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Human Rights Committee

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China under article 40 of the Covenant, due in
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Contents

	<i>Paragraphs</i>	<i>Page</i>
Preamble	1–3	11
Article 1: Implementation of “one country, two systems”	4–7	11
Article 2: Ensuring to all individuals the rights recognised in the Covenant	8–13	11
Human rights institution	8–9	11
Independent Police Complaints Council.....	10–12	12
Human rights education	13	12
Article 3: Equal rights of men and women.....	14–15	12
Equal pay for work of equal value (EPEV)	16	13
Women in advisory and statutory bodies (ASBs).....	17	13
Women in public office	18	13
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	19	13
Women’s Commission.....	20–21	13
Legislation against sex discrimination.....	22–23	14
Article 4: Public emergencies.....	24	14
Article 5: Prohibition on the destruction of any rights and freedoms recognised in the Covenant.....	25	14
Article 6: Right to life	26–27	14
Child Fatality	27	14
Article 7: No torture or inhuman treatment and no experimentation without consent.....	28–54	15
Instances of the alleged use of torture or other forms of ill-treatment.....	33–34	15
Training of disciplined forces and the ICAC	35–38	15
Screening of claims for non-refoulement protection	39–54	16
Article 8: No slavery or servitude; no forced or compulsory labour	55–77	18
Protection of foreign domestic helpers	56–66	18
Minimum Allowable Wage and Employees Retraining Levy on employers	67	20
Overall regime on combating trafficking in person and victim protection	68–77	20
Article 9: Liberty and security of person.....	78–79	22
Immigration detention in respect of foreign illegal migrants.....	79	22
Article 10: Right of persons deprived of their liberty	80–83	22
The rights of persons in custody	80	22
Regulation and management of penal establishments	81	22
Rehabilitation of juvenile offenders and other offenders.....	82	22
Assistance for Hong Kong residents detained in the Mainland of China	83	22
Article 11: No imprisonment for non-fulfilment of contract.....	84	22
Article 12: Liberty of movement.....	85–89	22
Legal protection of liberty of movement	85–86	22

Travel documents for permanent residents and non-permanent residents	87	23
Immigration control on entry into Hong Kong by visitors	88	23
Assistance for Hong Kong residents in distress outside Hong Kong.....	89	23
Article 13: Restrictions on expulsion from Hong Kong.....	90–91	23
Legal position	90–91	23
Article 14: Equality before courts and right to fair and public hearing	92–104	23
Right of access to courts	92	23
Legal representation for children	94	24
Live television link for victims of specified sexual offences.....	95	24
Impact of interpretation of the Basic Law by the Standing Committee of the National People’s Congress (NPCSC) on the rule of law and independence of judiciary in HKSAR	96–104	24
Article 15: No retrospective criminal offences or penalties	105	25
Article 16: Right to recognition as person before law	106	26
Article 17: Protection of privacy, family, home, correspondence, honour and reputation	107–108	26
Interception of Communications and Surveillance Ordinance (Cap. 589) (ICSO).....	107	26
Protection of data privacy	108	26
Article 18: Freedom of thought, conscience and religion.....	109–110	26
Article 19: Freedom of opinion and expression	111–123	26
Press freedom.....	112	26
Prevention and protection against intimidation and harassment of legislators, media personnel and academics	113–115	27
The offences of treason and sedition	116	27
Freedom of expression.....	117–120	27
Access to Government-held information	121–123	28
Article 20: Prohibition on propaganda for war.....	124	28
Article 21: Right of peaceful assembly	125–138	28
The operation of the Public Order Ordinance (Cap. 245).....	126–138	28
Article 22: Freedom of association	139–141	30
Societies Ordinance (Cap. 151)	139	30
Regulation of trade union activities	140	30
Organisations for the promotion of human rights	141	30
Article 23: The family – a vital component of society	142–152	30
Family welfare services	143	30
Split families.....	144–148	30
Enforcement of Maintenance Order.....	149	31
New arrivals from the Mainland of China	150	31
Statutory paternity leave	151–152	31
Article 24: Rights of children.....	153–167	31

Commission on Children.....	153	31
Services for the child.....	154	31
Child abuse and domestic violence.....	155–157	31
Corporal punishment	158–165	32
Representation of children in care or protection cases.....	166–167	33
Article 25: Right to participate in public life.....	168–185	33
Constitutional development	168–184	33
Government advisory and statutory bodies.....	185	37
Article 26: Right to equal protection before the law	186–209	37
Discrimination Law Review	186–187	37
Legislation against racial discrimination	188–196	37
Discrimination on the ground of age	197	38
Discrimination on the grounds of sexual orientation and gender identity	198–201	38
Disability discrimination.....	202–207	39
Discrimination against rehabilitated persons	208	40
Residence requirements under social security schemes.....	209	40
Article 27: Right of ethnic minorities.....	210–222	40
Overall legal framework	210–211	40
Education for non-Chinese speaking (NCS) students.....	212–220	40
Access to public sector employment.....	221–222	42

Annexes

- 2A The Equal Opportunities Commission, Privacy Commissioner for Personal Data, and The Ombudsman
- 2B Human Rights Education
- 3A Equal pay for work of equal value
- 3B Women's Commission
- 6A Deaths in custody of the Police, the Correctional Services Department, the Customs and Excise Department, the Immigration Department and the Independent Commission Against Corruption
- 6B Child Fatality
- 7A Training of the Police and the ICAC
- 7B Screening of claims for non-refoulement protection
- 8A Regulation of employment agencies
- 8B Protection of FDHs – publicity and promotional efforts
- 8C Protection for victims
- 9A Immigration detention in respect of foreign illegal migrants
- 10A The rights of persons in custody
- 10B Regulation and management of penal establishments
- 10C Rehabilitation of juvenile offenders and other offenders
- 10D Assistance for Hong Kong residents detained in the Mainland of China
- 12A Travel documents for permanent residents and non-permanent residents
- 12B Immigration control on entry into Hong Kong by visitors
- 13A Deportation, removal and Immigration Tribunal
- 14A Right of access to courts
- 17A Interception of Communications and Surveillance Ordinance (Cap. 589)
- 17B Protection of data privacy
- 18A Freedom of religious belief
- 19A Access to Government-held information
- 19B Regulation and licensing of the broadcast media, Radio Television of Hong Kong, Film Classification System, appeals against the decision of the Film Censorship Authority and the censors, regulation of obscene and indecent articles, and management of libraries and museums
- 21A Use of body worn video cameras by the Police
- 21B Position with respect to the confiscation of exhibits under Public Entertainment Laws; stalls for fund raising/collecting signatures during processions; and public meetings outside Central Government Offices
- 22A Number and membership of trade unions
- 22B Non-governmental organisations with an active interest in human rights issues
- 23A Family welfare services
- 23B One-Way Permit Scheme
- 23C New arrivals from the Mainland of China
- 24A Services for the child

- 24B Child abuse and domestic violence
- 24C Convention on the Rights of the Child and promotion of the rights of the child
- 24D Sexual offences records check
- 25A Chief Executive elections, Legislative Council elections, District Council elections and rural elections
- 25B Government advisory bodies and statutory bodies
- 26A Discrimination Law Review – eight recommendation of priority
- 26B Race Discrimination Ordinance (Cap. 602)
- 26C Advisory Group on Eliminating Discrimination against Sexual Minorities
- 26D Gender recognition
- 27A Education for NCS – professional and funding support
- 27B Education for NCS – local kindergarten
- 27C Access to public sector employment
- 27D Administrative Guidelines on Promotion of Racial Equality, support services for EMs and efforts on publicity and education

List of abbreviations

APIs	Announcement of Public Interests
ASBs	Advisory and statutory bodies
BOR	Hong Kong Bill of Rights
BWVCs	Body worn video cameras
C&ED	Customs and Excise Department
CA Panel	Panel on Constitutional Affairs of the Legislative Council
CAPO	Complaints Against Police Office
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCTV	Closed-circuit television
CE	The Chief Executive
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFA	The Court of Final Appeal
CGO	Central Government Offices
CGs	Consulates General
CIBS	Community involvement broadcasting service
CMAB	Constitutional and Mainland Affairs Bureau
CoE	Certificate of Entitlement
CPG	The Central People's Government
CRC	Convention on the Rights of the Child
CRPD	Convention on Rights of Persons with Disabilities
CSD	Correctional Services Department
CSSA	Comprehensive Social Security Assistance
CTO	Crimes (Torture) Ordinance (Cap. 427)
DAB	Digital audio broadcasting
DC	District Council
DDO	Disability Discrimination Ordinance (Cap. 487)
DH	Department of Health
DI report	Domestic incident report
DLR	Discrimination Law Review
DoJ	Department of Justice
DV report	Domestic violence report
EAs	Employment agencies
EC	Election Committee for electing the Chief Executive
ECDVD	Enhanced Central Domestic Violence Database
EDB	Education Bureau

EM	Ethnic minority
EM Unit	Ethnic Minorities Unit of the EOC
EOC	Equal Opportunities Commission
EPEV	Equal Pay for Work of Equal Value
FCPSUs	Family and Child Protective Services Units
FCs	Functional constituencies
FCSV	Family Conflict and Sexual Violence Policy Unit of the Police
FDHs	Foreign domestic helpers
FEHD	Food and Environmental Hygiene Department
FSDO	Family Status Discrimination Ordinance (Cap. 527)
GCE	General Certificate of Education
GCs	Geographical constituencies
GCSE	General Certificate of Secondary Education
HKBORO	Hong Kong Bill of Rights Ordinance (Cap. 383)
HKDSE	Hong Kong Diploma of Secondary Education
HKSAR	The Hong Kong Special Administrative Region of the People's Republic of China
ICAC	Independent Commission Against Corruption
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICSO	Interception of Communications and Surveillance Ordinance (Cap. 589)
IFSC	Integrated Family Service Centre
IGCSE	International General Certificate of Secondary Education
ImmD	Immigration Department IPCC Independent Police Complaints Council
ISSHK	International Social Service Hong Kong
IWG	Inter-departmental Working Group on Gender Recognition
JPs	Justice of the Peace
KFR	Kaifong Representatives
KG	Kindergarten
LAD	Legal Aid Department
LASC	Legal Aid Services Council
LCSD	Leisure and Cultural Services Department
LD	Labour Department
Learning Framework	Chinese Language Curriculum Second Language Learning Framework
LEAs	Law enforcement agencies
LegCo	Legislative Council

LIFA	Low-income Working Family Allowance
LRC	Law Reform Commission
MAC	Museum Advisory Committee
MHO	Mental Health Ordinance
MIPs	Mentally incapacitated persons
NC	Nominating Committee
NCS	Non-Chinese speaking
NECIIs	Non-ethnic Chinese illegal immigrants NGOs Non-governmental organisations
NPCSC	Standing Committee of the National People's Congress of the People's Republic of China
ODO	Oaths and Declarations Ordinance (Cap. 11)
OWP	One-Way Permit (i.e. Permits for Proceeding to Hong Kong and Macao)
PCPD	Office of the Privacy Commissioner for Personal Data
PCSOs	Probation and community service orders offices
PDPO	Personal Data (Privacy) Ordinance (Cap. 486)
PELA	Publicly-funded legal assistance
Police	Hong Kong Police Force
PRC	People's Republic of China
Previous Concluding Observations	The Committee's Concluding Observations adopted on 26 March 2013
PRH	Public rental housing
PSB	Public service broadcaster
RDO	Race Discrimination Ordinance (Cap. 602)
REO	Registration and Electoral Office
RTHK	Radio Television Hong Kong
Scheme-KG	Kindergarten under Kindergarten Education Scheme
SDCS	School Dental Care Service
SDO	Sex Discrimination Ordinance (Cap. 480)
SEC	Standard Employment Contract
SWD	Social Welfare Department
TCAB	Torture Claims Appeal Board
The 8.31 Decision	The Decision on Issues Relating to the Selection of the Chief Executive of the HKSAR by Universal Suffrage and on the Method for Forming the Legislative Council of the HKSAR in the Year 2016 on 31 August 2014
The Committee	The Human Rights Committee
The Covenant	International Covenant on Civil and Political Rights
The Government	The HKSAR Government

The Guidelines	Administrative Guidelines on Promotion of Racial Equality
The initial report	The initial report of the HKSAR in the light of the Covenant submitted in 1999
The Report	The fourth report of the HKSAR in the light of the Covenant
The second report	The second report of the HKSAR in the light of the Covenant submitted in January 2005
The Ombudsman	The Office of the Ombudsman
The previous report	The third report of the HKSAR in the light of the Covenant submitted in May 2011
TIP	Trafficking-in-Persons
TWP	Two-Way Permit (i.e. Exit-Entry Permit for Travelling to and from Hong Kong and Macao)
UGC	University Grants Committee
USM	Unified screening mechanism
VREO	Village Representative Election Ordinance (Cap. 576)
WoC	Women's Commission

Preamble

1. This is the fourth report of the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR) in the light of the International Covenant on Civil and Political Rights (the Covenant) (the Report). It updates the Human Rights Committee (the Committee) on developments since the submission of the third report of the HKSAR (the previous report) in May 2011. It also responds to the Committee's Concluding Observations of March 2013 (previous Concluding Observations) which were adopted after the Committee had considered the previous report earlier that month, and the Committee's "Report on follow-up to the concluding observations of the Human Rights Committee" published in November 2017.

