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The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the latter's communication [AL CHN 1/2020] dated 11 February 2020, has the honour to transmit herewith the reply by the Chinese Government.

The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and other International Organizations in Switzerland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Office of the High Commissioner for Human Rights  
**GENEVA**

联合国人权理事会当代形式种族主义特别报告员、少数群体问题特别报告员 2020 年 2 月 11 日联合来函【AL CHN 1/2020】收悉。中国政府对来函答复如下：

### 整體法律體制

香港特區政府致力消除種族歧視和促進少數族裔人士的平等機會《中華人民共和國香港特別行政區基本法》(“《基本法》”)是香港特區的憲制性文件，對基本權利及自由提供憲制上的保證。

《基本法》第二十五條保證香港居民在法律面前一律平等。第三十九條進一步訂明，包括《公民權利和政治權利國際公約》(“《公約》”)等適用於香港的有關規定繼續有效並通過香港特區的法律予以實施。第三十五條保證香港居民有權向法院提起訴訟、獲得司法補救，以及對行政部門和行政人員的行為向法院提起訴訟。第六十四條規定香港特區政府必須遵守法律，以及執行立法會通過並已生效的法律。

透過本地立法，《香港人權法案條例》(第 383 章)將《公約》中適用於香港特區的有關規定納入本地法律。該條例對香港特區政府和所有公共主管當局，以及任何代表香港特區政府或公共主管當局行事的人，均有約束力。《香港人權法案》的全文載於《香港人權法案條例》第 8 條。《香港人權法案》第一(一)條使《公約》第二(一)條得以在香港實施，保障人人可以享受《香港人權法案》確認的權利，不因任何理由(包括種族、膚色、語言、民族本源或社會階級)而受到歧視。《香港人權法案》第二十二條實施《公約》第二十六條，進一步保證人人享受平等而有效的保護，不因任何理由(包括種族、膚色、語言、民族本源或社會階級)而受到歧視。

因此有必要開宗明義強調，《基本法》已禁止香港特區政府作出種族歧視行為，香港特區政府必須按照相關規定行使或執行其職能或權力，而涉嫌違反相關規定的行為可通過向法院依法提起的訴訟受到挑戰。

### 《種族歧視條例》

為更能保障個人不因其種族而受歧視，香港特區政府訂立《種族歧視條例》，該條例在2009年7月全面實施。《種族歧視條例》規定，在僱傭，教育，貨品、設施及服務的提供，以及處置或管理處所等指定範疇基於種族的歧視均屬違法。在這些範疇種族騷擾其他人（即作出不受歡迎的行徑，而在有關情況下，一名合理的人應會預期另一人會因該行徑而感到受冒犯、侮辱或威嚇／造成屬有敵意或具威嚇性的環境），同屬違法。在該條例中，「種族」就某人而言，界定為該人的種族、膚色、世系、民族或人種。

根據《種族歧視條例》，平等機會委員會（“平機會”）獲賦予職能及權力，使其得以致力消除種族歧視，以及促進不同種族群體人士之間的平等機會及和諧。平機會有權根據《種族歧視條例》進行正式調查和獲取資料，以及處理個別人士的投訴和提供法律協助。此外，平機會亦不時向香港特區政府提出修訂反歧視條例（包括《種族歧視條例》）的建議。

### 適用於政府及公共主管當局

如前述，香港特區的法律體制一直禁止香港特區政府及公共主管當局作出種族歧視行為。《香港人權法案條例》禁止香港特區政府及公共主管當局作出會導致任何形式歧視的行為，包括基於種族的歧視。現時有不同途徑處理對政府及公共主管當局的投訴，計有平機會、申訴專員公署、獨立監察警方處理投訴委員會、立法會、各政策局及部門內的投

訴機制，以及法院。任何人如感到受屈，可根據《香港人權法案條例》第6條，就政府或公共主管當局違反《香港人權法案》第一條（一）款或第二十二條提起訴訟，尋求補救或濟助。

特別報告員來函第2頁提出《種族歧視條例》特別地“未能保障個人免受因政府的職能和權力而引起的歧視”的說法是錯誤的。事實上，《種族歧視條例》不僅對政府具約束力（條例第3條），條例亦明確訂明在所指定的範疇，例如僱傭，教育，貨品、設施及服務的提供，以及處所的處置或管理作出基於種族的歧視性的行為及做法，即屬違法。《種族歧視條例》第27條更特別訂明，政府任何部門在提供服務時歧視他人，即屬違法。另外，在指定的範疇基於種族而騷擾他人同屬違法。

特別報告員來函第3頁指出“指稱遭到種族歧視的受害人需提起訴訟和支付昂貴的訟費”；此外，“據報由於法定豁免和司法覆核的範圍有限，對種族和族裔少數群體能訴諸司法的機會和得到法律保護構成極大障礙。”我們謹請特別報告員注意，香港特區有完善的法律援助政策確保所有符合《法律援助條例》（《法援條例》）（第91章）訂明的條件，並具備合理理據在香港法院提出訴訟或抗辯的人士，不會因為缺乏經濟能力而無法尋求公義。事實上，特別報告員來函提到的 *Singh Arjun 訴 律政司司長* (DCEO9/2011, 2016年5月30日) 一案中的敗訴原告正是由法律援助署署長（“法援署署長”）委派的首席大律師作代表。

