levy are two completely separate matters. It should be noted that the minimum allowable wage was adjusted in 2003 in accordance with the established principle and mechanism while the level of the levy had been prescribed in the statute for over a decade in 1992. Moreover, the minimum allowable wage has been adjusted upward twice since the extension of the levy to employers of foreign domestic workers in 2003.

(d) Live-in requirement

147. Starting from 1 April 2003, all foreign domestic helpers are required to work and reside in the employers’ residences as stated in the standard employment contract, except for foreign domestic helpers working for employers who had obtained exceptional approval of the Director of Immigration before 1 April 2003 to let their foreign domestic helpers live out. Although some helpers may claim this requirement to be an inconvenience, we maintain that it is in keeping with the well-established policy that non-local workers are only allowed to work in the HKSAR where there is an inadequate supply of local workers. In the case of foreign domestic helpers, they are brought in to meet employers’ needs for live-in domestic helpers. To allow foreign domestic helpers to live out as a matter of course would defeat the purpose of importing full-time live-in domestic helpers.

148. As regards working hours for live-in foreign domestic helpers, it may be noted that there are no statutory prescriptions on working hours in Hong Kong. Working hours is one of the terms and conditions of employment which is to be agreed between employers and employees in the light of market conditions.

(e) *Maternity protection*

149. In paragraph 130 (c) of the initial report, we reported on the proposals for the continued application of the Employment Ordinance, including the provisions on maternity protection to live-in domestic helpers, and for the introduction of a flexible arrangement for the termination of contract by mutual consent of the employer and employee. We advised that the proposals were being examined.

150. Having considered the views of the parties concerned, the Government has decided that all provisions under the Employment Ordinance, including those on maternity protection, should continue to apply in full to live-in domestic helpers, foreign and local alike. The proposal for flexible arrangement for a pregnant live-in domestic helper and her employer to mutually agree to dissolve the employment contract, however, has been abandoned owing to the lack of support from both the relevant employers' associations and employees' groups.

Imported workers

151. As at 31 December 2006, there were 1,144 persons working in Hong Kong under the Supplementary Labour Scheme, the details of which were explained in paragraph 131 of the initial report. Most of these imported workers were employed on a two-year contract. They are informed of their legal and contractual rights and benefits through pamphlets, briefings and a telephone enquiry service with pre-recorded messages in English, Cantonese and Putonghua.¹⁹ Their employers are required to pay the imported workers wages at a rate comparable to local workers in similar positions, to provide them with free medical treatment, subsidised accommodation of a prescribed standard and return passage.

Legal protections

152. The position remains broadly the same as explained in paragraph 133 of the initial report. In the event of disputes relating to employment rights and benefits, the Labour Department provides free conciliation services. Past experience shows that imported workers and foreign domestic helpers who could not communicate in Chinese and English were often accompanied by friends or relatives speaking either language when making enquiries, filing claims or attending conciliation meetings. In such cases, the Labour Department will exercise flexibility to ensure that nobody would be denied access to its services due to language difficulties. In addition, the Labour Department has commissioned interpreters to provide interpretation service during conciliation meetings and for criminal investigation and prosecution purposes when necessary.

Promotion and publicity of employment rights and benefits

153. The position remains broadly the same as reported in paragraphs 134 and 135 of the initial report. The Labour Department issues publicity materials informing imported workers of their

¹⁹ Out of the some 1,000 imported workers in Hong Kong, over 90% come from Mainland China.

statutory and contractual rights and benefits. The Department also maintains a telephone enquiry service for that purpose in English, Cantonese and Putonghua, and conducts briefings for all imported workers within eight weeks of their arrival, advising them of their employment rights and obligations and of the channels available to them for enquiries and complaints.

154. Foreign domestic helpers have access to information about their legal and contractual rights through a Government-maintained enquiry service. The Immigration Department issues pamphlets and leaflets to all helpers when they apply for their identity cards. These are published in seven languages.²⁰ The Labour Department also publishes a practical guide on the rights and obligations of foreign domestic helpers and their employers in five languages, namely Chinese, English, Tagalog, Indonesian and Thai. These are distributed to the helpers free of charge. A copy of the standard contract for the employment of foreign domestic helpers in the relevant language is attached to the guidebook for their ready reference.