2. In preparing the Report, the HKSAR Government (the Government) has, in accordance with established practice, invited the public to submit their views on the Government's implementation of the Covenant in respect of the topics covered in the report outline and suggest additional topics that ought to be included in the Report from 1 December 2017 to 12 January 2018.

3. The outline was discussed at the Panel on Constitutional Affairs (CA Panel) of the Legislative Council (LegCo), and representatives of interested non-governmental organisations (NGOs) were invited to attend. We have carefully considered the views received in drafting the Report. Issues raised by commentators, together with the respective responses of the Government where applicable, have been incorporated in the relevant sections of the Report.

Article 1

Implementation of "one country, two systems"

4. The HKSAR is established under the principle of "one country, two systems". As stipulated in Articles 1 and 2 of the Basic Law, the HKSAR is an inalienable part of the People's Republic of China (PRC) and enjoys executive, legislative and independent judicial power, including that of final adjudication.

5. Since the establishment of the HKSAR, the Central Authorities have been upholding Hong Kong's high degree of autonomy, supporting the Government to act according to the law, and respecting Hong Kong's judicial independence in accordance with the principle of "one country, two systems" and the Basic Law. Judicial independence is guaranteed by the Basic Law. The courts of HKSAR exercise judicial power independently and are free from interference. The Government spares no effort in preserving the rule of law and freedom, being Hong Kong's two core values.

6. The executive authorities, the legislature and the Judiciary of the HKSAR will continue to discharge their respective duties in accordance with the Basic Law.

7. The progress and development of democracy in the HKSAR is covered under Article 25 of this Report.

Article 2

Ensuring to all individuals the rights recognised in the Covenant

Human rights institution

8. In paragraph 7 of the previous Concluding Observations, the Committee recommended strengthening the mandate and independence of the existing bodies (including the Office of The Ombudsman (The Ombudsman) and the Equal Opportunities Commission (EOC)), and reiterated its previous recommendation to establish an independent human rights institution, which was echoed by some local commentators.

9. In Hong Kong, human rights are fully protected by law. The legal safeguards are provided for in the Basic Law, the Hong Kong Bill of Rights Ordinance (Cap. 383) (HKBORO) and other relevant ordinances. They are buttressed by the rule of law and an

independent judiciary. Under Hong Kong's existing institutional framework, there are a number of organisations which help promote and safeguard different rights. These organisations include the EOC, the Office of the Privacy Commissioner for Personal Data (PCPD), The Ombudsman, and the legal aid services. Over the years, the Government has continued to strengthen the mandate of these organisations as elaborated in Annex 2A. The existing mechanism of protecting human rights has worked well and that there is no need to establish another human rights institution to duplicate the functions of or supersede the existing mechanism.

Independent Police Complaints Council

10. Under the two-tier police complaints system, the Complaints Against Police Office (CAPO) is responsible for handling and investigating complaints lodged by members of the public against members of the Hong Kong Police Force (Police). It operates independently from other Police formations to ensure its impartiality in handling complaints. The Independent Police Complaints Council (IPCC) is an independent statutory oversight body specifically appointed to monitor and review the CAPO's handling and investigation of complaints. Members of the IPCC appointed by the Chief Executive (CE) are civilians drawn from a wide spectrum of the community, and persons who hold office of emolument in a Government bureau or department (including any member of the Police) are not eligible for appointment. Further information on the police complaints system is provided in paragraph 57 of the HKSAR Common Core Document.

11. In gist, CAPO submits a detailed investigation report on each reportable complaint to the IPCC and is required to address queries and suggestions from the IPCC on the report. Where the IPCC members have doubts about the investigation of a particular complaint, they may invite the complainants, complainees and any other person who is or may be able to provide information or other assistance to attend interviews. If the IPCC is not satisfied with the result of a CAPO investigation, it may ask CAPO to clarify any doubts or reinvestigate the complaint. It may also bring the case to the personal attention of the CE. In 2016–17, the IPCC received investigation reports of 1 567 new cases and endorsed the investigation results for 1 550 cases involving 2 807 allegations. The IPCC also monitors CAPO's investigation into reportable complaints through the IPCC Observers Scheme, under which IPCC members and a wide pool of observers may, on a scheduled or surprise basis, attend any interviews or observe the collection of evidence conducted by the Police during investigation of complaints to ensure that these processes are conducted in a fair and impartial manner. In 2016–17, the IPCC observers conducted 1 817 observations, including 1 570 interviews and 247 collection of evidence. Over the past three years, the IPCC have also made more than 40 recommendations to the Police for improvement, including the improvement of procedure for dealing with mentally incapacitated persons (MIPs).

12. The statutory framework provided for under the Independent Police Complaints Council Ordinance (Cap. 604) as described above enhances the transparency of the police complaints system and reinforces the independent monitoring role of the IPCC.

Human rights education

13. The updated framework for the promotion of human rights is set out in paragraphs 61 to 85 of the HKSAR Common Core Document. Detailed information on human rights education in schools, human rights education to government officers and Government Counsel of the Department of Justice (DoJ) is set out at Annex 2B.

Article 3

Equal rights of men and women

14. The Basic Law and the Hong Kong Bill of Rights (BOR) guarantee permanent residents of the HKSAR the right to vote and the right to stand for elections in accordance with law without distinction on the ground of sex. We enhanced publicity to encourage women to register as electors and to participate as candidates for the rural ordinary elections held in 2011 and 2015 respectively. In addition to the publicity programmes of a

series of Announcement of Public Interests (APIs) on TV and radio as well as advertisement in newspaper and websites, etc., letters were sent to the Heung Yee Kuk, Rural Committees and women organisations of rural communities to encourage women participation in rural elections. The percentage of female registered electors increased from 47.3% in 2011 to 47.66% in 2015. The percentage of female candidates also increased from 2.23% in 2011 to 3.75% in 2015. The number of elected female rural representatives increased from 30 in 2011 to 49 in 2015, representing an increase of 63%.

15. The Committee expressed concern at paragraph 18 of its previous Concluding Observations in relation to domestic violence in Hong Kong, including domestic violence against women and girls with disabilities. The measures taken by the Government in combating domestic violence are elaborated in paragraphs 155 to 156 of this Report in respect of Article 24, and those measures equally protect women and girls with disabilities.

Equal pay for work of equal value (EPEV)

16. As explained in paragraph 72 of the previous report, the EOC has continued to promote the concept of EPEV through publications and organising training sessions. For details, please see Annex 3A.

Women in advisory and statutory bodies (ASBs)

17. The Government introduced the gender benchmark of 25% as an initial working target for appointment by the Government to ASBs in 2004, which was later raised to 30% in 2010. On the recommendation of the Women's Commission (WoC), the Government further raised the target from 30% to 35% in April 2015 to further enhance the participation of women in ASBs. As at June 2017, the women's participation rate of ASBs with Government-appointed non-official members was 31.8%. The Government will closely monitor the situation and continue its efforts in promoting women's participation in ASBs. Further discussion on ASBs is at paragraph 185 below, in relation to Article 25.

Women in public office

18. As explained in paragraph 74 of the previous report, the number of women in the civil service directorate increased steadily from 1999 to 2009. That trend has continued. The number of female directorate officers in the civil service has increased from 316 (26.3%) in 2004 to 396 (32.3%) in 2009, and to 454 (34.2%) in 2014. In June 2017, the number of female directorate officers was 475 (35.7%). The percentage of female staff in the civil service stood at 37.4% in June 2017. In the 5th Term Government of the HKSAR, the CE (who is the head of the HKSAR) and the Secretary for Food and Health are women. As at end of 2017, half of the 18 top civil service positions (Permanent Secretary posts ranked at Point 8 of the Directorate Pay Scale) were filled by female officers.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

19. We are in parallel preparing the fourth report of the HKSAR under the CEDAW, which would form part of the ninth report of the PRC under CEDAW, at the time of finalising this report. Our work to fulfil our obligations under CEDAW and to advance the status of women in Hong Kong would be explained in detail in our fourth CEDAW report.

Women's Commission

20. The WoC is a high-level central mechanism on women's issues. Its mission is to enable women in Hong Kong to fully realise their due status, rights and opportunities in all aspects of life. Highlights of WoC's work are set out at Annex 3B.

21. WoC receives an annual Government funding to implement its programmes and secretarial support from the Labour and Welfare Bureau. Further details of the work of WoC would be discussed in our fourth CEDAW report.

Legislation against sex discrimination

Sex Discrimination (Amendment) Ordinance 2014

22. In 2014, the Government extended the protection and territorial scope of the Sex Discrimination Ordinance (Cap. 480) (SDO) to render unlawful any sexual harassment by customers against providers or prospective providers of goods, facilities or services. The prohibition of sexual harassment has also been expanded to cover harassment which occurs on a Hong Kong registered ship or aircraft even if it is outside the territory. The amendment affords protection to service providers in Hong Kong including approximately over 45 000 nurses, 12 000 flight attendants, 230 000 food and beverage workers and 260 000 retail workers.

Discrimination Law Review (DLR)

23. The EOC reviews the operation of the four pieces of antidiscrimination legislation on a regular basis and puts forward legislative proposals where necessary. As explained in paragraphs 186 to 187 below, the EOC made submission on the DLR to the Government in 2016, and the Government's target is to submit legislative proposals covering eight of the recommendations of priority in the form of a composite bill to the LegCo in 2018. Among these eight recommendations of higher priority, four are related to amendments to the SDO such as prohibiting discrimination on the ground of breastfeeding and expanding the scope of protection from sexual harassment to persons in a common workplace.

Article 4 Public emergencies

24. The position is as explained in paragraphs 88 to 92 of Part II of the initial report.

Article 5 Prohibition on the destruction of any rights and freedoms recognised in the Covenant

25. The position is as explained in paragraph 93 of Part II of the initial report. In short, Article 5 has been implemented by section 2(4) and (5) of the HKBORO.

Article 6 Right to life

26. The latest position in relation to deaths in custody of the Police, the Correctional Services Department (CSD), the Customs and Excise Department (C&ED), the Immigration Department (ImmD) and the Independent Commission Against Corruption (ICAC) is set out at Annex 6A.

Child Fatality

27. As mentioned in paragraph 90 of the previous report, the Social Welfare Department (SWD) has launched the Pilot Project on Child Fatality Review in February 2008 and set up a Review Panel. Upon the evaluation of the Pilot Project in 2010, this led to the setting up of the standing child fatality review mechanism in June 2011. Please see Annex 6B for details.

Article 7

No torture or inhuman treatment and no experimentation without consent

28. In paragraph 8 of the previous Concluding Observations, the Committee expressed concern over sections 2(1) and 3(4) of the Crimes (Torture) Ordinance (Cap. 427) (CTO) and recommended that the HKSAR should bring its legislation in line with international standards.

29. The HKSAR wishes to clarify that section 2(1) of the CTO defines “public official” as including “any person holding in Hong Kong an office described in the Schedule”, which refers to an office in the Police, the C&ED, the CSD, the ICAC and the ImmD. The use of the word “includes” in the definition of “public official” makes it clear that a person not holding an office described in the Schedule may still be a “public official” (or a “person acting in an official capacity”) within the meaning of section 2(1) and may be prosecuted for the offence of torture.

30. Section 3(1) of the CTO makes it an offence for a public official or a person acting in an official capacity to “intentionally inflict severe pain or suffering on another in the performance or purported performance of his or her official duties”. In comparison with the definition of “torture” in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the offence of torture in section 3(1) of the CTO is wider in scope. The offence is not limited by the purpose for which the perpetrator commits the act.

31. In light of the broad scope of the offence of torture in section 3(1) of the CTO, the HKSAR remains of the view that it is necessary to provide for a defence in section 3(4) where the accused can prove that he had lawful authority, justification or excuse for the conduct in respect of which he is charged. The defence of “lawful authority, justification or excuse” is intended to cover matters such as the use of reasonable force to restrain a violent prisoner or to treat a patient. It is not intended to cover, nor would the courts be asked to interpret section 3(4) as authorising, conduct intrinsically equivalent to torture as defined in Article 1 of the CAT.