必須注意的是，申請法律援助的人士，必須在財務資格（經濟審查）和訴訟理據（案情審查）方面，符合法援署署長的要求，但在考慮法律援助申請時，居住地並不是一項考慮因素。在民事案件方面，如果申請個案涉及違反《香港人權法案條例》，或抵觸《公約》中適用於香港的規定是其中爭論點，只要理據充分，法律援助署署長可運用酌情權，豁

免經濟審查方面的上限限額。任何人不論居住地或國籍，如欲獲得法援，必須同時通過《法援條例》規定的經濟審查和案情審查。司法覆核案的申請人亦可申請法律援助，挑戰法例、政府政策或行政決定的合法性。

### *Singh Arjun 訴 律政司司長 (DCEO 9/2011)*

特別報告員引用上述 *Singh Arjun 訴 律政司司長* 一案，認為《種族歧視條例》對政府的職能和權力所適用的範圍有限。就此而言，我們希望指出，在該案件中區域法院裁定《種族歧視條例》第 27 條禁止在提供「服務」方面的歧視，涵蓋警方在應要求提供協助以及調查罪行和違法行為時的活動。雖然區域法院最終裁定指稱基於種族而被拘捕的人不能根據《種族歧視條例》第 27 條提出民事索償，但若警方的拘捕行動確實違反《基本法》第二十五條及《香港人權法案》第一及第二十二條保證香港居民在法律面前一律平等的規定，該人仍可根據公法尋求有效補救，並可循民事訴訟就侵犯人身或非法拘禁索取損害賠償。區域法院在該案中找不到證據證明警方曾進行種族定性或其體制上存在種族主義，因此相關索賠亦告失敗。相反，證據顯示警方在有關情況下已適當回應原告人的需要。

### *警方執法的原則*

特別報告員來函第 6 頁指“香港警察經常對種族和族裔少數群體人士進行種族定性”的評論是完全沒有根據的。必須注意的是，警方針對的是涉嫌違法的行為本身，而並非涉案人士的背景、國籍、種族或政治立場等因素。《警隊條例》（第 232 章）第 54 條「截停、扣留及搜查的權力」賦予警務人員權力，如在任何街道或其他公眾地方，發現任何人行動可疑，或合理地懷疑某人已經或即將或意圖犯任何罪行，該警務人員可截停該人以要求他出示身分證明文件供查閱。警務人員亦可根據《入境條例》（第 115 章）第 17C 條「身

分證明文件的攜帶及出示」賦予的權力，要求市民出示身分證明文件以供查閱。此外，個別法例如《公安條例》(第 245 章)、《危險藥物條例》(第 134 章)、《武器條例》(第 217 章)、《火器及彈藥條例》(第 238 章)等，亦賦予警務人員截停搜查的權力。透過截停搜查行動，警方能更有效地執行其法定職能，特別是防止和偵查刑事罪行。

警方是專業的執法部門，一直以不偏不倚、公平公正的態度處理每一宗案件。警方只會在發現任何人行動可疑，或合理地懷疑某人已經或即將或意圖犯任何罪行，方會進行截停查問或搜查。警方充分了解進行截停查問或搜查時須得到市民合作及理解的重要性，並會繼續確保所有有關行動均合法和適當地進行。

### 加強支援少數族裔人士

#### 《2018 年歧視法例 (雜項修訂) 條例草案》

香港特區政府致力促進少數族裔人士的平等機會，協助他們融入香港社會。在法例方面，香港特區政府於 2018 年 12 月向立法會提交《2018 年歧視法例 (雜項修訂) 條例草案》(《條例草案》)，以落實平機會向政府提交的歧視條例檢討意見書(“意見書”)中 8 項需要優先處理的建議，其中 6 項涉及《種族歧視條例》(該 6 項建議見附錄 A)。立法會已經完成審議此《條例草案》的工作，待立法會恢復二讀和三讀通過後，該條例草案便成為法律。

就意見書中餘下屬需要優先處理的建議(包括修訂《種族歧視條例》，明確規定政府所有的職能及權力須受條例規管)，以及平機會亦認為應作進一步諮詢、研究和教育的議題，特區政府會繼續仔細研究如何進行相關跟進工作，並就此與平機會保持溝通。

## 促進種族平等的行政措施

除恪守法律規定外，香港特區政府亦加強措施，促進種族平等，以期讓屬於不同種族的人士有平等機會獲得並受惠於社會上的資源和機會。

香港特區政府一直致力透過一系列包括教育、就業、翻譯服務及社區外展的支援措施，協助少數族裔人士融入社會，達到一定成效。在 2018 年，特區政府進一步成立一個高層次、由政務司司長出任主席的少數族裔事務督導委員會（“督導委員會”），統籌特區政府跨局/部門就支援少數族裔人士的工作。在督導委員會的督導及統籌下，特區政府在 2018 及 2019 年制定並宣布了一系列加強支援少數族裔人士的新措施，涵蓋教育、就業、衛生、社會福利及社會共融等方面。香港特區政府至今採取的措施載於附錄 B。