Enforcement

155. The position remains broadly the same as reported in paragraphs 136 to 138 of the initial report. Relevant government departments, particularly the Labour Department, continue to vigorously enforce the legislations governing the employment of imported workers to protect their rights and benefits.

Employment services provided to ethnic minorities

156. Some commentators considered the employment services provided by the Government insufficient to cater for the needs of ethnic minorities. Their views and our response are summarized as follows.

157. A few have raised concern that many ethnic minorities were unable to find jobs through the Labour Department because the information on vacancies was provided in Chinese. They considered that Government should provide multi-lingual employment services as well as translation and interpretation services for ethnic minorities.

158. At present, the Labour Department provides a wide range of free employment services to help place job-seekers into employment. Job-seekers can obtain a full range of employment service through the Department's network of 12 Job Centres, Telephone Employment Service Centre as well as bilingual Interactive Employment Service on the web. They can browse the most up-to-date vacancy information printed in three languages (English, Traditional Chinese and Simplified Chinese) through the user-friendly vacancy search terminals at all Job Centres. To facilitate ethnic minorities to make use of our employment service, the leaflet on "Easy-to-use Employment Services of the Labour Department" has been translated into Tagalog, Indonesian, Thai, Urdu, Hindi and Nepali. Indeed, with only a few exceptions, e.g. when some of the job vacancy information cannot be readily translated into English, the essential items of vacancy information (e.g. occupation, working hours, salary, location of workplace) are shown in both English and Chinese. If ethnic minority job-seekers would like to know more about

²⁰ Namely: Chinese, English, Tagalog, Hindi, Indonesian, Thai and Sinhalese.

specific job vacancies or need other types of employment assistance, they can directly approach the staff at the Job Centres and the Telephone Employment Service Centre of the Labour Department. In addition, employment briefings specifically for ethnic minorities are organised regularly at the Job Centres.

159. Some also suggested that the Government should create more job and training opportunities and programmes for ethnic minorities. In response to this, we wish to point out that the Government has adopted a multi-pronged approach to promote employment on all fronts without distinction as to race, colour, or national or ethnic origin. The Government has also launched several special employment programmes including the Employment Programme for the Middle-aged, the Work Trial Scheme, the Work Orientation and Placement Scheme, the Special Incentive Allowance Scheme for Local Domestic Helpers, the Youth Pre-employment Training Programme and the Youth Work Experience and Training Scheme to enhance the employability of the more vulnerable and disadvantaged groups. Ethnic minorities falling into the respective categories are always encouraged to join the programmes. The Administration will continue to facilitate economic development so that more job opportunities will be created on the open market.

160. In response to allegations from some commentators that the Government does not provide special service counters for ethnic minorities in its Job Centres, we should explain that members of the ethnic minorities are always encouraged to seek employment assistance through the Labour Department's Job Centres, Telephone Employment Service and Interactive Employment Service on the web for suitable jobs. In addition, ethnic minorities who need more personalised and intensive employment service are welcome to join the Job Matching Programme available at all the Job Centres run by the Labour Department. Under this programme, each participant is assigned a placement officer who provides job-seekers with comprehensive employment services comprising in-depth interview, career counselling and active job-matching. Placement officers also introduce suitable tailor-made retraining courses to job-seekers where appropriate.

161. Some commentators requested that the Government should provide information on the number of ethnic minority job-seekers successfully finding employment through the Labour Department's employment services. There are, however, difficulties. As established practice, the Labour Department provides free employment services to all job-seekers and draws no distinction on the basis of their ethnicity and race. Information on job vacancies, which usually contains the employers' contact details, is provided and job-seekers are encouraged to approach employers direct without necessarily seeking referrals from Job Centres. As there is no obligation for either the employers or the job-seekers to report to the Labour Department the results of the recruitment, the Department does not have information on the number of successful job placements for ethnic minorities.

(ii) Right to form and join trade unions

162. The position remains the same as reported in paragraph 141 of the initial report. That is, the right to form and join trade unions is guaranteed by Article 27 of the Basic Law and Article 18 of the HKBOR. There are registered trade unions which specifically represent the rights of overseas workers. Those unions include the Filipino Migrant Workers' Union; the Indonesian Migrant Workers Union; and the Overseas Nepali Workers Union Hong Kong.