32. The non-derogable character of the prohibition of torture is clearly provided for in section 5(2)(c) of the HKBORO and has been recognised by the courts in various rulings. In light of Article 39 of the Basic Law, the courts will give full consideration to the absolute and nonderogable character of the prohibition of torture under the Covenant and the HKBORO when considering whether or not an accused person is entitled to the defence in section 3(4) of the CTO.

Instances of the alleged use of torture or other forms of ill-treatment

33. The position remains as mentioned under paragraph 92 of the previous report.

34. Since the submission of the previous report in 2011, the CAPO has not received any complaint of torture as defined in the CTO. As at 31 December 2017, there has not been any prosecution for the offence of torture under the CTO.

Training of disciplined forces and the ICAC

35. The position remains as mentioned under paragraphs 116 to 123 of Part II of the initial report.

36. At paragraph 11 of its previous Concluding Observations, the Committee recommended increasing efforts to provide training to the Police with regard to the principle of proportionality when using force, taking due account of the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials.

37. The Police have established guidelines and training in the use of force. The training materials cover the principle of proportionality when using force. Police officers may use minimum force as appropriate only when such an action is absolutely necessary and there are no other means to accomplish the lawful duty. Police officers shall give verbal warning

prior to the use of force as far as circumstances permit, while the person(s) involved shall be given every opportunity, whenever practicable, to obey police orders before force is used.

38. Details on the training of the Police and the ICAC are set out at Annex 7A.

Screening of claims for non-refoulement protection

39. Foreigners who have smuggled into the HKSAR, who have overstayed their limit of stay allowed by the ImmD or who have been refused entry upon arrival (collectively “illegal immigrants” below) are liable to be removed from the HKSAR in accordance with the law. To maintain effective immigration control and for public interest, they should be removed as soon as practicable.

Refugee Convention not applicable

40. The 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol have never been applied to the HKSAR, and illegal immigrants seeking non-refoulement protection in the HKSAR are not to be treated as “asylum seekers” or “refugees”. The Government has a long-established policy of not granting asylum, and not determining or recognising refugee status.

41. The HKSAR is a very densely populated city with long coastlines, a liberal visa regime and a regional transportation hub, making us particularly vulnerable to the ill-effects of illegal immigration. We must maintain effective immigration control to safeguard the livelihood and employment opportunities of local workers, including preventing illegal immigrants from seeking to enter and effectively removing them. By experience, any sign (however tenuous) of potential relaxation in the Government’s attitude towards illegal immigrants could mislead would-be migrants into believing that they may seek to enter and remain here, bringing to the HKSAR a significant risk of mass influx of illegal immigrants which would greatly jeopardise public safety and social stability.

42. That said, ImmD will not remove illegal immigrants to another country where they would face a real risk of being subjected to persecution¹.

Screening for non-refoulement claims

43. Following various decisions of the Hong Kong courts², the Government enacted the Immigration (Amendment) Ordinance 2012 to ensure that procedures to screen torture claims would meet the common law requirements of high standards of fairness, under which:

- (a) Claimants to set out the basis of their claims by completing claim forms;
- (b) Claimants to attend screening interviews with immigration officers to answer questions relating to their claims; and
- (c) The immigration officer who has interviewed the claimant to decide the claim having regard to all relevant considerations, and to inform claimant of the decision and reasons in writing.

¹ In March 2013, the Court of Final Appeal ruled in *C & Others v Director of Immigration* (2013) 16 HKCFAR 280 that, given it is the Director of Immigration’s policy to take into consideration a person’s claimed fear of persecution as a relevant factor when deciding whether or not to remove the person to another country, the Director is required to make an independent assessment as to whether the claimed fear of persecution is well-founded before executing such removal. Prior to this decision, the Government maintained, on humanitarian grounds, a practice of withholding removal of foreigners who had applied to the United Nations High Commissioner for Refugees (the HKSAR for recognition of their refugee status in the HKSAR, despite the Government’s prevailing long-established policy of not determining anyone’s refugee status and not granting asylum. However, UNHCR has ceased refugee status determination in the HKSAR after commencement of the Unified Screening Mechanism.

² Including the CFA’s decision in *Secretary for Security v Sakthivel Prabakar* (2004) 7 HKCFAR 187, and the Court of First Instance’s decision in *FB v Director of Immigration* [2009] 2 HKLRD 346, amongst others.

44. Any claimant aggrieved by the officer's decision may appeal to the Torture Claims Appeal Board (TCAB), comprising members who either have a judicial background (former judges or magistrates), are legally qualified, or have substantial experience in adjudicating asylum claims in other common law jurisdictions.

45. In paragraph 9 of its previous Concluding Observations, the Committee recommended that the HKSAR should recognise the absolute character of prohibition of return to a location where the individual faces a real risk of torture or CIDTP. In light of the Court of Final Appeal's (CFA) ruling in *Ubamaka Edward Wilson v Secretary for Security* (2012) 15 HKCFAR 743 in December 2012³, a claimant who has established a real risk of torture or CIDTP is entitled to non-refoulement protection under Article 3 of BOR and may not be returned to his country so long as the real risk of torture or CIDTP persists – this is consistent with the absolute character of the principle of non-refoulement under Article 7 of the Covenant.

46. In March 2014, the Government commenced operating a unified screening mechanism (USM) to screen claims made by illegal immigrants resisting removal to another country on all applicable grounds (non-refoulement claims), under which an illegal immigrant cannot be removed to another country where he would face substantiated risks of torture or a violation of an absolute and non-derogable right under the BOR, and will not be removed to another country where he would face a substantiated risk of persecution. Procedures of USM follow the statutory mechanism for torture claims in operation since December 2012 (see paragraph 43 above) to ensure that the common law requirements of high standards of fairness are met.

47. In determining each claim, the case officer will take into account all relevant considerations, including the facts and supporting evidence submitted by the claimant and country of origin information, as well as local and overseas jurisprudence. As for the Committee's recommendation, also at paragraph 9 of its previous Concluding Observations, that the HKSAR should not set an inappropriate high threshold for recognising a real risk of ill-treatment on return, it should be noted that ImmD adopts the same threshold as that laid down by the CFA in *Ubamaka* in determining non-refoulement claims, that a claimant who invokes protection from CIDTP must establish that he faces a real risk of being subjected to ill-treatment which attains a "minimum level of severity"; the CFA observed that "a very high threshold must be surmounted" to establish such. This is consistent with the requirements of Article 7 of the Covenant.

48. Since 2009, publicly-funded legal assistance (PFLA) is available to all claimants during the entire screening process, with hundreds of barristers and solicitors who have received relevant training to provide PFLA to claimants during the screening process.

49. Aside from PFLA, qualified interpretation and translation services (also publicly-funded) would be provided to claimants as appropriate. If the physical or mental condition of a claimant is in dispute and is relevant to the consideration of a claim, ImmD may arrange qualified medical practitioners to conduct a medical examination which is also publicly funded. ImmD's case officers also received suitable training to attend to special needs of vulnerable claimants as necessary⁴.

50. USM procedures are published on ImmD's departmental website. Translated copies are available at ImmD's Recognizance Reporting Offices.

51. All non-refoulement claims are individually screened under the USM, under which each non-refoulement claimant would be given all reasonable opportunities to submit his

³ In *Ubamaka*, the CFA ruled that the right not to be subjected to cruel, inhuman or degrading treatment or punishment (CIDTP) enshrined in Article 3 of the BOR (which implements Article 7 of the Covenant) is absolute and non-derogable and the Government must not remove a foreigner to a country where he has a genuine and substantial risk of being subjected to CIDTP, however objectionable his conduct or character may be.

⁴ For example: arranging female case officers for female claimants who allege to have been sexually abused or who so request on religious grounds; allowing a relative/guardian to accompany minors or mentally incapacitated claimants in interview(s); providing barrierfree access for claimants with disabilities, etc.

grounds and supporting evidence (including his own medical expert evidence, if any) to establish his claim, including procedures and support set out in paragraphs 43, 44, 48 to 50 above.

52. As mentioned in paragraph 44 above, claimants aggrieved by a decision of an immigration officer to reject a non-refoulement claim may appeal to the independent statutory TCAB. Over 90% of appeals are decided after an oral hearing. PFLA is also available to appellants where the lawyer assisting the claimant is of the view that an appeal is meritorious.

53. In determining whether a claim is substantiated, the decision maker in ImmD or TCAB must, having regard to the individual circumstances of the case, take into account all relevant considerations including, if applicable, relevant country information and whether there is any region within the risk country in which the claimant would not face a risk of harm under any applicable grounds. If the claim is found to be substantiated, the claimant will not be removed from Hong Kong to the risk country until the said risk no longer exists. ImmD and TCAB would inform a claimant of their decisions and reasons in writing.

54. Issues relating to Government's humanitarian assistance, the number of non-refoulement claimants and the comprehensive review of the strategy of handling non-refoulement claimants are set out at Annex 7B.

Article 8

No slavery or servitude; no forced or compulsory labour

55. The position remains as set out in paragraph 102 of the previous report. Articles 4(1) and (2) of the BOR prohibit slavery and the slave trade in all their forms and also the holding of any person in servitude. Forced or compulsory labour is prohibited by Article 4(3) of the BOR. Proven instances of slavery, servitude, forced and compulsory labour remain rare in Hong Kong. Although the Court of First Instance has decided in *ZN v Secretary for Justice* [2017] 1 HKLRD 559 that the applicant was a victim of human trafficking for the purpose of forced labour, the Government is appealing against the Court's decision.

Protection of foreign domestic helpers

56. Some commentators expressed concerns on the protection of the basic rights of foreign domestic helpers (FDHs) in Hong Kong. The Government remains committed to protecting the rights of all migrant workers (including FDHs). FDHs enjoy the same rights and protection as local workers under the labour laws, regardless of their race or country of origin, in relation to their entitlement to weekly rest days, paid statutory holidays, paid annual leave, sickness allowance, maternity protection, long service payment, severance payment, compensation for work-related injuries or death, right to form and join trade unions, and protection against anti-union discrimination, etc. FDHs are further protected through the government-prescribed Standard Employment Contract (SEC), under which they enjoy the Minimum Allowable Wage, free accommodation, free food (or food allowance), free medical care and free return passage to/from their home countries. The regulation of Employment Agencies (EAs) has also been substantially strengthened (see Annex 8A).

Protection of FDHs against abuse or exploitation

57. The Government does not tolerate any abuse or exploitation of FDHs. In respect of protecting the employment rights of FDHs, any violation of the Employment Ordinance (Cap. 57) that is supported by sufficient evidence will be prosecuted by the Labour Department (LD). The prompt investigation and prosecution actions taken by the law enforcement authorities and the subsequent six-year jail term imposed on the former employer of an Indonesian domestic helper for assault and breaches of labour laws in 2015 demonstrate the high importance that the Government attaches to protecting FDHs. From July 2010 to July 2017, LD secured 190 convicted summonses against employers of FDHs for wage offences. Among the convicted employers, eight were sentenced to perform

community service for up to 240 hours, while four were sentenced to imprisonment for up to 4 months.

58. FDHs abused or assaulted by their employers are advised to make a report to the Police as soon as possible. The Police will take statements from the FDH in his or her language or dialect through an interpreter. The Police may also co-ordinate with the SWD, NGOs and the FDH's employment agency to arrange for emergency assistance, counseling and temporary residence. With sufficient evidence, the Police will arrest the offenders and take further action as appropriate.

59. Between July 2010 and July 2017, the Police received 259 reports of wounding and serious assault cases involving FDHs who alleged that they had been attacked by their employers. The Police do not maintain statistics on the sentencing outcomes.

60. Clause 3 of the SEC specified that all FDHs shall only work and reside in their employers' residences. If employers breach their undertaking in the SEC and the relevant application forms, ImmD will take into consideration such records in assessing their future applications for employing FDHs. ImmD has strengthened the assessment of contract renewal applications by employers and may refuse such applications in cases where the FDHs are found to be absent from Hong Kong for a prolonged period and/or there are irregularities in the movement patterns of the FDHs. Furthermore, any employer and/or FDH who furnishes false information in the course of an application may contravene the Immigration Ordinance (Cap. 115). We encourage any FDHs who consider that their employers have contravened any contractual terms to report their cases to LD and/or ImmD for assistance and investigation. LD has made extensive efforts in promoting the rights of FDHs (see Annex 8B for details).

“Two-week rule”

61. The Committee recommended the Government to consider repealing the “two-week rule”⁵ at paragraph 21 of its previous Concluding Observations.

62. The main purpose of the “two-week rule” is to allow sufficient time for FDHs to prepare for the departure but not for them to find new employers. It is required for maintaining effective immigration control and preventing FDHs from job-hopping and working illegally after contract termination. The Government does not intend to repeal the “two-week rule”.