香港特區政府亦致力保障不同種族人士享有平等權利，並透過實行《促進種族平等行政指引》（“《指引》”），提高服務少數族裔人士的政府人員的敏感度。《指引》於 2010 年推出，並有 23 個政策局／部門採納。香港特區行政長官在《2018 年施政報告》中宣布優化《指引》，以適用於**所有**為少數族裔人士提供服務的政策局、部門和有關機構（在下段以「公共主管當局」作統稱）。

經修訂的《指引》將由 2020 年 4 月起推行，公共主管當局有責任遵守。《指引》旨在提高公共主管當局在制訂、推行和檢討有關政策及措施時，要注意種族多元及共融的意識，以及給予公平合理的考慮，同時指導公共主管當局如何確保所有香港市民，不論種族，皆有平等機會獲得公共服務。香港特區政府會繼續對指引進行檢討。

## 有關投訴及調查的資料

## 刑事投訴

特別報告員要求提供關於針對種族歧視的刑事投訴的資料。《種族歧視條例》第 46 條規定，任何人藉公開活動，故意煽動基於種族而對某人或屬某類別人士的成員的仇恨、嚴重鄙視或強烈嘲諷，並包含威脅或煽動其他人威脅損害該人或屬該類別人士的成員的身體或其處所或財產，屬刑事罪行。一經定罪，可被判處罰款 100,000 港元及監禁兩年。警方自《種族歧視條例》2009 年生效以來沒有接獲與《種族歧視條例》第 46 條有關的報案，而截至 2019 年 12 月底，並沒有人人在《種族歧視條例》第 46 條下被檢控。

## 平機會處理的投訴和調查

特別報告員亦要求提供平機會處理與種族歧視有關的投訴和調查宗數。2015 年至 2019 年期間，平機會根據《種族歧視條例》共處理 495 宗投訴個案（包括 474 宗投訴調查及 21 宗主動調查）及收到 1 380 宗查詢。在 474 宗投訴調查中，數目最多的頭三類為種族中傷（240 宗）、種族歧視（187 宗）、種族騷擾（45 宗）和使人受害（2 宗），當中並沒有嚴重中傷的投訴。

平機會根據四條反歧視條例，負責進行正式的調查、處理投訴、鼓勵涉及糾紛的有關各方進行調停，以及向受屈人士提供協助。受屈人士可透過平機會網頁內的電子表格、電郵、電話、信件、傳真或親身向平機會投訴。處理投訴的程序已於平機會網頁詳細說明。平機會的首要目標是鼓勵投訴人和答辯人透過調停達致和解。

至於受屈人士的族裔，258 人為華裔，其次 126 人為南亞裔，詳情請參閱**附錄 C**。

在 474 宗投訴調查個案中，20 宗個案獲成功調停；不成功個案為 15 宗；2 宗個案因提早解決而終止調查；427 宗因其他情況而終止，例如缺乏實質證據支持、並無發現違法行為、受屈人士不想繼續追究，或有關個案相隔已超過 12 個月等；而其餘 10 宗則仍在調查中。至於主動調查的 21 宗個案，當中 10 宗獲得解決，另 11 宗則不需採取跟進行動。

若投訴未能透過平機會的投訴處理程序成功調停，投訴人有權向平機會申請法律協助。平機會透過屬下的法律及投訴專責小組，根據法律行使酌情權<sup>1</sup>，決定是否給予法律協助，而每宗申請都會獲得獨立考慮。自 2009 年制定《種族歧視條例》以來至 2019 年底，共 16 宗涉及種族歧視的個案向平機會申請法律協助，其中 6 宗申請獲批。

根據《種族歧視條例》，投訴人可就種族歧視、種族騷擾及種族中傷向區域法院提出民事法律程序。投訴人可透過平機會處理投訴之餘，同時提出民事法律程序，亦可以用民事法律程序代替向平機會提出投訴。

## 結論

香港特區政府致力消除種族歧視和促進少數族裔人士的平等機會。《基本法》作為香港特區的憲制性文件，對基本權利及自由提供憲制上的保證，包括法律面前一律平等的權利保證，更在法治和司法獨立之下得以加強。因此，政府必須按照上述規定行使或執行其職能或權力。

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<sup>1</sup> 在作出決定時，平機會會考慮多項因素，包括：(a)個案有否帶出一個原則問題；(b)個案的複雜程度或雙方的相對位置會否令申請人難以處理其個案；(c)證據的強弱程度及勝訴機會；(d)案件能否確立重要的法律先例；(e)訴訟能否令申請人得到有效的補救，及能否藉案件有效地提高公眾對平等機會的意識及推廣平等機會；(f)雙方的態度及行為；及(g)平機會可按個別個案的情況，考慮任何其他相關事宜。