(iii) Right to housing

163. The objective of our public housing policy is to provide subsidised housing for low-income families which are unable to afford private rental housing. The right to subsidised housing is based on an applicant's housing need (which is assessed by making reference to the applicant's household income, assets, property ownership and the residence period in Hong Kong) and is enjoyed without distinction as to race, colour, national or ethnic origin.

164. In paragraph 143 of the initial report, we had responded to the comment concerning legislating against racial discrimination by landlords who refuse to lease their premises to members of the ethnic minorities. When enacted, the proposed Race Discrimination Bill, described in paragraphs 66 to 72 above in relation to Article 2, will outlaw discrimination by landlords in the disposal or management of premises, including premises comprised in a tenancy, or the treatment of occupiers of premises. We believe that the provision will effectively deter landlords from discriminating against persons of different racial or ethnic backgrounds in regard to leasing and purchases of accommodation.

Housing needs of new arrivals

165. Public rental housing is subject to eligibility criteria that all applicants must meet, irrespective of their race, colour, national or ethnic origin. One such criterion is that at least 50 per cent of an applicant's household members included in the application must have lived in Hong Kong for seven years²¹ and are still living in Hong Kong at the time of allocation of a public rental flat. We consider that, in view of the scarcity of our public housing resources, it is fair and reasonable to maintain the current residence rule in the allocation of public rental housing. As explained in the initial report, the system also embodies the necessary flexibility to provide compassionate rehousing in public rental flats for people with urgent and genuine housing needs.²²

(iv) Right to receive medical care, social security and social services

166. The right to receive medical care, social security and social services is enjoyed without distinction as to race, colour or national or ethnic origin. Article 36 of the Basic Law provides that Hong Kong residents shall have the right to social welfare in accordance with law. Article 145 further provides that, on the basis of the previous social welfare system, the HKSAR Government shall formulate policies on the development and improvement of this system "in the light of the economic conditions and social needs".

²¹ All children under the age of 18 are deemed to have fulfilled the seven-year requirement if they meet one of the following conditions:

- (a) At least one of their parents has lived in Hong Kong for seven years or more; or
- (b) The children have established Hong Kong birth status as a permanent resident.

²² On, for example, medical or social grounds.

167. Our social security policy is to meet the basic and special needs of the disadvantaged people in Hong Kong. These include people such as the financially vulnerable, the elderly, and the severely disabled. All local residents - irrespective of their sex, race or religion - enjoy the right to social security. This is achieved through the Comprehensive Social Security Assistance (CSSA) Scheme which provides comprehensive social security on an entirely non-contributory basis.

168. The CSSA Scheme provides financial assistance to bring the income of needy individuals and families up to a prescribed level to meet their basic needs. To be eligible for CSSA, an applicant must satisfy the residence requirement and the financial test. Regarding the residence requirement, the applicant must have been a Hong Kong resident for at least seven years and have resided in Hong Kong continuously for at least one year immediately before the date of application. Moreover, Hong Kong residents aged below 18 are exempt from the "prior residence" requirement. Persons whose presence in Hong Kong is unlawful and persons permitted to Hong Kong for a purpose other than residence are excluded from the CSSA Scheme. However, the Director of Social Welfare may, at his discretion, grant assistance to applicants who do not satisfy the residence requirement, but are in genuine hardship.

169. We emphasize that the seven-year residence requirement applies to all applicants, irrespective of race. It may also be noted that most developed countries require a prior period of residence as a condition to the receipt of non-contributing welfare benefit. Applicants, irrespective of their racial background, can receive CSSA once they pass the residence rule, assets and income tests.

170. In order to ensure that the needy persons can have access to the relevant information through sufficient channels, we have all along emphasized the importance of promoting public knowledge of the social security system. Information on social security is available in both Chinese and English, so that those who cannot read Chinese can access the information.

171. In providing social services for ethnic minorities, we seek to facilitate their integration into the local community. To this end, we encourage ethnic minorities in need to make use of the support provided by mainstream services, including family and child welfare services, youth services, medical social services, etc. For example, based on district needs, Integrated Family Service Centres or Integrated Children and Youth Services Centres organise various groups and programmes to enhance ethnic minorities' understanding of the local community they reside in. Those activities will also strengthen their social participation and provide them with more integration opportunities with the local community.