63. The “two-week rule” does not preclude FDHs from working in the HKSAR again after returning to their home countries. Under exceptional circumstances⁶, ImmD may allow the FDH to change employer in the HKSAR without having to return to his/her home country. In the event that an FDH is involved in a labour dispute and is required to remain in the HKSAR for the proceedings and attending hearings after the completion or termination of his/her employment contract, the FDH may apply to ImmD for extension of stay as a visitor with relevant proof. Each of these applications will be determined on its individual merits. As at 30 November 2017, ImmD approved 6 478 cases for change of employer after premature termination.

Live-in requirement for FDHs

64. At paragraph 21 of its previous Concluding Observations, the Committee recommended the Government to consider repealing the “livein” requirement, which forms the cornerstone of Hong Kong's policy of importing FDHs.

⁵ Under the prevailing policy, an FDH must leave the HKSAR upon completion of his/her employment contract or within two weeks from the date of termination of the contract, whichever is earlier. To this end, employers are required under the SEC to provide return passage to their FDHs upon completion or termination of the employment contracts.

⁶ Such as an FDH's previous employment contract being prematurely terminated owing to the employer's migration, external transfer, death or financial difficulty, or there being evidence that the FDH has been abused or exploited.

65. As in many other jurisdictions in the world, priority in employment should be given to local workforce, and importation of workers should only be allowed where there is confirmed manpower shortage that cannot be filled by local workers. Against this principle, FDHs have been imported since the early-1970s to meet the shortfall of local live-in domestic workers. Given that there is no shortage in supply of local non-live-in domestic workers, any change to the “live-in requirement” will go against the rationale for importing FDHs and the fundamental policy that local employees should enjoy priority in employment.

66. This live-in requirement has been made known to FDHs before their admission into Hong Kong, and specified in the SEC which is signed by both the employer and the FDH beforehand. To safeguard the rights of FDHs, the employers are required to undertake to the Government that they will provide the FDH with free, suitable and furnished accommodation and with reasonable privacy. If an employer fails to provide such accommodation, the FDH may terminate the SEC and/or report to LD for free consultation or conciliation services. The FDH may also report it to ImmD which will take this into account in determining whether the employer’s future applications for FDHs should be refused.

Minimum Allowable Wage and Employees Retraining Levy on employers

67. We would take the opportunity to update paragraph 108 of the previous report – there were seven adjustments to FDHs’ monthly Minimum Allowable Wage since the submission of the previous report, all upward, to the prevailing amount of \$4,410, applicable to contracts signed on or after 30 September 2017. The Employees Retraining Levy on employers of FDHs was abolished on 14 May 2013 so as to ease the burden on families employing FDHs.

Overall regime on combating trafficking in person and victim protection

68. First of all, whilst we note the Committee’s recommendation at paragraph 20 of its previous Concluding Observations to take steps which could lead to the extension of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol) to the HKSAR, we are mindful, given the HKSAR’s liberal visa regime, of the adverse implications to our effective immigration controls and possible abuses by overstayers and illegal migrants if the Palermo Protocol, in particular the provision to permit victims of Trafficking-in-Persons (TIP) to remain in the territory, is applied to the HKSAR. Upon considering these implications, we have no plan to extend the Palermo Protocol to the HKSAR.

69. There is no sign that the HKSAR is being actively used by syndicates as a destination or transit point for TIP, or that TIP is a prevalent or widespread problem in the HKSAR. The Government attaches great importance to combating TIP. We have put in place a package of effective and comprehensive legislative and administrative measures to combat TIP with continuous enhancements over the years, and our law enforcement agencies (LEAs) will continue to take proactive enforcement actions in combating human trafficking and protecting victims. Our efforts are set out in the ensuing paragraphs.

Legislative Framework

70. As regards the Committee’s recommendation to include certain practices regarding FDHs in the definition of the crime of human trafficking, the Committee is invited to note that the HKSAR addresses TIP through various pieces of local legislation, encompassing offences such as physical assault, false imprisonment, criminal intimidation, unlawful custody of personal valuables, child abduction, child pornography and exploitation of children, illegal employment, trafficking in persons for the purpose of prostitution, control over persons for purpose of prostitution, causing prostitution, living on earnings of prostitution of others, etc. Some of the offences attract penalty of up to life imprisonment. In addition, there is dedicated labour legislation to protect the rights of workers, including FDHs, particularly in respect of withholding of wages, non-granting of rest days or

statutory holidays. This ‘multiple-legislation’ approach provides LEAs and prosecutors with more flexibility in investigating and prosecuting TIP cases.

71. To enhance prosecutors’ awareness of TIP and forced labour, the Prosecution Code published in 2013 by the DoJ added a new paragraph on “Human Exploitation Cases”, with the aim and purpose of providing guidance to prosecutors as to what may amount to TIP and exploitation as well as the proper approach to be adopted in cases involving these elements. The definition of TIP as set out under the Palermo Protocol is adopted in the Code.

Inter-departmental co-operation

72. There are established mechanisms for inter-departmental cooperation in combating TIP. At the operational level, the Interdepartmental Joint Investigation Team, set up in 1998, enables intelligence exchange among various departments and joint investigation/co-operation on TIP activities in day-to-day operations, discussion on the current trends in TIP, monitoring of case statistics and law enforcement initiatives to combat the crime. At the policy level, an inter-departmental TIP Working Group was established in 2010 to enhance enforcement strategy against TIP, monitor the overall situation of TIP and formulate the overall strategy for combating TIP in the HKSAR.

73. In 2016, a “Guideline on Inter-departmental Cooperation for the Handling of Suspected Cases of Trafficking in Persons” was issued to provide guidance on the general principles and procedures to enhance inter-departmental co-operation among Government bureaux/departments in anti-TIP work. In April 2017, the Prosecutions Division of the DoJ has assigned a designated desk to oversee and co-ordinate cases involving TIP issues handled or submitted by various LEAs for legal advice.

Victim Identification

74. As regards the Committee’s recommendation to intensify efforts for victim identification, the Committee is invited to note that the Police and ImmD have put in place an enhanced mechanism for TIP victim screening and identification since July 2016. The C&ED has also implemented the same since March 2017. Under the mechanism, the officers will conduct a two-tier screening on vulnerable persons who are arrested or who put themselves forward to the authorities with a view to ascertaining whether they are TIP victims.

Protection for Victims

75. As regards the Committee’s recommendation on strengthening assistance, protection and support provided to TIP victims, the Committee is invited to note that the Government already provides holistic and humane protection, support, and assistance to TIP victims, details of which are set out at Annex 8C.

Training and Partnership

76. Training on anti-TIP is offered to the officers of LEAs, LD, SWD and prosecutors, etc. In 2017, about 2 000 government officials have received local/overseas anti-TIP training. Relevant LEAs have included the theme of TIP into their induction training for all officers.

77. The Government also co-operates with other jurisdictions, including Australia, the United States and the European Union, etc. and other NGOs to provide specialised training workshops on TIP to officers from various bureaux/departments. The Government also actively participates in international conferences and workshops to identify the best practice to combat TIP and share TIP intelligence and experience. Our anti-TIP efforts are kept under regular review.

Article 9

Liberty and security of person

78. The position on legal protection of the right to liberty and security of person in HKSAR remains as mentioned in paragraphs 150 and 151 of Part II of the initial report, i.e. it is guaranteed under Article 28 of the Basic Law, and Article 5 of the BOR which corresponds to Article 9 of the Covenant.

Immigration detention in respect of foreign illegal migrants

79. The legal position on the liberty and security of persons who are detained pending removal from the HKSAR was clarified by the CFA in a judicial review case in 2014. For details, please see Annex 9A.

Article 10

Right of persons deprived of their liberty

The rights of persons in custody

80. The position regarding legal protection of the rights of persons in custody is essentially as explained in paragraph 177 of Part II of the initial report. The latest position with respect to avenues for complaints, Justice of the Peace (JPs) Visit Programme as well as complaints to The Ombudsman is set out at Annex 10A.

Regulation and management of penal establishments

81. The position remains the same as explained in paragraph 129 of the previous report. The updated position of the prison population and ethnic minority (EM) population are set out at Annex 10B.

Rehabilitation of juvenile offenders and other offenders

82. The position regarding the rehabilitation of offenders, and rehabilitation of juvenile offenders remain largely the same as explained in paragraphs 134 to 139 of the previous report, and paragraphs 103, and 105 to 108 of Part II of the second report respectively. Please see Annex 10C for details.

Assistance for Hong Kong residents detained in the Mainland of China

83. The position regarding the assistance for Hong Kong residents detained in the Mainland of China (the Mainland) remains largely the same as explained in paragraphs 142 to 144 of the previous report. Updates on the reciprocal notification mechanism is set out at Annex 10D.

Article 11

No imprisonment for non-fulfilment of contract

84. The position remains the same as explained in paragraphs 217 to 221 of Part II of the initial report.

Article 12

Liberty of movement

Legal protection of liberty of movement

85. The legal protection remains essentially as mentioned in paragraphs 222 to 225 of Part II of the initial report. Hong Kong residents' freedom of movement within the HKSAR and the freedom to enter or leave the HKSAR continues to be protected under Article 31 of the Basic Law and Article 8 of the BOR (which implements Article 12 of the Covenant).

86. At paragraph 17 of its previous Concluding Observations, the Committee expressed concerns on the right of movement of Falun Gong practitioners in Hong Kong. Falun Gong practitioners enjoy the right to freedom of movement on equal terms as other Hong Kong residents. There are no specific measures that are aimed at curtailing their freedom of movement in Hong Kong.

Travel documents for permanent residents and non-permanent residents

87. Under Article 154 of the Basic Law, the Government is authorised to issue HKSAR passports to all Chinese citizens who hold Hong Kong permanent identity cards (persons who hold such cards have the right of abode in Hong Kong). The ImmD is the sole authority for the issue of HKSAR passports. Please see Annex 12A for details.

Immigration control on entry into Hong Kong by visitors

88. The position was essentially as explained in paragraphs 152 to 155 of the previous report. Under the “one country, two systems” principle enshrined in the Basic Law, the HKSAR enjoys a high degree of autonomy. Article 154(2) of the Basic Law provides that the Government may apply immigration controls on entry into, stay in and departure from the Region by persons from foreign states and regions. Please refer to Annex 12B for details.

Assistance for Hong Kong residents in distress outside Hong Kong

89. The position was essentially as explained in paragraphs 156 to 157 of the previous report.

Article 13 Restrictions on expulsion from Hong Kong

Legal position

90. The legal position, including the powers of deportation and removal under the Immigration Ordinance (Cap. 115), remains as explained in paragraphs 246 to 248 of Part II of the initial report.

91. The updated figures on deportation orders and removal orders issued since the preparation of the previous report, and the position of Immigration Tribunal are set out at Annex 13A.

Article 14 Equality before courts and right to fair and public hearing

Right of access to courts

92. Our legal aid policy remains that no one with reasonable grounds for taking or defending legal action in a Hong Kong court is prevented from doing so because of a lack of means. Paragraphs 45 to 48 of the HKSAR Common Core Document provide an overview of the legal aid services in the HKSAR, and paragraph 32(f) of that document provides statistics on legal aid applications in recent years. The Government regularly reviews the criteria for assessing the financial eligibility of legal aid applicants as well as the scope of legal aid schemes.

93. On the issue of independence of the legal aid system, the Legal Aid Services Council⁷ (LASC) conducted a review in 2009 and the findings were set out in paragraph

⁷ LASC is a statutory body set up in 1996 under the Legal Aid Services Council Ordinance (Cap. 489) to oversee the administration of legal aid services provided by the Legal Aid Department and advise the CE on legal aid policy. LASC is chaired by a non-official and includes eight other members (two barrister members, two solicitor members and four lay members), with the Director of Legal Aid as an ex officio member.

175 of the previous report. Further to the 2009 review, LASC carried out another review on the issue and made recommendations in 2013. In this review, LASC considered that there was no immediate need to establish an independent legal aid authority though it would be worthwhile to revisit the independence issue from time to time. Please see Annex 14A for details.

Legal representation for children

94. The position remains largely as explained in paragraphs 177 to 178 of the previous report.

Live television link for victims of specified sexual offences

95. Currently, the court may, on its own motion or upon application, permit certain persons, including a child, a mentally incapacitated person and a “witness in fear”, to testify by way of a live television link in criminal proceedings in certain circumstances. In June 2017, the Government introduced a Bill into the LegCo seeking to enable the court to permit complainants of specified sexual offences to give evidence by way of a live television link, so as to protect them from the embarrassment or ordeal of being exposed to public sight, any indignity of treatment, and the anxiety arising from the need to physically face the assailants during the trial.