**《2018 年歧視法例（雜項修訂）條例草案》**

**涉及《種族歧視條例》（第 602 章）的六項修訂**

- (a) 以對“有聯繫者”的提述取代對“近親”的提述；
- (b) 提供使人免因被當為某種族人士而遭直接及間接種族歧視和騷擾的保障；
- (c) 擴闊保障範圍至涵蓋在共同工作場所工作的人（例如寄售專櫃員工）之間的性騷擾、殘疾騷擾及種族騷擾；
- (d) 保障服務提供者免受顧客的殘疾騷擾和種族騷擾；
- (e) 在香港註冊的船舶和飛機上就服務提供者和服務使用者之間於香港境外作出的殘疾騷擾和種族騷擾提供保障；及
- (f) 廢除規定間接歧視案中答辯人能證明施加要求或條件的意圖並不是基於歧視，便無需支付損害賠償的條文。

**支援少數族裔人士的措施**

<b>政策範疇</b>	<b>措施</b>
教育	<ul style="list-style-type: none"><li>• 向中小學投放資源，協助推行「中國語文課程第二語言學習架構」，幫助非華語學生有效學習中文作為第二語言，以期促成他們銜接主流中文課堂；</li><li>• 加強對錄取非華語學生的幼稚園的資助，讓幼稚園為非華語學生提供更適切的支援，協助他們學習中文，並建構多元文化和共融的環境；</li><li>• 對錄取有特殊教育需要的非華語學生的公營主流學校提供額外財政援助，協助學校加強為相關學生提供情緒、溝通及社交方面的支援，讓這些學生可以適應校園生活和順利過渡不同的學習階段；</li><li>• 支援非華語學生以中文學習中國歷史；</li><li>• 委託專上院校就非華語學生在中文的學與教為學校提供專業支援；</li><li>• 研究如何追蹤非華語學生學習中文的進度，回饋學校以優化支援措施；及</li><li>• 加強對非華語學生家長的家長教育，協助他們支援子女學習。</li></ul>
就業支援	<ul style="list-style-type: none"><li>• 推行試點計劃，透過非政府機構以個案管理方式為少數族裔求職人士提供就業服務；</li><li>• 完成檢視各公務員職系的中文語文能力入</li></ul>

政策範疇	措施
	<p>職要求，以期向少數族裔人士提供更多加入特區政府工作的機會；</p> <ul style="list-style-type: none"> <li>• 就鼓勵少數族裔人士加入紀律部隊加強招聘及外展的工作；</li> <li>• 為非華裔大學生提供特區政府的短期實習計劃；及</li> <li>• 加強對少數族裔人士的培訓支援，包括擴展專設的語文及特定行業培訓課程，並就入讀課程的教育程度要求增加靈活性。</li> </ul>
社會福利	<ul style="list-style-type: none"> <li>• 委託非政府機構設立專責外展隊，協助有需要的少數族裔人士與主流福利服務聯繫；</li> <li>• 加強協助少數族裔人士對抗家庭暴力及性暴力的預防及支援服務；</li> <li>• 於殘疾人士家長／親屬資源中心設立少數族裔專屬單位，提供一個集中的地點，讓殘疾非華語兒童的家人／照顧者可交流經驗，並在中心職員的協助下互相幫助；</li> <li>• 為錄取有特殊需要的學前少數族裔兒童的特殊幼兒中心及早期教育及訓練中心提供額外資助，加強早期介入服務以協助該等兒童日後融入主流教育；及</li> <li>• 推展「少數族裔社區大使」試驗計劃，增加少數族裔人手以優化地區中心／服務單位為少數族裔人士提供的服務。</li> </ul>
衛生	<ul style="list-style-type: none"> <li>• 翻譯及製作更多宣傳教育物品，協助少數族裔人士使用公共衛生服務，及更有效地推行健康教育。</li> </ul>

政策範疇	措施
推廣文化敏感度及社會共融	<ul style="list-style-type: none"><li>• 優化《促進種族平等行政指引》以適用於所有為少數族裔人士提供服務的特區政府政策局、部門和相關機構；</li><li>• 為特區政府新入職公務員及前線員工提供更多文化敏感度/平等機會的訓練課程；</li><li>• 提升少數族裔語言的翻譯服務，包括增設越南語翻譯服務；</li><li>• 加強少數族裔人士支援服務中心的服務；</li><li>• 在地區層面舉辦更多推動少數族裔與本地社群溝通和交流的活動；及</li><li>• 透過紀律部隊的到校外展活動，增加與少數族裔兒童及青少年的互動。</li></ul>

2015 至 2019 年平等機會委員會  
根據《種族歧視條例》處理的投訴個案宗數

受屈人士的族裔

族裔	個案宗數
華人	258
亞洲人(非華人)	143
菲律賓人	6
印尼人	5
韓國人	4
馬拉人	2
南亞裔人士	126
印度人	77
尼泊爾人	8
巴基斯坦人	30
孟加拉人	5
斯里蘭卡人	6
歐洲人	15
澳洲人	4
其他	8
不詳	67
總計：	495

The Chinese Government has received the joint communication [AL CHN 1/2020] dated 11 February 2020 of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and Special Rapporteur on minority issues. The reply to the joint communication is as follows,

### Overall Legal Framework

The HKSAR Government is committed to eliminating racial discrimination and promoting equal opportunities for ethnic minorities. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("Basic Law") is the constitutional document of the HKSAR, and provides constitutional guarantee for fundamental rights and freedoms.