172. As regards access to medical care, it is a well-established policy of the HKSAR that no one should be prevented from obtaining adequate medical treatment due to a lack of means. All persons who hold valid Hong Kong identity cards have access - at very low cost - to public health services. Persons who do not hold valid Hong Kong identity cards also have access to those services although they will be charged at higher rates. This applies irrespective of the person's race, colour, or national or ethnic origin.

(v) Right to education and training

173. As explained in paragraph 151 of the initial report, these rights are enjoyed without discrimination on the grounds of race, colour, or national or ethnic origin. Primary and secondary schools provide education to all eligible children in Hong Kong irrespective of race, colour or national or ethnic origin. To ensure that the schools remained mindful of their role in ensuring equal opportunities for all students and in fostering the concepts of equality and equity, the Education Bureau issued a circular on “The Principle of Equal opportunities” in December 2003. The circular was sent to all schools, reminding them of that role and of their duty to eliminate all forms of discrimination on grounds such as sex, class, race, disability, and so forth. The circular also serves to remind all schools that, in formulating and revising their school policies, they should observe the principles of equal opportunities and avoid any form of discrimination.

174. We have discussed in paragraph 152 of the initial report the issue of education for non-Chinese children. The updated position of the relevant issues of concern is as follows -

(a) Securing school places

175. Under existing legislation in Hong Kong, all children aged between six and 15 must attend school and the Permanent Secretary for Education has the duty of ensuring that they do.²³ The Education Bureau meets all requests for school placement on a standard procedural basis. All children, irrespective of their racial or ethnic backgrounds, are treated alike. The Bureau’s Regional Education Offices provide placement assistance, as well as advice or information on schools, the education system, or policies on kindergarten, primary, and secondary education. To facilitate access, the four Regional Education Offices are located at different locations of the territory, namely Hong Kong Island, Kowloon, New Territories East and New Territories West. The Bureau also provides counselling and assistance to children with difficulties. While most of the schools in the public sector use Chinese as the medium of instruction, one should not assume that these schools are not appropriate for non-Chinese speaking students, particularly those who have started to learn Chinese at an early age. For non-Chinese speaking students who would cope better with English as a medium of instruction, they have to compete with other local students for entry to English-medium schools, failing which placement assistance to the relevant schools is offered.

(b) Opportunities to learn Chinese and support services to non-Chinese speaking children

176. As mentioned in paragraph 153 (c) of the initial report, all children, regardless of their race, are eligible to study in a public sector school (most of which use Chinese as the medium of instruction) provided that they are either Hong Kong permanent residents or that their travel documents contains an appropriate endorsement on their conditions of stay in Hong Kong. Irrespective of the medium of instruction (Chinese or English) adopted by the schools in which they are studying, non-Chinese speaking students are encouraged to learn Chinese in school.

²³ Section 74 of the Education Ordinance (Chapter 279).

This is to help them integrate into the local community through effective communication and a better understanding of the local culture.

177. In recognition of the need of non-Chinese speaking ethnic minority students, we have stepped up our efforts in implementing special measures to provide them with appropriate education support, particularly in their learning of the Chinese language. These measures include:

- (i) Centralised support provided by the Education Bureau to ten designated primary schools and five designated secondary schools in the 2006/07 school year. The Bureau provides intensive on-site support to these designated schools to help them further enhance the learning and teaching, particularly in the Chinese Language subject, of the non-Chinese speaking students. Such support takes the form of regular visits by professional officers to conduct collaborative lesson planning with teachers and to help the schools develop school-based Chinese Language curricula, learning and teaching strategies, school-based teaching resources/materials, learning activities and assessment designs, etc. Each designated school is provided a special grant of \$ 0.3 million (US\$ 38,462) per annum for two years to arrange programmes to support the learning and teaching of their non-Chinese speaking students;
- (ii) A supplementary guide on the teaching of Chinese to non-Chinese speaking students will be developed under the umbrella of the central Chinese Language curriculum framework. This supplementary guide will advise on the selection of key learning targets and objectives related to different strands, and principles of selecting relevant materials and contexts for the different needs of students. It will also be supported by examples based on the experiences of learning and teaching of Chinese Language to non-Chinese speaking students in local schools;
- (iii) A local university has been commissioned to run Chinese Learning Support Centres which support non-Chinese speaking students who are less proficient in Chinese (in particular the late starters) by offering remedial programmes for these students after school hours or during holidays. The Centres also participate in the development of related teaching resources, provide professional advice and provide training to the Chinese Language teachers;
- (iv) Training programmes for Chinese Language teachers in the designated schools has commenced in May 2007;
- (v) Starting from summer 2007, the 4-week Summer Bridging Programme, previously confined to incoming non-Chinese speaking Primary 1 entrants, was extended to cover also non-Chinese speaking students proceeding to Primary 2, Primary 3 and Primary 4 to help them consolidate what they have learned in Key Learning Stage 1;
- (vi) To meet the aspirations of individual non-Chinese speaking students who would like to be provided an avenue for alternative qualifications in Chinese, arrangements have been made for interested non-Chinese speaking students to participate in the General Certificate of Secondary Education (GCSE) (Chinese) examination in Hong Kong starting from 2007; and