Impact of interpretation of the Basic Law by the Standing Committee of the National People’s Congress (NPCSC) on the rule of law and independence of judiciary in HKSAR

96. In paragraph 5 of the previous Concluding Observations, the Committee expressed concern that the interpretations of the Basic Law by the NPCSC may weaken and undermine the rule of law and the independence of the judiciary. Since the previous report, there have been two interpretations of the Basic Law by the NPCSC.

Interpretation of Articles 13(1) and 19 of the Basic Law in 2011

97. The first NPCSC interpretation concerns the case of *Democratic Republic of the Congo v FG Hemisphere Associates LLC* (2011) 14 HKCFAR 95 in connection with the nature and scope of state immunity which applies to foreign States being sued in the HKSAR. Article 158(2) of the Basic Law provides that in adjudicating cases, the courts of the HKSAR may interpret on their own the provisions of the Basic Law which are within the limits of the autonomy of the Region. Article 158(3) further provides that, if the courts of the Region, in adjudicating cases, need to interpret the provisions of the Basic Law concerning affairs which are the responsibility of the Central People’s Government (CPG), or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgments on the cases, the courts shall, before making their final judgments which are not appealable, seek an interpretation of the relevant provisions from the NPCSC through the CFA. In matters falling within the ambit of Article 158(3), the CFA has a duty to seek an interpretation from the NPCSC.

98. Upon referral by the CFA in *Democratic Republic of the Congo*, the NPCSC issued an interpretation on Articles 13(1)⁸ and 19⁹ of the Basic Law in August 2011. In this

⁸ Article 13(1) of the Basic Law provides that “The Central People’s Government shall be responsible for the foreign affairs relating to the HKSAR.”

⁹ Article 19 of the Basic Law provides as follows:

“[1] The HKSAR shall be vested with independent judicial power, including that of final adjudication. [2] 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. [3] 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.”

interpretation, the NPCSC clarified the application of the doctrine of state immunity in the HKSAR, stating that the determination as to rules or policies on state immunity is an act of state involving foreign affairs, and that the laws previously in force in Hong Kong concerning the rules on state immunity may continue to be applied after 1 July 1997, subject to such modifications, adaptations, limitations or exceptions as are necessary to make them consistent with the rules or policies on state immunity that the CPG has determined.

99. The NPCSC interpretation is consistent with the provisional judgment of the majority of the CFA in that case. The decision to refer the matter to the NPCSC for an interpretation was made by the CFA in accordance with the law. While the HKSAR is vested with independent judicial power and the courts have jurisdiction over all cases, the courts of the HKSAR have no jurisdiction over acts of state such as defence and foreign affairs under Article 19(3) of the Basic Law. The CFA's referral and the NPCSC's interpretation are entirely consistent with the principles of "one country, two systems" and the independence of the judiciary under the Basic Law.

Interpretation of Article 104 of the Basic Law in 2016

100. Article 104 of the Basic Law provides that when assuming office, the CE, principal officials, members of the Executive Council and of the LegCo, judges of the courts at all levels and other members of the judiciary in the HKSAR must, in accordance with law, swear to uphold the Basic Law and swear allegiance to the HKSAR of the PRC.

101. On 7 November 2016, the NPCSC issued an interpretation of Article 104 of the Basic Law pursuant to Article 158(1) of the Basic Law, reiterating and explaining clearly the meaning of Article 104, and no change has been made to the content of that Article. Oath taking by public officers specified in Article 104 when assuming office continues to be conducted in accordance with Article 104 and the Oaths and Declarations Ordinance (Cap. 11) (ODO).

102. In November 2016, the Court of First Instance (HCAL 185/2016) handed down a judgment on whether the oaths purportedly taken by two LegCo Members-elect in the 2016 LegCo general election contravened the Basic Law and the ODO. The Court held that, independent of the NPCSC interpretation of Article 104 of the Basic Law, the laws of Hong Kong as set out in the relevant provisions of the ODO carry effectively the same meanings and legal effects as Article 104 as interpreted by the NPCSC. As an oath is a solemn declaration, the ODO does not allow for any real difference in the form and substance of the oath itself. The Court found that they had manifestly refused or wilfully omitted to take the oath, and held that they shall, by operation of law, be disqualified from assuming their offices and be regarded as having vacated their office under section 21 of the ODO since the date of the first LegCo meeting in October 2016.

103. Their appeal was unanimously dismissed by the Court of Appeal (CACV 224/2016). The Appeal Committee of the CFA also held that there was no reasonably arguable basis for disturbing the judgments of the lower courts and hence refused to grant them leave to appeal to the CFA.

104. Separately, on 14 July 2017, the Court of First Instance declared that the oaths purportedly taken by four other persons, all being returned by the LegCo general election held in September 2016, were invalid and that they were regarded as having been disqualified from assuming office or having vacated their office under section 21 of the ODO (HCAL 223226/2016). Two of them filed Notices of Appeal in September 2017.

Article 15
No retrospective criminal offences or penalties

105. Article 15 of the Covenant has been implemented by Article 12 of the BOR. There is no significant update in relation to Article 15.

Article 16

Right to recognition as person before law

106. The position is as reported in paragraph 301 of Part II of the initial report. That is, the right to recognition as a person before the law is guaranteed by Article 13 of the BOR which implements Article 16 of the Covenant.

Article 17

Protection of privacy, family, home, correspondence, honour and reputation

Interception of Communications and Surveillance Ordinance (Cap. 589) (ICSO)

107. The ICSO, which was enacted in August 2006 and amended in June 2016, provides a statutory regime for the conduct of interception of communications and covert surveillance involving the use of devices. The ICSO provides stringent safeguards at all stages – from the application for an authorisation, execution of the authorisation, to the subsequent oversight. The regime is in conformity with Article 30 of the Basic Law, and seeks to protect the right to privacy under Article 14 of the BOR which implements Article 17 of the Covenant. The latest position is set out at Annex 17A.

Protection of data privacy

108. The position is essentially as explained in paragraphs 186 to 195 of the previous report in respect of Article 17. The Government continues to support the PCPD in promoting the protection of personal data privacy and monitoring the compliance with the requirements of the PDPO. Please refer to Annex 17B for the latest development.

Article 18

Freedom of thought, conscience and religion

109. At paragraph 17 of its previous Concluding Observations, the Committee recommended that the Government should ensure that its policies and practices relating to Falun Gong practitioners conform fully to the requirements of the Covenant. We reiterate that Falun Gong practitioners in Hong Kong enjoy the rights recognised in the BOR without distinction of any kind, including freedom of thought, conscience and religion and freedom of opinion and expression. They are also entitled to equality before the law and equal protection of the law.

110. As explained in paragraphs 321 and 322 of Part II of the initial report, freedom of religious belief is one of the fundamental rights enjoyed by Hong Kong residents. The Government is committed to upholding religious freedom in Hong Kong in accordance with Articles 32 and 141 of the Basic Law, Article 15 of the BOR and the relevant legislation. Religious organisations have the freedom to conduct religious activities in accordance with the laws of Hong Kong. Details are set out at Annex 18A.

Article 19

Freedom of opinion and expression

111. The legal protections are as explained in paragraphs 326 and 327 of Part II of the initial report.

Press freedom

112. Freedom of expression and freedom of the press are guaranteed by the Basic Law and the HKBORO. The Government supports the principle of editorial autonomy for journalistic work, and does not interfere with the internal operations of media organisations.

Prevention and protection against intimidation and harassment of legislators, media personnel and academics

113. At paragraph 13 of its previous Concluding Observations, the Committee expressed concerns on assaults and harassment of journalists and academics and recommended that effective steps be taken to investigate such attacks.

114. The Government is fully committed to protecting the safety of all members of the public, regardless of whether he or she is a person of particular categories or is an ordinary member of the public. On receiving a report of criminal intimidation or violence, the Police will conduct a thorough investigation into the case in order to bring the offender to justice. The Police attach great importance to these incidents and adopt a proactive approach in their investigations. Depending on the evidence available and subject to legal advice, the Police will arrest and lay charges against the persons concerned.

115. For the safety and well-being of victims of crime, should there be indications or suspicion that there is a threat of injury to a victim, his family and/or his properties, the Police will assess the threat and take appropriate actions commensurate with the threat level. These actions include, for example, enhancing patrol at the residence and/or work place of the victims, and providing safety advice to the victims. Pursuant to the Witness Protection Ordinance (Cap. 564), the Police have established a witness protection programme, under which protection and other assistance are provided for witnesses whose personal safety or well-being may be at risk.

The offences of treason and sedition

116. The position remains as set out in paragraph 205 of the previous report.

Freedom of expression

Academic Freedom

117. In response to paragraph 13 of the previous Concluding Observations where the Committee expressed concerns on academic freedom, the Government wishes to reiterate that academic freedom is an important social value treasured by Hong Kong and protected by the Basic Law. It is also a cornerstone of our higher education sector. The Government is committed to upholding academic freedom and institutional autonomy.

118. Educational institutions enjoy academic freedom and institutional autonomy under the law. According to Article 137 of the Basic Law, educational institutions of all kinds may retain their autonomy and enjoy academic freedom. They may continue to recruit staff and use teaching materials from outside the HKSAR. Furthermore, Article 34 of the Basic Law states that Hong Kong residents shall have freedom to engage in academic research, literary and artistic creation, and other cultural activities.

119. The eight University Grants Committee (UGC)-funded universities are all independent and autonomous statutory bodies. They have their own governing ordinances and statutes which set out their objectives, functions and governance structure. The legislation provides the universities with the power and freedom to carry out their objectives and functions. The UGC, which acts as an intermediary between the Government and the universities, also safeguards academic freedom and institutional autonomy. In fact, the roles of the UGC, the Government and the universities in the higher education sector are clearly defined in the UGC Notes on Procedure. In particular, the Notes set out five major areas of institutional autonomy, namely: selection of staff; selection of students; curricula and academic standards; acceptance of research programmes; and allocation of funds within the university.

120. As a matter of fact, academics in Hong Kong continue to enjoy freedom to conduct their academic work, including researching in and publishing on subjects of their choice. It is particularly worthy to note that, in line with international practice, a peer-reviewed mechanism has been adopted all along to assess research proposals submitted under the various competitive research funding schemes administered by the Research Grants Council under the aegis of UGC. The committees/panels involved in the assessment process

are invariably chaired by distinguished non-local experts from foreign countries, which help ensure that assessment is based on academic quality and merits of the proposals.

Access to Government-held information

121. The latest position with respect to the Code on Access to Information and complaint cases handled by The Ombudsman is set out at Annex 19A.

122. In paragraph 13 of the previous Concluding Observations, the Committee recommended that effective steps should be taken to implement the right of access to information by public bodies. The LRC set up the Access to Information Sub-Committee in 2013 to study the subject of access to information. The Sub-Committee is studying Hong Kong's existing access to information regime and the laws and regimes of other jurisdictions, and will conduct a public consultation relating to proposals on reforming the access to information regime. After considering the views collected from the consultation exercise, the LRC will submit reform proposals to the Government. Options for reforming the access to information regime in Hong Kong will be considered in the light of LRC's findings and recommendations.

123. The updated position on regulation and licensing of the broadcast media, the Radio Television Hong Kong (RTHK), film classification system, appeals against the decision of the Film Censorship Authority and the censors, regulation of obscene and indecent articles, as well as management of libraries and museums, please see Annex 19B.

Article 20 Prohibition on propaganda for war

124. The general situation is as explained in paragraph 373 of Part II of the initial report.

Article 21 Right of peaceful assembly

125. As explained in paragraph 375 of Part II of the initial report, freedom of assembly, of procession and of demonstration is guaranteed by Article 27 of the Basic Law and Article 17 of the BOR (which implements Article 21 of the Covenant). The provisions of the Public Order Ordinance (Cap. 245) in respect of public meetings and processions were specifically framed with a view to conforming with Article 21 of the Covenant.

The operation of the Public Order Ordinance

126. The Government respects and takes it upon itself to protect the rights of the public to peaceful assemblies and processions and to express their views. As Hong Kong is a crowded place, large-scale public assemblies and processions will affect other people or road users, and may affect public safety and order. In this connection, while facilitating expression of views by participants of processions, it is also the Government's responsibility to maintain public order, and at the same time to ensure the rights of other people to use the public place or road as well as their safety. Participants of public meetings or processions, in exercising their freedom of expression, should, under the premise of observing Hong Kong law and without affecting public order, proceed in a peaceful and orderly manner.