Article 25 of the Basic Law guarantees the right to equality before the law. Article 39 further provides, amongst others, that the provisions of the International Covenant on Civil and Political Rights ("ICCPR") as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR. Article 35 guarantees the right of access to the courts and to judicial remedies, and the right to institute legal proceedings in the courts against the acts of executive authorities and their personnel. Article 64 provides that the HKSAR Government must abide by the law and shall implement laws passed by the Legislative Council ("LegCo") and already in force.

By way of a piece of local legislation, namely the Hong Kong Bill of Rights Ordinance (Cap. 383) ("HKBORO"), provisions of the ICCPR as applied to the HKSAR have been incorporated into local law. The HKBORO binds the Government and all public authorities, and any person acting on behalf of the Government or a public authority. The full text of the Hong Kong Bill of Rights ("BOR") is set out under section 8 of the HKBORO. Article 1(1) of the BOR, which gives domestic effect to Article 2(1) of the ICCPR, guarantees that the rights recognised by the BOR are enjoyed without distinction of any kind, such as race, colour, language, or national or social origin. Article 22 of the BOR, which implements Article 26 of the ICCPR, further provides that the law shall guarantee equal and effective protection against discrimination on

any ground, including race, colour, language, or national or social origin.

It should therefore be emphasised, at the outset, that acts of racial discrimination on the part of the HKSAR Government have in any event been proscribed according to the Basic Law, that the HKSAR Government must act in accordance with the provisions thereunder when performing or exercising its functions or powers and that acts of alleged contravention can be impugned by way of legal proceedings brought before the courts according to law.

### *Race Discrimination Ordinance*

To better protect individuals from racial discrimination, the HKSAR Government introduced the RDO which came into full operation in July 2009. The RDO provides that it is unlawful to discriminate on the ground of race in a number of prescribed areas, including employment, education, provision of goods, facilities or services, and disposal or management of premises. It is also unlawful to harass another person (i.e. engaging in unwelcome conduct, in circumstances in which a reasonable person would have anticipated that the other person would be offended, humiliated or intimidated by that conduct / creating a hostile or intimidating environment) on the ground of race in these fields. For the purpose of the RDO, “race”, in relation to a person, is defined to mean the race, colour, descent or national or ethnic origin of the person.

Under the RDO, the Equal Opportunities Commission (“EOC”) is entrusted with the functions and powers to work towards the elimination of racial discrimination and to promote equality of opportunity and harmony between persons of different racial groups. It has the power to conduct formal investigations and obtain information in accordance with the RDO. The EOC is empowered to deal with individual complaints and provide legal assistance. In addition, the EOC can make proposals, as it has done from time to time, to the HKSAR Government for amending the anti-discrimination ordinances, including the RDO.

### Application to Government and Public Authorities

As mentioned above, the HKSAR Government and public

authorities have always been prohibited from practising racial discrimination under the HKSAR's legal framework. The HKBORO prohibits the Government and public authorities from engaging in practices that would entail any form of discrimination, including discrimination on the ground of race. Avenues are also available to address complaints against the Government and public authorities through the EOC, The Ombudsman, the Independent Police Complaints Council, the LegCo, the complaint channels in various bureaux and departments, and the courts of law. In particular, an aggrieved person may seek remedy or relief by bringing legal proceedings against the Government or a public authority for violation of Article 1(1) or Article 22 of the BOR pursuant to section 6 of the HKBORO.

The statement on page 2 of the Special Rapporteurs' Letter that the RDO singularly "fails to protect individuals from discrimination arising from Government functions and powers" is, with respect, misconceived. Not only does the RDO in fact bind the Government (section 3 of the RDO), it also expressly renders it unlawful to discriminate against a person on the ground of race in prescribed areas, including employment, education, provision of goods, facilities or services, and disposal or management of premises. In particular, section 27 of the RDO renders it unlawful for the Government to discriminate against a person in the provision of the services of any department of the Government. It is also unlawful to racially harass another person in the prescribed areas.

On page 3 of the Special Rapporteurs' Letter, it is stated that "alleged victims of racial discrimination are obliged to pay expensive court fees and pursue litigation." Besides, it is stated that "(s)tatutory exemptions and the limited scope of judicial review reportedly pose immense barriers on racial and ethnic minorities' access to justice and protection under the law". We would like to draw the Special Rapporteurs' attention to HKSAR's well-established legal aid policy that all those who meet the criteria set out in the Legal Aid Ordinance (Cap. 91) ("LAO") and have reasonable grounds for pursuing or defending a legal action in the courts of Hong Kong will not be denied access to justice due to a lack of means. In fact, the unsuccessful plaintiff in the case of *Singh Arjun v Secretary for Justice* (DCEO 9/2011, 30 May 2016) mentioned in the Special Rapporteurs' Letter was represented by leading

counsel assigned by Director of Legal Aid (“DLA”).

As a matter of background, although applicants must satisfy DLA of their financial eligibility (the means test) and of the justification for legal action (the merits test), it is important to note that residence is not a factor of consideration when considering legal aid applications. In civil cases, DLA has discretion to waive the upper limits of the means test in meritorious applications where a breach of the HKBORO or the ICCPR as applied to the HKSAR is an issue. To qualify for legal aid, a person, irrespective of residence and nationality, is required to satisfy both the means test and merits test as provided by the LAO. Applicants for judicial review can also apply for legal aid to challenge the legality of legislation, as well as government policies or administrative decisions.

