

立法會 CB(2)903/06-07(01)號文件
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Comments on the Government's outline
of the Second Report under the Convention on the
Elimination of All Forms of Racial Discrimination

Submission to Panel on Home Affairs

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This paper is submitted with a view to request the Hong Kong SAR to elaborate on certain issues in the report.

1. Special Groups – Foreign Domestic Helpers (FDH).

The 'live in' requirement and the 14 days rule for the foreign domestic helpers make the position of FDH more vulnerable. The live in requirement in the absence of a regulation in respect of minimum hours of rest make the FDH open to exploitation and overwork. The requirement to leave Hong Kong within 14 days after the termination of the contract compels most domestic helpers to endure injustice and ill treatment for the fear that any actions against such would make them jobless with very little or no time to find new employment.

Furthermore it is common knowledge that the Indonesian, Sri Lankan and Indian domestic helpers are underpaid because these countries are considered as backward countries and therefore justify the underpayment.

In this context, we would like the government of Hong Kong SAR to elaborate on the action taken so far to reduce the vulnerability of the FDH while imposing the above rules on the FDH. We would also like to know the number of prosecutions that has already been carried out in order to combat underpayment. We also wish to know more about the proposed special education effort in order to combat the racial discrimination by the employers.

The proposed anti racial discrimination bill allows the employer to choose the nationality of their helper. We would like to know the government's plan to enlighten the employer that while the employer has the privilege in choosing the nationality of the helper, the rest of the bill is still applicable to both the employer and the employee.

2. In relation to article 5 (a) on equal treatment before tribunals and organs administering justice.

Hong Kong government gives everybody equal access to justice. However our experience is that they do not receive equal treatment when seeking justice. It has been brought to our notice by many of our clients who are domestic helpers from Indonesia, Sri Lanka and India that they are pressurized by the Presiding Officers of the Labour Tribunal to accept settlements from their employer that are far below their rightful claims. We have also been informed that the Presiding Officers try to persuade the domestic helpers to settle for a certain sum of money on the grounds that the said amount is worth a lot in their respective countries and that it would take a long time for them to earn that amount in their own country. We believe that remarks of this nature are racially biased as it refers to their nationality. Therefore we would like to know about the measures that the

government has taken to ensure that all the organs administering justice do provide equal treatment to everyone.

3. Decision made under the Immigration Ordinance.

As much as we acknowledge the right of every sovereign state in deciding immigration policy, we would like to know what measures are taken by the Government of HKSAR to ensure that the front line officers of the Immigration Department do not abuse their powers and that their decisions in refusing entry or extending visa to certain individuals are not based on racial bias.

4. Article 5 (f)-right of access to service.

While we acknowledge the government's effort to open up the services towards the ethnic minorities and foreign domestic helpers, we also believe that merely opening the door is not adequate. We believe that it is the responsibility of the government to make sure that the people not only have enough confidence to walk in through the door but also they have enough knowledge to benefit from the services provided.

In the education sector, even though all schools are open to children of all nationalities, the absence of such support system for the non Chinese speakers in most of the schools not only deter the NCS students from entering particular schools but also restrict themselves to a few schools that has a support system and thereby hinder the integration process of the ethnic minorities.

The first step to be taken by an employee **to seek redress** for unfair dismissal or unpaid entitlements by the employer is to lodge a claim in the Labour Department. While this facility is available for all individuals the claim form issued to claimants by the Labour Department is available only in English or in Chinese. As such if one wants to make a claim in the Labour Department he or she should be able to read English or Cantonese as there are no interpreter services provided in the Labour Department. Moreover unless one has at least a basic knowledge of law it is not possible for them to fill in the said form as they are required to provide information in respect of claims related to severance payment, terminal payment, maternity leave payment etc. that could be quite complicated for a person who has no knowledge of the law. These services are now being provided by NGOs like us. We wish to know whether the Government of HKSAR has made any effort to overcome such problems.

Another example for this is **in the medical area**. While the ethnic minorities and FDH are allowed to access the government medical services in Hong Kong, the absence of stand by interpreter makes it difficult for the EM to explain the situation to the doctor and also properly understand the diagnosis as well as the doctor's instructions in respect of care and medicine. In certain instances the

patient who underwent surgery for removal a particular organ was unaware which of his organ was removed.

The above is just a few examples. Right to life and right to fair trial and seek remedy and right to education are basic human rights of people. Therefore we would like to ask the government to explain the measures taken to safeguard the interests of ethnic minority community who mostly can not speak Cantonese or English and in the absence of standby interpreter services.