

**HONG KONG AGAINST RACIAL DISCRIMINATION (H.A.R.D.)**

**SUBMISSION TO PANEL ON HOME AFFAIRS MEETING**

**Legislative Council, 10<sup>th</sup> January 2003**

**Views on the Outline of Topics to be Covered in the Second Report on the Hong Kong Special Administrative Region under the Covenant**

HARD has been invited to provide comments on the outline of topics to be covered in the second report of the HKSAR under ICESCR.

HARD will primarily focus on the contents of paragraph 16, page 7 of the abovementioned outline.

The paragraph merely indicates that the HKSAR Government will address the matters raised by the Committee in their concluding observations in 2001. The outline therefore provides no indication of the contents of the report in relation to that particular section.

However in addressing the matters relating to legislation against racial discrimination H.A.R.D. submits that the following information be included in the report:

**No announcement on the enactment of race discrimination legislation**

1. HKSAR Government to date has not given any indication of it's intention to enact legislation against racial discrimination in the private sector.

**Positive results of the Consultation Exercise**

2. The Government reported to the Committee on CERD in August 2002 that it was revisiting the issue and would consider results of a consultation exercise seeking the views of the business community and NGO's. The Government indicated to the Committee that results of the exercise would be released in the early part of 2002. The results have been released in August 2002. The conclusion of the consultation can only be described as positive. Of the responses from the business community, 64 per cent were in favour of legislating against race discrimination, while 12 per cent neutral were neutral. While all responses from NGOs were in support of legislation. H.A.R.D. submits that the Government includes details of the consultation exercise and its results. The Government is urged to give an indication in eth report of a time frame within which it will consider the results and provide information on whether is agrees or refuses to legislate against racial discrimination in Hong Kong.

### **Lack of enforcement Powers of the Race Relations Unit**

3. It is expected that the report will include the establishment of the Race Relations Unit, its composition, activities and future projects. However it is vital that the report also includes the limited powers of the unit which is limited given that it lacks the status of a statutory body. This fact must be illustrated by including the results of investigations conducted by the Race Relations Unit of allegations of racial discrimination made by members of the public.

### **The Reporting Process**

H.A.R.D. urges the Government to circulate a draft version of the report to NGO's, Civil Society the EOC and other relevant groups and bodies, for comments, and views. This exercise should allow sufficient time for the respective groups to provide feedback, and HARD suggests at least one month. Finally HARD urges the HKSAR Government to take into account the feedback and incorporate where relevant into the final version of the report.

**Vandana Rajwani**  
**Spokesperson, Founding member**  
**Hong Kong Against Racial Discrimination**  
**H.A.R.D.**

**Kelley Lopper**  
**Founding member**  
**Hong Kong Against Racial**  
**Discrimination H.A.R.D.**

**8<sup>th</sup> January 2003**

# **Hong Kong Against Racial Discrimination's Views on the Outline of Topics to be Covered in the Second Report on the Hong Kong Special Administrative Region under the Covenant**

**Submitted to the Home Affairs Bureau – 17<sup>th</sup> December 2002**

## **1. Legislation (Outline: paragraph 16, Covenant: Article 2)**

### **Legal and Moral Obligations of the HKSAR Government**

- 1.1 The Hong Kong government has clear legal and moral obligations to introduce legislation against racial discrimination in Hong Kong and should include a commitment to legislate in this section of its next report to the Committee on Economic, Social and Cultural Rights (“Committee”). Such legislation should be modeled on existing equal opportunities ordinances and should extend the jurisdiction of the Equal Opportunities Commission to cover discrimination on the basis of race in both the public and private sectors.
- 1.2 Equality and non-discrimination are fundamental human rights principles and are necessary to underpin and ensure the fulfillment of all other basic human rights and freedoms, including economic, social and cultural rights. However, the government continues to discount increasing local and international calls for legislation.

### **Obligations under the Covenant**

- 1.3 In a recent visit to Hong Kong, the Chair of the Committee, Professor Virginia Dandan, reiterated that the obligations arising from Article 2(2) of the Covenant (i.e. that the State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind) have immediate effect and are not limited by Article 2(1) (i.e. that each State Party must undertake to take steps to the *maximum of its available resources*, with a view to *achieving progressively* the full realization of the rights recognized in the Covenant) (emphasis added).<sup>1</sup>

### **Racial Discrimination is prevalent, and a serious problem in Hong Kong**

- 1.4 Racial discrimination is a serious problem in Hong Kong. H.A.R.D. and other groups have gathered significant evidence - including numerous case studies and statistics - that demonstrate the existence and nature of such discrimination. The problem exists in both the private and public sectors in many areas of life including employment, accommodation, education, medical services, the hospitality industry, the provision of goods and services, etc.

---

<sup>1</sup> Virginia Dandan, “Looking Back and Looking Forward: The Work of the Committee on Economic, Social and Cultural Rights in Perspective”, comments from a talk at the Centre for Comparative and Public Law, Faculty of Law, the University of Hong Kong on 19 September 2002.