*Singh Arjun v Secretary for Justice (DCEO 9/2011)*

The case of *Singh Arjun v Secretary for Justice* (above) was cited by the Special Rapporteurs to suggest limited applicability of the RDO to Government functions and powers. In this regard, we would like to point out that in the subject case, the District Court held that the prohibition against discrimination in the provision of “services” in section 27 of the RDO does include the activity of the Police in terms of responding to requests for assistance and investigating crimes and offences. Although the District Court eventually held that a person who alleges to have been subject to a racially motivated arrest would not be able to bring a civil claim under section 27 of the RDO, such person would have an effective remedy in the form of a public law challenge that the arrest contravenes the right to equality before the law guaranteed by Articles 25 of the Basic Law and Articles 1 and 22 of the BOR, and may claim damages for trespass or false imprisonment in a civil action if such allegation can be substantiated. In this particular case, the District Court could not find any evidence of racial profiling or institutional racism by the Police and the claim accordingly failed in any event. On the contrary, the evidence showed that the Police had responded to the plaintiff’s needs as appropriate in the circumstances.

*Principles Governing Police’s Enforcement Actions*

In response to page 6 of the Special Rapporteurs' Letter, we wish to point out that the comment "Police in Hong Kong frequently subject racial and ethnic minorities to racial profiling" is totally unfounded. It should be noted that action is taken by the Police against the suspected illegal act itself, but not such factors as the background, nationality, race or political stance of the person involved. Under section 54 of the Police Force Ordinance (Cap. 232) concerning "Power to stop, detain and search", if a police officer finds any person in any street or any other public place who acts in a suspicious manner, or whom he reasonably suspects of having committed or being about to commit or intending to commit any offence, the police officer is empowered to stop the person for the purpose of demanding that he produce proof of his identity for inspection. Under section 17C of the Immigration Ordinance (Cap. 115) concerning "Carrying and production of proof of identity", a police officer is also empowered to require members of the public to produce proof of identity for inspection. Furthermore, police officers are empowered by legislation such as the Public Order Ordinance (Cap. 245), Dangerous Drugs Ordinance (Cap. 134), Weapons Ordinance (Cap. 217), Firearms and Ammunition Ordinance (Cap. 238), etc. to conduct stop and search action. By conducting stop and search actions, the Police are in a better position to discharge their statutory functions, particularly in the prevention and detection of crime.

As a professional law enforcement agency, the Police handle each case in an impartial, fair and just manner. The Police will only conduct stop-and-question or stop-and-search actions when they find any person acting in a suspicious manner, or when they reasonably suspect that such person has committed or is about to commit or intends to commit any offence. The Police fully understand the importance of obtaining public co-operation and understanding when stop-and-question or stop-and-search actions are conducted, and will continue to ensure that all such actions are conducted in a lawful and appropriate manner.

#### Strengthened Support for Ethnic Minorities

##### *Discrimination Legislation (Miscellaneous Amendments) Bill 2018*

The HKSAR Government seeks to provide ethnic minorities with

equal opportunities and facilitate their integration into the local community. On legislation, the HKSAR Government has introduced the Discrimination Legislation (Miscellaneous Amendments) Bill 2018 to the LegCo in December 2018, so as to implement the eight recommendations of priority in the Discrimination Law Review (“DLR”) submitted by the EOC; and amongst which, six are related to the RDO (please refer to the **Appendix A** for the six items). The scrutiny by the Bills Committee of the LegCo has been completed, and the Bill is awaiting resumption of second reading and third reading at the LegCo for its passage into law.

The HKSAR Government will consider how to follow up on the other recommendations of priority under the DLR (including the recommendation of bringing all Government functions and powers within the scope of the RDO) as well as issues identified by the EOC as requiring further consultation, research and education, while maintaining communication with the EOC.

#### *Administrative Measures to Promote Racial Equality*

In addition to compliance with the legal requirements, the HKSAR Government has stepped up measures to promote racial equality with a view to ensuring that persons of different races have equal access to, and benefit from, resources and opportunities available in society.

The HKSAR Government has been implementing a series of support measures for ethnic minorities, ranging from education, employment, translation services to community outreach, to facilitate ethnic minorities to integrate into the community with proven results. In 2018, the HKSAR Government further established a high-level Steering Committee on Ethnic Minority Affairs (“SCEMA”), under the chairmanship of the Chief Secretary for Administration, to co-ordinate cross-bureau/inter-departmental efforts of the HKSAR Government on the support for ethnic minorities. Under the steer and co-ordination of SCEMA, a series of new measures to further strengthen support for ethnic minorities were formulated and announced by the HKSAR Government in 2018 and 2019, which cover education, employment, health, social welfare and social integration. The measures introduced by the HKSAR Government to date are set out in **Appendix B**.