- (vii) In recent years, we have provided information notes and conducted briefings on school places allocation systems in the major ethnic minority languages (e.g. Nepali, Urdu and Hindi). A non-Chinese speaking parent information package and leaflet, in English and Chinese, introducing the local education system and educational support services for non-Chinese speaking students has been prepared and distributed to schools and parent. This has been translated into the major ethnic minority languages for distribution.

178. As for language education outside school, the Bureau's Standing Committee on Language Education and Research will, making reference to its experience in administering the Workplace English Campaign, develop a Workplace Chinese Programme for meeting the needs of the non-Chinese speaking students group.

(c) Diversity in the education sector

179. Educational alternatives for students with different preferences continue to exist, both within and outside the public sector. For example, some public sector schools use English as the medium of instruction. Some schools also offer the opportunity to learn other languages including those of Hong Kong's major minority groups such as Hindi or Urdu. Additionally, some schools, mainly privately-run, offer non-local curricula at the primary and secondary levels. Subject to the availability of resources and the applicable vetting mechanism, some of these private schools may receive one-off capital assistance from the Government for school building. At present, some 55 such schools offer a range of curricula as those of the USA, Australia, Canada, United Kingdom, France, Germany, Japan, Korea, Singapore and so forth.

(d) Access to tertiary education and vocational training

180. At the tertiary education level, the eight University Grants Committee (UGC)-funded institutions admit students based on merits taking into account their academic and non-academic performance, including sports, music, public services and so forth. Their admission policies incorporate flexibility, enabling them to accept good students without the relevant qualifications in Chinese Language based on the local examinations. This is achieved through the acceptance of results in an alternative language other than Chinese, the granting of a waiver to the language requirement or acceptance of alternative qualifications in Chinese. For other tertiary institutions in Hong Kong, section 4(i) of the Post Secondary Colleges Ordinance (Chapter 320) provides, inter alia, that - for a college to be registered under the Ordinance - students must be admitted "without favour being shown on grounds of race, nationality or religion".

181. As mentioned in paragraph 157 of the initial report, the Vocational Training Council (VTC) continues to offer vocational education and training programmes and the Employees Retraining Board (ERB) retraining services to eligible persons, irrespective of race, colour, national or ethnic origin. To enhance vocational education and training for non-Chinese speaking persons notably those from ethnic minority groups, the VTC has put in place dedicated programmes in different streams (including electrical and welding industries) for them since the academic year 2003/2004. The ERB also provides two tailor-made courses (one on security and property management and the other on domestic help) in the English language with curriculum adapted to suit the specific vocational needs of non-Chinese speaking adults on a pilot basis. The two courses were launched in May 2007.

182. We have conveyed the views of the ethnic minority community to the local universities and post-secondary/vocational training institutions, and have encouraged them to continue to suitably allow flexibility for non-Chinese speaking students when applying the Chinese language requirement during student admission and course design.

Right to participate in cultural activities

183. The position remains the same as explained in paragraph 159 of the initial report. The right to participate in cultural activities is guaranteed by Article 34 of the Basic Law and Article 15 of the ICESCR. The right is enjoyed without restriction as to race, colour, or national or ethnic origin.

6. Article 5 (f) - right of access to services

184. The position remains the same as explained in paragraph 160 of the initial report. That is, by virtue of Article 22 of the Hong Kong Bill of Rights Ordinance all laws that regulate the right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks, must not be discriminatory either in their terms or in their practical application. The existing legal framework will be further reinforced by the Race Discrimination Bill described in paragraphs 66 to 72 of this report when it is enacted.