127. The Police have the responsibility to take necessary measures against any unlawful behavior. Where there is evidence suggesting that a person may have committed a criminal offence, the matter will be referred to the Prosecutions Division of the DoJ for deciding whether or not to prosecute the person in question, and if so, for what offence(s). DoJ will handle all prosecutions in accordance with the applicable law, relevant evidence and the Prosecution Code. The Prosecution Code provides guidelines to prosecutors on how to deal with prosecutions relating to public order events. Prosecution will only be pursued when the conduct exceeds sensible proportions or the bounds of reasonableness.

128. Under the Public Order Ordinance, any public meeting or procession with attendance exceeding the limit prescribed in the Ordinance, i.e. public meetings of more than 50 persons and public processions of more than 30 persons, should give notice to the Commissioner of Police and only be conducted if the Commissioner has not prohibited or objected it. The Commissioner (or delegated officers) will carefully examine each case. He may impose conditions on a notified public meeting or procession as reasonably necessary to ensure public order and public safety. Generally speaking, upon receipt of a notification about a public meeting or procession, the Police will establish early contact and maintain active and close communication with the event organiser to provide advice and assistance.

129. The CFA has pointed out in a judgment that Hong Kong's legal requirement for notification is widespread in jurisdictions around the world. It has also affirmed that the statutory requirement for notification is compatible with the right of assembly, and is required to enable the Police to fulfil their duty of taking reasonable and appropriate measures to enable lawful assemblies and demonstrations to take place peacefully.

130. If the Commissioner of Police prohibits/objects to or imposes conditions on a notified public meeting or procession under the Public Order Ordinance and if the organiser disagrees, the organiser may lodge an appeal to the independent statutory Appeal Board on Public Meetings and Processions. The Appeal Board is chaired by a retired judge and consists of three other members selected in rotation from a panel of 15 independent members appointed by the CE. It may confirm, reverse or vary the prohibition, objection or condition imposed by the Commissioner of Police.

131. Between 1 July 1997 and 31 July 2017, there were over 90 000 public meetings and processions in Hong Kong.

132. It is evident that since the establishment of the HKSAR, the public continues to enjoy a high degree of freedom of assembly. The majority of these activities were conducted in a peaceful and orderly manner and in accordance with the law.

Police videotaping of public demonstrations

133. It may be necessary for the Police to make video recordings during public order events, such as recording the overall activities and movement of the crowd participating in public processions, to facilitate internal review so that the management of public order events and contingency plans can be improved continuously.

134. The recording of public order events by the Police does not target individual participants. It is only when a breach of the peace or public order has occurred or is likely to occur that a police officer would record the act or event in question. Police officers shall, where reasonably practicable, notify the subject of the recording prior to the commencement of the recording. The recording in these circumstances is reasonable and lawful as it is for the collection of evidence to facilitate investigation of crime and prosecution of offenders.

135. Officers who are responsible for making video recordings of public order events have undergone appropriate training, including that on the legal requirements, the purpose and scope of the power to conduct video recordings, proper use of videotaping equipment, and procedures on recording, etc.

136. The videotapes will only be used for investigation, evidential or internal review purposes and will not be kept longer than necessary. The Police have clear and stringent guidelines and procedures on the handling of recorded materials, including safe custody, proper handling and timely destruction of these recorded materials.

137. For details relating to the use of body worn video cameras by the Police, please see Annex 21A.

138. The position with respect to the confiscation of exhibits under public entertainment laws; stalls for fund raising/collecting signatures during processions; and public meetings outside Central Government Offices (CGO) is set out at Annex 21B.

Article 22

Freedom of association

Societies Ordinance (Cap. 151)

139. As reported in the previous report, there has been a healthy growth in the number of societies. The number of societies which have either been registered or been exempted from registration since the establishment of the HKSAR reached over 38 900 by 31 August 2017.

Regulation of trade union activities

140. The position remains as explained in paragraphs 120 to 126 of Part II of the initial report of the HKSAR under the International Covenant on Economic, Social and Cultural Rights (ICESCR) in relation to Article 8 of that Covenant. The number and membership of trade unions are set out at Annex 22A.

Organisations for the promotion of human rights

141. The position continues to remain as explained in paragraphs 401 to 404 of Part II of the initial report. The list at Annex 22B updates the same Annex in the previous report.

Article 23

The family – a vital component of society

142. The general position remains as explained in paragraph 234 of Part II of the second report.

Family welfare services

143. The latest position with respect to Integrated Family Service Centre (IFSC), Family and Child Protective Services Units (FCPSUs), review of laws relating to guardianship and custody of children by LRC, and responsibility of parenting is set out at Annex 23A.

Split families

144. The Government understands the wishes for family reunion, but there is no absolute right for people who are not Hong Kong residents to enter and remain in Hong Kong for the purposes of family reunion. Governments worldwide require people who wish to join their families to submit, prior to entering the jurisdictions in question, formal applications for processing in accordance with local laws and policies.

145. The Government has been handling matters of right of abode and split families in accordance with the Basic Law, the HKBORO, and relevant local legislation and policies, which are consistent with the provisions of the Covenant as applied to Hong Kong.

Split families between HKSAR and the Mainland of China

146. At paragraph 15 of its previous Concluding Observations, the Committee expressed concerns over families that are separated between the Mainland and the HKSAR. Our position, including the legislative provisions for the entitlement of right of abode and the Certificate of Entitlement (CoE) Scheme, was set out in paragraphs 126 and 127 of Part II of the second report.

147. Pursuant to Article 22 of the Basic Law, for entry into the HKSAR, people from other parts of China must apply for approval. Mainland residents who wish to settle in Hong Kong for family reunion must apply for the One-Way Permit (OWP) (i.e. Permits for Proceeding to Hong Kong and Macao) from the relevant Mainland authorities. Details on the OWP scheme are set out at Annex 23B.

Split families from other countries

148. Our existing immigration policy for eligible Hong Kong residents to sponsor their dependants who are non-Mainland residents to take up residence in Hong Kong was set out

in paragraph 272 of the previous report. Such applications may be favourably considered provided that normal immigration requirements and specific eligibility criteria are met. The Director of Immigration may, after considering all relevant factors, exercise his discretion on a case-by-case basis to grant permission to the applicants to enter the HKSAR as dependants if there are exceptional humanitarian or compassionate considerations. The Government will continue to review its immigration policies from time to time to ensure that they meet the needs of society.

Enforcement of Maintenance Order

149. The Government is committed to enhancing the effectiveness of the system of collection of maintenance payments and enforcement of maintenance orders. While the review on judgment summons proceedings is underway, the Government has introduced a series of improvement measures through legislative and administrative means over the years to facilitate the timely collection of maintenance payment and enforcement of maintenance orders.

New arrivals from the Mainland of China

150. Between 1 January 2010 and 31 December 2016, nearly 322 000 people from the Mainland settled in Hong Kong. The position of new arrivals from the Mainland and the initiatives that have been taken to ease the process of their settlement is set out at Annex 23C.

Statutory paternity leave

151. As from February 2015, eligible male employees are entitled to enjoy three days' statutory paternity leave with pay around the time of their child's birth. This family-friendly entitlement helps facilitate working fathers in providing support to their spouse/partner before and after confinement, bonding with their newborn child and sharing family responsibility with their spouse/partner.

152. The Government has conducted a review on the implementation of statutory paternity leave and recommends that the duration of paternity leave be extended to five days. Both the Labour Advisory Board and the Panel on Manpower of the LegCo are supportive of the proposal. The Government is preparing the enabling legislation.

Article 24 Rights of children

Commission on Children

153. The Government plans to establish a Commission on Children in mid-2018 to amalgamate the efforts made by relevant bureaux/departments and child concern groups, and focus on addressing children's issues as they grow, including those issues covered by this Report such as child poverty, child abuse, child fatality, child custody, protection of children and child care services. The Commission will formulate long-term targets and strategic directions concerning the holistic development and important growth stages of children.

Services for the child

154. The Government continues to provide various services for the child, as well as monitor the poverty situation and the effectiveness of poverty alleviation measures, including those relevant to children (see Annex 24A).

Child abuse and domestic violence

155. The Government has launched various initiatives in combating child abuse and domestic violence, as well as strengthening support for the victims and families in need. Our work in this aspect has been set out in paragraphs 10.46 to 10.57 in relation to Article 10 of HKSAR's third report under the ICESCR, as well as paragraphs 16.9 to 16.33 of

HKSAR's third report under CAT. It will be explained in greater detail in HKSAR's fourth report under the CEDAW.

156. In addition to providing support and specialised services for victims of domestic violence, we also provide support to needy families through the provision of child care services, family crisis intervention and counselling services, etc. To this end, we have allocated considerable resources to the SWD to provide a co-ordinated package of preventive, supportive and specialised services for individuals involved in domestic violence as well as for families in need. The SWD's expenditure in this area has increased from \$2.1 billion in the 2012–13 financial year to \$3.2 billion in the 2016–17 financial year. The estimated budget for the 2017–18 financial year was further increased to about \$3.4 billion. Additional manpower has also been allocated to the SWD to enhance the department's capability in handling domestic violence cases. Related issues including training for Police officers in handling child abuse and domestic violence cases as well as supportive and specialised services offered to victims of domestic violence are set out at Annex 24B.

157. The latest position with respect to the Convention on the Rights of the Child (CRC) and the promotion of the rights of the child is set out at Annex 24C.

Corporal punishment

158. In paragraph 16 of the previous Concluding Observations, the Committee recommended that practical steps be taken to put an end to corporal punishment, to encourage non-violent forms of discipline, and to conduct public information campaigns.

159. There are provisions under the Child Care Services Regulations (Cap. 243, sub. leg. A) which prohibit corporal punishment of children in registered child care centres and mutual help child care centres. According to section 27 of the Offences against the Person Ordinance (Cap. 212), it is unlawful for a person over the age of 16, including a parent, who has the custody, charge or care of a child or young person under the age of 16, to wilfully assault or ill-treat the child or young person, or cause such child or young person to be assaulted or ill-treated, in a manner likely to cause such child or young person unnecessary suffering or injury to his health.

160. Under the subvention system of SWD, the subvented day child care services (including the afore-said centres) and residential child care services are required to take all reasonable steps to protect service users from abuse, including physical abuse. In case these service providers encounter suspected child abuse incidents, they should handle the incidents pursuant to the Procedural Guide for Handling Child Abuse Cases (Revised Edition, 2015) published by the SWD.

161. Besides legal protection, to safeguard the well-being of children, SWD and NGOs provide a range of preventive, supportive and remedial welfare services, including public education, parent education, support groups, counselling services, etc. to enhance the parents' knowledge of the physical and psychological development of children, effective parenting skills, communication skills, emotion and stress management as well as dealing with children's behavioural problem.

162. SWD launches the "Strengthening Families and Combating Violence" publicity campaign every year to organise territory-wide and district-based publicity and public education programmes to arouse public awareness of the importance of family solidarity, prevention of child abuse and domestic violence as well as to encourage people in need to seek help. The publicity activities in recent years included promoting, through the means of publicity videos, animations and posters, the message that corporal punishment and verbal abuse should not be used during the course of child discipline, and that domestic violence not only harms the victims but may also cause lasting psychological damages to the children, seriously affecting their personality development and growth.

163. The Family Life Education Resource Centre of SWD provides a wide variety of multi-media resource materials on loan to Government departments and NGOs for running family life education programmes with a view to enhancing family functioning, strengthening family relationship and preventing family breakdown.

164. In relation to child abuse, the provisions under the Offences against the Person Ordinance may apply. For example, a person who is convicted of assault occasioning actual bodily harm (section 39) or common assault (section 40) is liable to imprisonment for three years and one year respectively. Furthermore, a person convicted of the offence of ill-treatment by those in charge of a child or young person pursuant to section 27(1) of the Ordinance (discussed above) is liable to 10 years' imprisonment.

165. As to whether corporal punishment in the family that do not constitute criminal offences under the existing laws should be prohibited by law, we note that the laws of other jurisdictions are developing, and the issue is still a controversial one even in Western society. We do not consider that legislation at this stage would be the most effective means of dealing with the issue in Hong Kong.

Representation of children in care or protection cases

166. The position remains as explained in paragraph 310 of the previous report.

167. The latest position of sexual offences records check is set out at Annex 24D.

Article 25

Right to participate in public life

Constitutional Development

168. Since the submission of the previous report, and as explained in subsequent updates in our follow up to paragraph 6 of the previous Concluding Observations, we have continued our efforts in taking forward Hong Kong's constitutional development in strict compliance with the Basic Law.