The HKSAR Government also strives to safeguard the equal rights of people with different races, and enhance the sensitivity among public officers serving ethnic minorities through the implementation of the Administrative Guidelines on Promotion of Racial Equality (“the Guidelines”). The Chief Executive of the HKSAR announced in her 2018 Policy Address that the Guidelines, first introduced in 2010 and adopted by 23 government bureaux / departments, would be refined for application to **all** government bureaux / departments as well as related organisations (collectively referred to as “public authorities” in the next paragraph) providing services to ethnic minorities.

Public authorities are required to comply with the revised Guidelines which will be implemented with effect from April 2020. The purpose of the Guidelines is to raise public authorities’ awareness on the need for racial diversity and inclusion as well as equity considerations in the formulation, implementation and review of relevant policies and measures. The Guidelines also provide guidance to public authorities to ensure that Hong Kong people, regardless of their race, enjoy equal access to public services. The HKSAR Government will continue to keep the Guidelines under review.

### Information on Complaints and Investigations

#### *Criminal complaints*

The Special Rapporteurs have asked for information on criminal complaints lodged against racial discrimination. Section 46 of the RDO makes it a criminal offence for a person, by any activity in public, to intentionally incite hatred towards, serious contempt for, or severe ridicule of, another person or members of a class of persons on the ground of race, and which involves threatening physical harm or inciting others to threaten physical harm towards, or towards any property or premises of, that other person or the members of the class of persons. A person convicted of this offence is punishable by a fine of HK\$100,000 and imprisonment for two years. The Police have not received any report relating to section 46 of the RDO since the implementation of the RDO in 2009. As at the end of December 2019, no one has been

prosecuted under section 46 of the RDO.

### *Complaints and investigations handled by the EOC*

The Special Rapporteurs have also asked for the number of complaints and investigations handled by the EOC in relation to racial discrimination. From 2015 to 2019, the EOC has handled 495 complaint cases (including 474 cases under Complaint Investigation and 21 self-initiated investigations) and received 1 380 enquiries in relation to race discrimination under the RDO. Among the 474 cases under Complaint Investigation, the top three categories concern allegations of racial vilification (240), racial discrimination (187), racial harassment (45), and victimisation (2) and do not include any complaints of serious vilification.

The EOC is responsible for conducting formal investigations, handling complaints, encouraging conciliation between parties in dispute, and providing assistance to aggrieved persons in accordance with the four anti-discrimination ordinances. Aggrieved persons may lodge a complaint with the EOC through an on-line form on its website, email, telephone, letter, fax, or in person. The complaint handling procedures have been well publicised on EOC's website. The primary objective of the EOC is to encourage a settlement between the complainant and the respondent by way of conciliation.

In terms of the ethnic origins of the aggrieved persons, they were mainly Chinese (258), followed by South Asians (126). For details, please refer to **Appendix C**.

Out of 474 Complaint Investigation cases, conciliation of 20 cases were successful while 15 were unsuccessful; investigation of 2 cases were discontinued due to early resolution; 427 cases were discontinued on other grounds such as lacking in substance, no unlawful act was found, the complainants have no desire to pursue further, or the case has lapsed over 12 months, etc.; and the remaining 10 cases are still under investigation. Regarding the 21 self-initiated investigation cases, 10 of which were resolved whereas 11 cases did not require follow up action.

If a complaint is not successfully conciliated during the EOC's complaint handling process, the complainant has the right to apply to the EOC for legal assistance. The EOC exercises statutory discretion<sup>1</sup> through the Legal and Complaints Committee in deciding whether or not to grant legal assistance and each application is considered independently. Since the enactment of the RDO in 2009 up to end-2019, 16 race discrimination cases have been put forward for application of legal assistance from the EOC, of which 6 were granted.

Under the RDO, a victim of racial discrimination, harassment or vilification may make a claim by bringing civil proceedings in the District Court. This can be done in addition, or as an alternative, to lodging a complaint with the EOC.

### Conclusion

The HKSAR Government is firmly committed to eliminating racial discrimination and promoting equal opportunities for ethnic minorities. The Basic Law, which serves as the constitutional document of the HKSAR, provides constitutional guarantee for fundamental rights and freedoms, including the right to equality before the law, and is buttressed by the rule of law and an independent judiciary. The Government must therefore act in accordance with the provisions thereunder when performing or exercising its functions or powers.

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<sup>1</sup> In doing so, the EOC considers a wide range of factors, including (a) whether the case raises a question of principle; (b) whether the complexity of the case or parties' relative positions makes it too difficult for the applicant; (c) strength of the evidence and likelihood of success; (d) whether the case can set important legal precedent; (e) whether litigation can lead to effective remedy for the applicant, and whether the case can be effectively used to enhance public awareness and promote equal opportunities; (f) the attitude and behaviour of the parties; and (g) the EOC may consider any other matters which may be relevant on a case by case basis.

**Discrimination Legislation (Miscellaneous Amendments) Bill 2018**

**Six amendments relating to the RDO (Cap. 602)**

- (a) to replace the references to “near relative” with references to “associate”;
- (b) to provide protection from direct and indirect racial discrimination and racial harassment by imputation;
- (c) to expand the scope of protection to cover racial harassment between persons working in a common workplace (e.g. consignment workers);
- (d) to protect service providers from racial harassment by customers;
- (e) to provide protection from racial harassment between service providers and customers where the acts of harassment take place outside Hong Kong but on Hong Kong registered aircraft or ships; and
- (f) to repeal provisions which disallow the award of damages if the respondent in an indirect discrimination case can prove that the requirement or condition was not applied with intention to discriminate.