F. Article 6 - Provision of effective protection and remedies against any acts of racial discrimination

185. The position remains broadly as explained in paragraphs 162 to 164 of the initial report. That is, the rights provided under ICCPR and ICESCR as applied to Hong Kong, as well as various other individual rights and freedoms enjoyed by Hong Kong residents are protected under Article 39 of the Basic Law. Any acts of racial discrimination by the Government or public authorities would infringe the HKBORO. Under the HKBORO, a court or tribunal may grant remedies in respect of a breach, violation or threatened violation of the Ordinance as it considers appropriate and just in the circumstance.

186. In addition, the Race Discrimination Bill, when enacted, will provide additional legal protection against racial discrimination. Under the Race Discrimination Bill, legal proceedings can ordinarily be brought in the District Court and, in general, a claim may be made the subject of civil proceedings in like manner as any other claims in tort. In addition to the usual judicial remedies obtainable in the Court of First Instance, the District Court may:

- (a) Make a declaration that the respondent has engaged in conduct that is unlawful under the Bill and order that the respondent shall not repeat or continue such unlawful conduct;
- (b) Order that the respondent shall perform reasonable act or course of conduct to redress any loss or damage suffered by the claimant;
- (c) Order that the respondent shall employ or re-employ the claimant;
- (d) Order that the respondent shall promote the claimant;

(e) Order that the respondent shall pay to the claimant damages by way of compensation for any loss or damages suffered by reason of the respondent's conduct or act;

(f) Order that the respondent shall pay to the claimant punitive or exemplary damages;

(g) Make an order declaring void in whole or in part and either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of the Bill.

187. Some commentators have criticized the alleged discriminatory attitudes of some public officials in dealing with ethnic minorities, specifically those in the Legal Aid Department and the Labour Tribunal. Our response to these allegations is as follows.

(a) Legal Aid Department

188. In 2005 and 2006, non-Chinese applicants lodged a total of 3 complaints against the Legal Aid Department. None alleged discrimination on the part of the Department's staff. The Department has taken measures to ensure racial minorities have equal access to its services, for example, by providing interpreters to ensure that applicants' instructions are fully and properly conveyed and that differences of language do not give rise to misunderstanding. The Department is in the process of preparing information leaflets in other languages about legal aid services for the ethnic minorities.

(b) Labour Tribunal

189. As mentioned in paragraphs 21 to 26 of Part A, the mission of the Judiciary is to maintain an independent and effective judicial system which upholds the rule of law, safeguards the rights and freedoms of the individual, and commands the confidence within and outside Hong Kong. Every one is treated fairly and equally before the courts. The Labour Tribunal is part of the Judiciary and is accessible to all without distinction as to race, colour, or national or ethnic origin. The Tribunal addresses the cases before it in accordance with the law and established procedures. Persons aggrieved by its decisions have access to well-established channels of appeal.

190. One commentator criticised the Labour Tribunal for the discriminatory behaviour of some of its Presiding Officers, saying that they pressurized foreign domestic helpers to accept settlements from their employers that were far below their rightful claims. We were surprised to learn of such accusation. In fact, the Tribunal has not received any complaints in the last five years from foreign domestic helpers that they had been racially discriminated against or they had been pressurized by the Presiding Officers to accept any settlement. We have asked the commentator to provide details of the incident, upon receipt of which the Chief Magistrate will investigate into the complaint.

191. As explained in paragraph 168 of the initial report, the Government firmly opposes all forms of discrimination and strives to foster a culture of courtesy, respect and tolerance throughout the public service generally. To that end, civil service (which, in Hong Kong, includes the disciplined services) training incorporates elements aimed at instilling human rights awareness. For example, the 'Basic Training Package' for civil servants emphasizes the

importance of impartiality in all dealings with the public, which entails fair and equal treatment for persons of all races or nationalities. Another example is the ‘Valuing Diversity Web Package’ launched in 2005 with special modules on racial sensitivity and equal opportunities. The above principles are also highlighted in the customer service training courses for front-line officers and equal opportunities training courses for new recruits. These efforts will continue.