169. According to the Basic Law and the *Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the HKSAR of the PRC* adopted on 6 April 2004 (the NPCSC's 2004 Interpretation), amendments to the method for selecting the CE and for forming the LegCo have to go through the following "Five-step Process":

- First Step – the CE to make a report to the NPCSC, so as to invite the NPCSC to decide whether it is necessary to amend the methods of selection/formation;
- Second Step – the NPCSC to make a determination on whether any amendment to the methods may be made;
- Third Step – if the NPCSC determines that amendments to the methods may be made, the Government to introduce to the LegCo resolution(s) on the amendments to the methods for selecting the CE or forming the LegCo, to be passed by a two-thirds majority of all the LegCo Members;
- Fourth Step – the CE to consent to the resolution(s) as passed by the LegCo; and
- Fifth Step – the CE to lodge the relevant bill(s) to the NPCSC for approval or for the record.

As such, the Central Authorities, the CE and the LegCo have their respective roles in the constitutional development of the HKSAR.

170. As stated in the previous report, the Government put forth on 14 April 2010 a package of proposals for the methods for selecting the CE and for forming the LegCo in 2012, and announced on 21 June 2010 an adjusted package after considering the views of different sectors of the community. In brief, in respect of the method for selecting the CE, the Government proposed that:

(a) The number of members of the Election Committee (EC) in 2012 be increased from 800 to 1 200, and the number of members of the four sectors in the EC be increased by the same proportion, i.e. the number of seats for each sector be increased by 100;

(b) Three quarters of the 100 new seats (i.e. 75 seats) in the fourth sector of the EC (i.e. the political sector) be allocated to elected District Council (DC) members; together with the existing 42 seats, the DC subsector would have a total of 117 seats, which would be returned through election from among elected DC members;

(c) The nomination threshold be maintained at the ratio of one-eighth of the total membership of the EC (i.e. the number of subscribers required shall be not less than 150), so as to allow sufficient competition and ensure that candidates have sufficient support.

- Regarding the method for forming the LegCo, the Government proposed in the adjusted package that:

(a) The number of seats in the LegCo in 2012 be increased from 60 to 70;

(b) The number of seats to be returned by geographical constituencies (GCs) through direct elections and that by functional constituencies (FCs) be increased from 30 to 35 respectively; and

(c) Candidates for the five new FC seats to be nominated among elected DC members and elected by all registered electors who currently did not have a right to vote in the traditional FCs on a one-person-one-vote basis (the electorate base would be about 3.2 million, being the total 3.43 million registered electors less 230 000 registered electors for the existing FCs). In other words, each elector would have two votes, one vote for the GC and one vote for the FC.

171. The motions put forth by the Government concerning the draft amendments to the methods for the selection of the CE and for the formation of the LegCo in 2012 were passed by a two-thirds majority of all Members of the LegCo on 24 and 25 June 2010 respectively. Subsequently, the draft amendments were given consent by the CE on 29 June 2010 and approved and recorded by the NPCSC respectively on 28 August 2010. The Government introduced into the LegCo two Bills in December 2010 for implementing the proposed arrangements regarding the methods for selecting the CE and for forming the LegCo in 2012. The Bills were passed by the LegCo in March 2011. The revised methods for selecting the CE and for forming the LegCo were formally implemented in the 2012 CE Election and 2012 LegCo Election as scheduled.

Universal suffrage for selection of the Chief Executive and the method for forming the LegCo in 2016

172. Article 45 of the Basic Law provides that: “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.” In addition, Article 68 of the Basic Law provides that: “The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region 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.” The *Decision of the NPCSC on Issues Relating to the Methods for Selecting the Chief Executive of the HKSAR and for Forming the Legislative Council of the HKSAR in the Year 2012 and on Issues Relating to Universal Suffrage* adopted by the NPCSC on 29 December 2007 has further stipulated that the election of the fifth-term CE of the HKSAR in the year 2017 may be implemented by the method of universal suffrage; and after the CE is selected by universal suffrage, the election of the LegCo of the HKSAR may be implemented by the method of electing all the members by universal suffrage.

173. The Government is fully committed to achieving the ultimate aim of universal suffrage in strict compliance with the Basic Law and the relevant Interpretation and Decisions of the NPCSC. In this connection, the Government set up the Task Force on Constitutional Development (the Task Force) in October 2013. The Government published the *Consultation Document on the Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016* and formally commenced a five-month public consultation to collect views from various sectors of the community on major issues and

related questions on the two electoral methods. The Consultation Document set out certain key issues relating to the methods of selection/formulation within the framework of the Basic Law and the relevant Interpretation and Decisions of the NPCSC, for example, the size, composition, formation method and electorate base of the Nominating Committee (NC) as required under Article 45 of the Basic Law, procedures for the NC to nominate candidates for the CE election, voting arrangements for electing the CE by universal suffrage, etc. For the method for forming the LegCo in 2016, the key issues include the number of seats and composition of the LegCo, the composition and electorate base of FCs, and the number of GCs and number of seats in each GC.

174. After an extensive and systematic public consultation which lasted for five months, the Government consolidated the views expressed by various sectors of the community on the two electoral methods during the consultation period, including those contained in over 120 000 written submissions put forth by different groups and individuals, those garnered at 226 consultation and district events attended by the Task Force and relevant Politically Appointed Officials, and those collected through opinion polls conducted by relevant organisations. The Government published the *Report on the Public Consultation on the Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016* on 15 July 2014. On the same day, in accordance with the NPCSC's 2004 Interpretation, the CE submitted his report to the NPCSC to invite the NPCSC to make a determination on whether there was a need to amend the methods for selecting the CE and for forming the LegCo. In the light of the results of the public consultation, the CE had come to the view that the community of Hong Kong generally hoped that universal suffrage for the CE election could be implemented in 2017 first, so that over five million eligible electors in Hong Kong could elect the next CE through "one person, one vote" in 2017, thereby taking an important step forward in the constitutional development of Hong Kong, and that there was no need to amend Annex II to the Basic Law regarding the method for forming the LegCo in 2016.

175. Having considered the report submitted by the CE and having extensively listened to views and opinions from different sectors of the Hong Kong community, the NPCSC adopted the *Decision of the NPCSC on Issues Relating to the Selection of the Chief Executive of the HKSAR by Universal Suffrage and on the Method for Forming the Legislative Council of the HKSAR in the Year 2016* on 31 August 2014 (the 8.31 Decision). The 8.31 Decision was made in accordance with the Basic Law and the NPCSC's 2004 Interpretation, and pursuant to the specific role of the Central Authorities in the constitutional development of the HKSAR. The 8.31 Decision has formally determined that starting from 2017, the selection of the CE may be implemented by the method of universal suffrage. It has also set out a clear framework for the specific method for selecting the CE by universal suffrage. As for the method for forming the LegCo in 2016, there is no need to amend the existing method and voting procedures for the LegCo as prescribed in Annex II to the Basic Law.

176. As regards how to devise a specific model for implementing universal suffrage, one must respect the fact that the electoral system of each country or place has been devised having regard to her own history, constitutional system and actual situations. In exploring the specific method for selecting the CE by universal suffrage, the Basic Law and the relevant Interpretation and Decisions of the NPCSC must be strictly adhered to, and it must be in accordance with the principle of "one country, two systems" and the basic policies of the PRC regarding Hong Kong.

177. On the basis of the Basic Law and 8.31 Decision, the Government published on 7 January 2015 the *Consultation Document on the Method for Selecting the Chief Executive by Universal Suffrage* and launched a two-month public consultation on the method for selecting the CE by universal suffrage. Subsequently, the Government published the *Consultation Report and Proposals on the Method for Selecting the Chief Executive by Universal Suffrage* on 22 April 2015, collating and consolidating the views received, and putting forward a package of proposals which were constitutionally in order, lawful, reasonable and rational. Highlights of the package of proposals put forth by the Government included the following:

(a) The NC shall comprise of 1 200 members, the composition of which shall follow the 38 subsectors in the four major sectors of the existing EC; the existing method for returning members of the 38 subsectors and electorate base for individual subsectors should remain unchanged;

(b) The nominating procedures shall be divided into two stages, namely the stage of “members recommendation” and the stage of “committee nomination”. A person who can obtain recommendation jointly by 120 NC members in their individual capacities can become a person seeking nomination for the CE election; each NC member may recommend only one person; each person seeking nomination shall obtain no more than 240 recommendations;

(c) At the stage of “committee nomination”, the NC shall nominate two to three CE candidates through voting by secret ballot. Each NC member may support two to all persons seeking nomination. The two to three persons seeking nomination who can obtain endorsement of more than half of all the members of the NC and with the highest number of members’ endorsement will become the candidates; and

(d) At the stage of electing the CE by universal suffrage, all eligible electors of Hong Kong will elect the CE-elect from the two to three candidates nominated by the NC using the “first-past-the-post” system.

178. The Government does not agree to some commentators’ concerns that the proposal would effectively screen out some candidates. In fact, if the proposal was implemented, all eligible voters in Hong Kong would have the right to vote for the nominated CE candidates on a “one person, one vote” basis; and the right to vote would have been universal and equal.

179. During the public consultation, some members of the public as well as certain Members of the LegCo advocated for other proposals, such as “civic nomination”, that would de facto bypass or undermine the substantive powers of the NC to nominate candidates. In response, the Government has repeatedly stated that such proposals were inconsistent with the Basic Law, which explicitly stipulates that the ultimate aim is for the CE to be selected by universal suffrage upon nomination by a broadly representative NC in accordance with democratic procedures. Therefore, it would have been unconstitutional, and hence impossible, to pursue such proposals.

180. Despite the outcomes of public opinion polls conducted by different organisations which suggested that there were more members of the public supporting rather than opposing the proposals put forward by the Government, the proposals failed to obtain the endorsement by a two-thirds majority of all Members of the LegCo as prescribed in Annex I to the Basic Law at the LegCo meeting on 18 June 2015. Therefore, according to the 8.31 Decision, the method for selecting the fourth-term CE in 2012 would continue to be adopted to select the fifth-term CE in 2017, i.e. the CE was to be elected by a 1 200-member EC.

181. The Government appreciates the importance of and the public aspiration for implementing universal suffrage for the selection of the CE and the formation of the LegCo. It is also mindful of the complicated and controversial nature of issues relating to constitutional development. The Government must prudently consider all factors and seek consensus at a suitable time and in appropriate circumstances such that it can obtain a two-thirds majority support from all Members of the LegCo, and attain the ultimate aim of implementing universal suffrage within the framework of the Basic Law and the relevant Interpretation and Decisions of the NPCSC. In this connection, the Government will do its best to work towards creating a favourable atmosphere to take forward constitutional development.

Public Elections

182. The Covenant was extended to Hong Kong in 1976 with a reservation on the application of Article 25, sub-paragraph (b), to Hong Kong. By a Note from the Government of the PRC to the United Nations Secretary-General dated 20 June 1997, the PRC Government informed the Secretary-General that the provisions of the Covenant as

applied to Hong Kong shall remain in force beginning from 1 July 1997. Article 39 of the Basic Law of the HKSAR which came into force on 1 July 1997 provides that the provisions of the Covenant as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

183. Under Articles 45 and 68 of the Basic Law, the methods for selecting the CE and for forming the LegCo shall be specified “in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress” with the ultimate aim of selecting the CE and electing all members of the LegCo by universal suffrage. Notwithstanding the reservation in respect of Article 25, sub-paragraph (b), both the Central Authorities and the Government are fully committed to achieving the ultimate aim of universal suffrage in accordance with the Basic Law and the relevant Interpretation and Decisions of the NPCSC. The elections held in the HKSAR since the submission of the previous report are elaborated in the following paragraphs.

184. The position with respect to CE elections, LegCo elections, DC elections and Rural elections is set out at Annex 25A.

Government advisory bodies and statutory bodies

185. The network of Government ASBs continues to be a distinctive feature and an integral part of public administration in Hong Kong. ASBs play an important role in assisting the Government in the formulation of policy objectives and performance of statutory functions. Details of ASBs are set out at Annex 25B.

Article 26

Right to equal protection before the law

Discrimination Law Review

186. The EOC is tasked with implementing the four anti-discrimination ordinances, namely, the SDO, the Disability Discrimination Ordinance (Cap. 487) (DDO), the Family Status Discrimination Ordinance (Cap. 527) (FSDO) and the Race Discrimination Ordinance (Cap. 602) (RDO). One of the EOC’s functions is to keep under review the working of the four Ordinances and, either when required by the CE or as the EOC thinks it necessary, draw up and submit to the CE proposals for amending the Ordinances. In March 2016, the EOC made submissions on the DLR containing a total of 73 recommendations to the Government. 27 are considered by the EOC to be of higher priority. The Government consulted the CA Panel on those recommendations that were considered to be capable of driving consensus among society in March 2017, and the CA Panel supports the Government to implement eight recommendations of priority (see Annex 26A).

187. The Government’s target is to submit the legislative proposals covering the eight recommendation in the form of a composite bill to be introduced to the LegCo in 2018.