## Appendix B

### Support Measures for Ethnic Minorities

Policy Area	Measures
Education	<ul style="list-style-type: none"><li>• Provide funding support to primary and secondary schools to facilitate the implementation of the “Chinese Language Curriculum Second Language Learning Framework” to help non-Chinese speaking students learn Chinese as a second language with a view to bridging to mainstream Chinese Language classes;</li><li>• enhance the subsidy for kindergartens admitting non-Chinese speaking students so that kindergartens can render more appropriate support to their non-Chinese speaking students, thereby assisting them in learning Chinese, fostering a diversified culture and building an inclusive environment;</li><li>• provide additional funding support to public sector mainstream schools admitting non-Chinese speaking students with special educational needs to strengthen the emotional, communication and social support for students concerned and help them adapt to school life and make smooth transition through different learning stages;</li><li>• support non-Chinese speaking students in their learning of Chinese History using the Chinese language;</li><li>• commission tertiary institutions to provide professional support services for schools on Chinese language learning and teaching of non-Chinese speaking students;</li><li>• explore how to gauge the progress of non-Chinese speaking students in learning the Chinese language through longitudinal studies and provide feedback to schools to further enhance their support services; and</li></ul>

Policy Area	Measures
	<ul style="list-style-type: none"> <li>• strengthen parent education of parents of non-Chinese speaking students to help them support their children's learning.</li> </ul>
Support for Employment	<ul style="list-style-type: none"> <li>• Launch a pilot programme in conjunction with non-governmental organisations (NGOs) to provide employment services for ethnic minority job seekers through a case management approach;</li> <li>• completed a comprehensive review on the Chinese language proficiency requirements for all civil service grades, with a view to providing more opportunities for ethnic minorities to seek employment in the HKSAR Government;</li> <li>• enhance recruitment promotion and outreaching efforts to encourage ethnic minorities to consider a career in the disciplined forces;</li> <li>• provide a short-term internship programme in the HKSAR Government for non-ethnic Chinese university students; and</li> <li>• enhance the training support for ethnic minorities, including expanding the dedicated language and industry-specific training courses, and allowing more flexibility in the education attainment criteria for course enrolment.</li> </ul>
Social Welfare	<ul style="list-style-type: none"> <li>• Commission NGOs to set up designated outreaching teams to connect ethnic minorities in need to mainstream welfare services;</li> <li>• strengthen prevention and support services for ethnic minorities against domestic and sexual violence;</li> <li>• set up specialised ethnic minority units in parents/relatives resources centres for persons with disabilities, which serve as focal points for family members/carers of ethnic minority children with disabilities to share their experiences and seek mutual support with the assistance of the centre</li> </ul>

Policy Area	Measures
	<p>staff;</p> <ul style="list-style-type: none"> <li>• provide additional subsidy for special child care centres and early education and training centres with pre-school ethnic minority children with special needs admitted to enhance early intervention efforts to such children to facilitate their integration into the mainstream education system; and</li> <li>• launch an “Ethnic Minority District Ambassador” scheme on a pilot basis to employ more ethnic minorities in district centres/social service units to enhance services provided to ethnic minorities.</li> </ul>
Health	<ul style="list-style-type: none"> <li>• Translate and produce more publicity and education materials in ethnic minority languages to enable ethnic minorities to make better use of public health services and enhance the effectiveness of health education.</li> </ul>
Promote Cultural Sensitivity and Social Integration	<ul style="list-style-type: none"> <li>• Improve the “Administrative Guidelines on Promotion of Racial Equality” for application to all HKSAR Government bureaux and departments and related organisations providing services for ethnic minorities;</li> <li>• provide more cultural sensitivity/equal opportunities training for new recruits and front-line staff of the HKSAR Government;</li> <li>• enhance provision of translation services in ethnic minority languages, including introducing new translation service in Vietnamese;</li> <li>• strengthen services of support service centres for ethnic minorities;</li> <li>• organise more district-based activities to encourage interaction and exchange between ethnic minorities and local communities; and</li> <li>• strengthen engagement of ethnic minority children and youth through outreaching to schools by the</li> </ul>

Policy Area	Measures
	disciplined forces.

Appendix C

**Number of Complaints Handled  
by the Equal Opportunities Commission (From 2015 to 2019)**

**Ethnic Origin of Aggrieved Persons**

<b>Ethnic Origin</b>	<b>Number of Complaints</b>
Chinese	258
Asian (other than Chinese)	143
Filipino	6
Indonesian	5
Korean	4
Malay	2
South Asian	126
<i>Indian</i>	77
<i>Nepalese</i>	8
<i>Pakistani</i>	30
<i>Bangladeshi</i>	5
<i>Sri Lankan</i>	6
European	15
Australian	4
Others	8
Unknown	67
<b>Total:</b>	<b>495</b>