192. Where members of the public consider that a public officer has mistreated them, we encourage them to bring the matter to attention through the relevant departmental complaint channel (such as those listed in paragraphs 45 to 48 in Part A of this report). The Government takes a serious view of such matters and will thoroughly investigate all allegations of misconduct and maltreatment of the public. In addition, The Ombudsman is empowered to investigate, in accordance with The Ombudsman Ordinance, complaints of grievances arising from maladministration in the public sector including inefficiency, bad or improper administration, unreasonable conduct (such as delay, discourtesy and lack of consideration), abuse of power or authority and unjust or discriminatory procedures. Where, after such investigations, either by The Ombudsman or by Government itself, misconduct or malpractice is established, the Government will take appropriate remedial and corrective measures, which may include disciplinary action against the officers concerned.

G. Article 7 - Measures to combat prejudice

Schools

193. Schools in Hong Kong promote students’ understanding of, and respect for, the roles, rights and responsibilities of individuals and groups, as well as the importance of social justice through the teaching of relevant subjects such as General Studies, Economic and Public Affairs, Ethics and Religious Studies, Integrated Humanities, Social Studies and Liberal Studies. Students also learn to appreciate and respect the culture and heritage of different communities through subjects such as Ethics and Religious Studies, History, Social Studies and Travel and Tourism. Schools also implement Moral and Civic Education and conduct life-wide learning activities to promulgate the anti-discrimination message. To support teachers in these endeavours, the Education Bureau has developed various learning and teaching resources, including Education Television programmes, reading materials, teaching kits and on-line learning packages. The Bureau regularly organises professional development programmes on human rights and global citizenship to keep teachers abreast of the latest information on human rights issues.

194. Many tertiary institutions offer programmes on history and culture of different countries, either for specific humanities discipline or as general education programmes for all their students. Courses on various aspects on human rights are also offered by the UGC-funded institutions. These programmes enable students to gain a better understanding of people of different races and ethnic origins. Many UGC-funded institutions have also organised student exchange and other forms of informal activities which are conducive to promoting cultural diversity, widening the students’ exposure as well as enhancing their appreciation of different culture.

Public education

195. We attach great importance to public education as an effective measure to foster understanding and to cultivate respect for racial differences, which are fundamental for the elimination of prejudices and discrimination. In paragraph 74 of this report, we have outlined, with details at Annex IV, the many initiatives taken on public education against racial discrimination and support services for the ethnic minorities. We shall continue to implement these measures and, subject to assessment of need and availability of resources, enhance our services as necessary.

196. As explained in paragraph 172 of the initial report, the Committee on the Promotion of Civic Education (CPCE) promotes human rights education among the general public. The Committee has a full-time education unit to develop civic education materials, including human rights education materials and programmes. In addition, the CPCE provides sponsorship to community organizations through its Community Participation Scheme to organise activities to promote public understanding of human rights, among others.

197. We are supported in our efforts by the Committee on the Promotion of Racial Harmony which advises Government on the problems and needs of the ethnic minorities and on promotion of public education against racial prejudice and discrimination. The Committee consists of members of different racial groups from different walks of life and include persons working with NGOs which are involved in providing services for the ethnic minorities. Apart from giving advice, the Committee helps in scrutiny of applications under the Equal Opportunities (Race) Funding Scheme and assists in the organisation of the Culture in Motion programme which aims at showcasing the unique culture and heritage of the ethnic minorities so as to promote public understanding of the characteristics and achievements of the ethnic minority groups. Through dialogues also at the Ethnic Minorities Forum, we aim to ensure that our services and public education programmes are effectively focussed on relevant areas of needs and concerns, and at the appropriate targets.

District initiatives

198. The Government's efforts to promote racial harmony is also well-supported at district level by the 18 District Councils, which sponsored a host of activities in their respective districts to facilitate social integration of ethnic minorities and enhance mutual understanding between the ethnic communities and the local Chinese. Examples of these activities include volunteer training programme and services, language and other interests classes for ethnic minorities, learning groups, familiarisation tours, tutorial classes for ethnic minority students, cultural shows, carnivals and other outdoor activities.

Durban Declaration and Programme of Action 2001

199. General Recommendation XXVIII of the CERD Committee calls on State Parties to "include in their periodic reports information on action plans of other measures they have taken to implement the Durban Declaration and Programme of Action at the national level". Our response to the paragraphs in the Programme of Action applicable to Hong Kong is at Annex V.