Legislation against racial discrimination

188. The RDO, which came into full operation in 2009, aims to protect the rights of individuals against discrimination, harassment and vilification on the ground of race. Please see Annex 26B for details.

189. As mentioned in paragraphs 186 to 187 above, the Government will submit the legislative proposals to take forward the eight recommendation of priority. Among them, six are related to RDO.

190. Paragraph 19 of the previous Concluding Observations recommended rectifying the gap in the RDO by applying it to the Government in the exercise of its public functions, such as the operations of the Police and the CSD.

191. The Basic Law, the HKBORO and the RDO together provide a comprehensive legal framework to protect individuals from discrimination on any ground, including race. The Government must act in accordance with the provisions thereunder when performing or exercising its functions or powers.

192. Article 25 of the Basic Law guarantees the right to equality before the law. 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 Government must abide by the law and shall implement laws passed by the LegCo and already in force.

193. The HKBORO binds the Government and all public authorities (including the LEAs), and any person acting on behalf of the Government or a public authority. Article 1(1) of the BOR, which gives domestic effect to Article 2(1) of the Covenant, 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 Covenant, further provides that the law shall guarantee equal and effective protection against discrimination on any ground, including race.

194. Avenues are available to address complaints against the Government and public authorities through the EOC, The Ombudsman, the CAPO, 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 22 of the BOR pursuant to section 6 of the HKBORO. It should, therefore, be emphasised that public bodies, including LEAs, have always been prohibited from committing any act that amounts to racial discrimination under the laws of the HKSAR.

195. The RDO binds the Government (section 3 of the RDO) and therefore, prohibits discriminatory acts and practices of LEAs in all the areas specified in the RDO, such as employment, education, the provision of goods, facilities or services, and the disposal or management of premises. In particular, section 27 of the RDO renders it unlawful for the Government to discriminate against a person in the provision of the services of any department of the Government or any undertaking by or of the Government.

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

Discrimination on the ground of age

197. The position remains as explained in paragraph 2.22 of the HKSAR’s third report under the ICESCR, in relation to Article 2 of that Covenant. The Government continues to promote to employers the message of equal opportunities in employment and to enhance public awareness of eliminating age discrimination in employment through various channels such as APIs on television and radio, and newspaper editorials. Moreover, the Government has published the “Practical Guidelines for Employers on Eliminating Age Discrimination in Employment” which provides best practices for employers and EAs to follow on a voluntary basis and “Eliminating Age Discrimination in Employment – A Simple Guide to Employers”.

Discrimination on the grounds of sexual orientation and gender identity

198. The Government is committed to promoting equal opportunities for persons with different sexual orientation and transgender persons, with a view to nurturing the culture and values of inclusiveness and mutual respect in the community.

199. To better address the issues relating to sexual minorities, the Government established the Advisory Group on Eliminating Discrimination against Sexual Minorities in

June 2013, which comprised non-officials from the sexual minority community, academic field, business community and the LegCo. Its function was to advise on matters relating to concerns about discrimination faced by sexual minorities in Hong Kong as well as aspects and extent of such discrimination. On that basis, it suggested strategies and measures to tackle the issues (see Annex 26C for details).

200. In paragraph 23 of the previous Concluding Observations, the Committee recommended that the HKSAR should enact legislation that specifically prohibits discrimination on ground of sexual orientation and gender identity. Some commentators have also enquired on the plan of the Government to legislate against discrimination on grounds of sexual orientation and gender identity. As acknowledged by the Advisory Group, the society is deeply divided as to whether legislation should be introduced to prohibit discrimination on grounds of sexual orientation and gender identity. On the one hand, there are views that the Government should introduce legislation to safeguard equal opportunities for the sexual minorities. On the other hand, there are strong views that the introduction of legislation will impact on traditional family values and freedom of religious belief. Given the complicated and highly controversial nature of this issue, the Government is conducting a further study on the experience of other jurisdictions in tackling discrimination on grounds of sexual orientation and gender identity through legislative and nonlegislative measures. The findings of the study will form the basis of legislative and administrative measures to be considered to tackle discrimination on grounds of sexual orientation and gender identity. We shall examine the findings and continue to listen carefully to different opinions in the society with a view to mapping out the way forward.

201. Regarding the issue of gender recognition, please refer to Annex 26D.

Disability discrimination

202. The position remains as set out in paragraphs 366 to 369 of the previous report. The general framework of the legal protection and the related measures for persons with disabilities are explained in paragraphs 92 and 113 to 114 of the HKSAR Common Core Document and the initial report of the HKSAR under the CRPD.

Voting Rights of Mentally Incapacitated Persons

203. In paragraph 24 of the previous Concluding Observations, the Committee recommended that the HKSAR should revise its legislation to ensure that it does not discriminate against persons with mental, intellectual or psychosocial disabilities by denying them the right to vote on basis that are disproportionate or that have no reasonable and objective relation to their ability to vote.

204. The relevant provisions of the Legislative Council Ordinance (Cap. 542) and the District Councils Ordinance (Cap. 547) provide for a natural person to be disqualified from being registered as an elector and from voting, if the person is found under the Mental Health Ordinance (Cap. 136) (MHO) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs. The disqualification from being registered as an elector and from voting is to ensure that the votes cast at the election truly reflect the free will of the electors and to reduce the risk of voters being subject to undue influence or manipulation, thereby ensuring the fairness of the election.

205. The restrictions are reasonable and proportionate to these legitimate aims. A person will not be disqualified merely because he or she has a mental, intellectual or psychosocial disability. The disqualification only applies to a person who is found by the Court as incapable, by reason of mental incapacity, of managing and administering his property and affairs pursuant to the MHO. The MHO further stipulates that the Court has to go through a series of established procedures before making the aforementioned finding in relation to an individual.

206. Specifically, the Court may, on application, make an order directing an inquiry on whether a particular person is incapable, by reason of mental incapacity, of managing and administering his property and affairs. The application to the Court is required to be accompanied by two medical certificates made and signed by registered medical practitioners certifying that the mentally incapacitated person is incapable, by reason of

mental incapacity, of managing and administering his property and affairs. The Court may require the person alleged to be a mentally incapacitated person to attend the inquiry for the purpose of being personally examined by the Court or by any other person specified by the Court. Moreover, the disqualification will cease to apply if the person is subsequently found under the MHO to have become capable of managing and administering his property and affairs.

207. In view of the above, it is clear that the disqualification provisions are reasonable and proportionate to the pursuit of important legitimate aims. The disqualification provisions are fully consistent with Article 25 of the Covenant.

Discrimination against rehabilitated persons

208. The position regarding the CSD's work on facilitating the reintegration of rehabilitated persons into society and promoting the acceptance of rehabilitated persons in the community remains essentially as mentioned in paragraph 371 of the previous report.

Residence requirements under social security schemes

209. Following the judgment of the CFA handed down on 17 December 2013 in relation to a judicial review of the "seven-year residence requirement" of the Comprehensive Social Security Assistance (CSSA) Scheme¹⁰, the SWD has restored the "one-year residence requirement" which was in effect before 1 January 2004, i.e. a CSSA applicant must have held the Hong Kong resident status for not less than one year and have resided in Hong Kong for at least one year (since acquiring the Hong Kong resident status to the date prior to the date of application). The one-year residence needs not be continuous or immediately before the date of application. Absence(s) from Hong Kong up to a maximum of 56 days (whether continuous or intermittent) before the date of application is/are treated as residence in Hong Kong. Persons aged below 18 are exempted from the residence requirements. Under special circumstances, the SWD may exercise discretion to exempt an applicant from the "one-year residence requirement" under the CSSA Scheme.

Article 27

Right of ethnic minorities

Overall legal framework

210. The Government is committed to eliminating racial discrimination and promoting equal opportunities for EMs. As promulgated in the 2017 Policy Address, through enhancing relevant legislation as well as implementing measures to strengthen education support, employment and other support services for the EMs, the Government seeks to provide them with equal opportunities, facilitate their integration into the community, while preserving their cultural characteristics. Some of the measures are elaborated in the ensuing paragraphs.

211. On the legislation front, the RDO was fully implemented in 2009 and the EOC is tasked with implementing the Ordinance. The latest development is outlined in paragraphs 188 to 189 above.

Education for non-Chinese speaking (NCS) students

212. In paragraph 22 of the previous Concluding Observations, the Committee recommended that the HKSAR should intensify efforts to improve the quality of Chinese language education for EMs and NCS students with an immigrant background, and to encourage the integration of students of EMs in public school education.

213. The Government ensures equal opportunities in school admission for all eligible children (including NCS children) in public sector schools, regardless of their race. The Government is committed to encouraging and supporting NCS students' early integration

¹⁰ The CFA's judgment was specifically in relation to the CSSA Scheme only and was not concerned with any other social welfare programmes.

into the community, including facilitating their adaptation to the local education system and mastery of the Chinese language.

Chinese Language Curriculum

214. Starting from the 2014/15 school year, the Education Bureau (EDB) has implemented the “Chinese Language Curriculum Second Language Learning Framework” (Learning Framework) in primary and secondary schools, which is developed from the perspective of second language learners, to help NCS students overcome the difficulties in learning Chinese as a second language with a view to enabling them to bridge over to mainstream Chinese Language classes. The “Learning Framework” is applicable to all public sector and Direct Subsidy Scheme schools which admit NCS students and offer the local curriculum. In the 2016/17 school year, there were about 18 200 NCS students (including 9 200 at primary level and 9 000 at secondary level) studying in these schools.

215. Moreover, to meet NCS students’ diverse aspirations and needs, Applied Learning Chinese (for NCS Students) pegged at the Qualifications Framework Levels 1 to 3 has been implemented at senior secondary levels to provide NCS students with an additional channel to acquire an alternative Chinese language qualification which would be useful for their further studies and career pursuits. The results would be recorded in the Hong Kong Diploma of Secondary Education (HKDSE). Furthermore, for eligible NCS students, the UGC-funded universities may have flexibility for the Chinese Language requirement and consider student applications for admission on a case-by-case basis. On the other hand, eligible NCS students will continue to be provided with examination subsidy (with the subsidised examination fees being on par with the fee level of the HKDSE (Chinese Language) Examination) for obtaining internationally recognised Chinese Language qualifications, including those under the General Certificate of Secondary Education (GCSE), International General Certificate of Secondary Education (IGCSE) and General Certificate of Education (GCE), for admission to the UGC-funded universities and post-secondary institutions. Needy students may also be granted half or full remission of the subsidised examination fees. In the 2016/17 school year, about 1 750 NCS students were subsidised to sit for the afore-mentioned examinations. Among them, 164 and 123 received full and half remission of the subsidised examination fees respectively.

Professional and funding support

216. To facilitate schools’ implementation of the Learning Framework and creation of an inclusive learning environment in schools, the EDB has, starting from the 2014/15 school year, increased substantially the provision of additional funding to schools and stepped up school-based professional support services and professional development programmes for teachers (see Annex 27A for details).

Multiple pathways

217. To enhance the employability of NCS school leavers, the Standing Committee on Language Education and Research has provided since April 2016 the “Vocational Chinese Language Courses for NCS School Leavers” pegged at Level 1 or 2 of the Qualifications Framework.

Research studies

218. The EDB will, based on the research framework drawn up in light of advice from research and language experts, continue to collect and analyse data to evaluate the effectiveness of the support measures for NCS students to ensure the quality of the support measures and refine them as appropriate. Having due regard to the views of teachers and learning and teaching experience of different schools, the Learning Framework will be refined in due course.

Local Kindergarten

219. The EDB encourages NCS children to attend local kindergartens (KGs) for exposure to and immersed in a Chinese language environment as early as possible for a smooth

progression to mainstream primary education. Under the new KG policy implemented starting from the 2017/18 school year, KGs admitting NCS students (regardless of the number) may apply to join training courses and support programmes to enhance KG teachers' competency in supporting NCS students (see Annex 27B for details).

220. With the implementation of the Learning Framework and the Applied Learning Chinese subject, NCS students' motivation to learn Chinese and the effectiveness of their learning have improved. More schools are accepting NCS students and more parents of NCS students are willing to enrol their children in a wider range of schools. Overall speaking, the outcomes of the package of initiatives are positive thus far. The EDB will continue to monitor progress and refine the implementation details to suit the prevailing needs of NCS students.

Access to public sector employment

221. The position remains essentially as mentioned in paragraphs 381 to 383 of the previous report. Appointments to the civil service are based on open and fair competition, and entry requirements for civil service posts are set based on the qualities or attributes as may be required for particular jobs. Race is not a relevant consideration in the assessment for recruitment or promotion of civil servants (see Annex 27C).

222. The latest position with respect to Administrative Guidelines on Promotion of Racial Equality (the Guidelines), support services for EMs and efforts on publicity and education is set out at Annex 27D.