- 1.5 The government should adopt a holistic approach using legislative, administrative and educational measures to address the problem. Legislation would demonstrate moral leadership on the part of the government and should be the first, crucial step in implementing such a policy. Other effective initiatives can only arise from a commitment to eliminate racial discrimination by providing legal channels for victims to voice and resolve complaints and access appropriate remedies. Clear educational policies would develop naturally from and complement legislation just as they have in the areas of sex, disability and family status discrimination.
- 1.6 After six years of positive experience with other equal opportunities laws and the effectiveness of the Equal Opportunities Commission (EOC)'s conciliation mechanism, even the business community is largely supportive of a legislative approach as demonstrated by the government's own recent review of the issue. In fact, many senior businesspeople and business groups we have spoken with in Hong Kong are surprised to discover that Hong Kong does not have laws banning racial discrimination in the private sector since this type of legislation is standard in other "world city" jurisdictions.
- 1.7 The business community – as well as the general Hong Kong public – now understand that equal opportunities laws are good for business and society; that such laws do not lead to vexatious litigation under the current EOC enforcement model emphasizing conciliation; they would not lead to significant costs; and that legal protections are necessary to provide recourse and remedy to those who experience racial discrimination. The Race Relations Unit, while a welcome development, does not have statutory enforcement powers and is therefore unable to provide real redress to victims.
- 1.8 Promoting equal opportunities is the right thing to do. Creating a culture of respect for everyone in Hong Kong is a moral obligation as well as in the economic, social and cultural interests of society. Protection of everyone's rights and guaranteeing equal access to opportunities are the cornerstones of a tolerant, fair community. Hong Kong has long prided itself on ensuring a level playing field but it risks jeopardizing that reputation by denying ethnic minorities legal protections against discrimination.
- 1.9 The government is facing considerable criticism over its commitment to human rights, particularly in the current debate over the proposals to implement Article 23 of the Basic Law. The government should seize the opportunity to demonstrate its sincerity about the protection and promotion of human rights by introducing an equal opportunities bill on race. There are no remaining legitimate obstacles to introducing a bill and by doing so Hong Kong would have much to gain. The government should demonstrate its priority to ensure Hong Kong's world city status and the enjoyment of fundamental human rights for everyone.

## **2. Right to education (Outline: paragraph 56, Covenant: Article 13)**

- 2.1 The proposed Outline should include, under the topic “right to education”, a subtopic on discrimination in the education system generally. Of particular concern to H.A.R.D. are allegations of racial discrimination in the education system limiting access to educational opportunities and full enjoyment of the right to education as enunciated in the Covenant.
- 2.2 The Committee explains in its General Comment No. 13 on the right to education that
- “educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:
- Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds”.<sup>2</sup>
- 2.3 The Committee also states that “the prohibition against discrimination enshrined in article 2 (2) of the Covenant is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination”.
- 2.4 Education is the key to ensuring adequate opportunity for social and economic advancement in society and we are therefore particularly distressed by reports that some from ethnic minority groups in Hong Kong have been denied access to education or are treated unfairly by education officials.
- 2.5 Evidence of racial discrimination faced by some ethnic minority students in the education system has been collected by various sources including complaints recorded by the Equal Opportunities Commission, cases documented by concern groups such as UNISON, and press reports. Some examples of alleged discrimination include:
- An ethnic Indian was allocated a place at his 5<sup>th</sup> choice secondary school. The Education Department indicated to an enquiring relative that they had deliberately allocated him this place because of his race believing he would welcome such an arrangement.<sup>3</sup>

---

<sup>2</sup> Committee on Economic, Social, and Cultural Rights, General Comment 13, The Right to Education, E/C.12/1999/10 (1999), para 6(b).

<sup>3</sup> From the Equal Opportunities Commission, Statistics on OJ Enquiries (enquiries on areas outside the EOC’s jurisdiction), from 1996-30 September 2002, Annex I: Specific Enquiries on Racial Discrimination, p 6.

- A group of Pakistani parents, who could not read Chinese, alleged that the Education Department had sent them notices in Chinese rather than English.<sup>4</sup>
  - In August 2001, parents of three ethnic minority students received letters from the Education Department all with important ramifications for the students' futures. However, the letters were all written in Chinese with no English translation. The parents sought the help of social workers for assistance in reading the letters.<sup>5</sup>
  - There have been numerous allegations that there are insufficient school places for South Asian and Southeast Asian school children in Hong Kong and that the choices of schools open to them are extremely limited.<sup>6</sup>
  - Ethnic minority children often wait much longer to obtain school places than their Chinese counterparts.<sup>7</sup>
  - Hong Kong Education Department Officials have sometimes expressed racist attitudes toward ethnic minority children seeking school places. According to a paper by UNISON, a senior education department official commented that children from South and Southeast Asian groups were stupid and wondered why UNISON was so eager to assist them. A middle-ranked education officer told a UNISON social worker that resources spent on education were inadequate and therefore services should be provided to Chinese people first because they were the "majority".<sup>8</sup>
- 2.6 Discriminatory outcomes of some education policies may, in part, stem from common attitudes toward particular ethnic groups. Surveys and academic studies have demonstrated that such attitudes exist throughout Hong Kong society. H.A.R.D. has also collected statements by Hong Kong people about various ethnic groups that reveal deep-seated stereotypical views of particular groups.
- 2.7 We urge the government to undertake an extensive review of its educational policies and amend or eliminate any policies or practices that may directly or indirectly discriminate on the basis of race.
- 2.8 In line with the comprehensive approach to eliminating racial discrimination explained in paragraph 1.5 above, the government should ensure that victims of racial discrimination by public officials – including those in the Education

---

<sup>4</sup> Ibid.

<sup>5</sup> Fermi Wai Fun Wong, "Towards Legislation Against Racial Discrimination in Hong Kong", a paper presented to Virginia Dandan, chair of the Committee, during her visit to Hong Kong in September 2002, p 9-10.

<sup>6</sup> Ibid. p 7.

<sup>7</sup> Ibid, p 8.

<sup>8</sup> Ibid.

Department - have access to the services of the Equal Opportunities Commission. In addition, comprehensive administrative measures addressing problems faced by minority students in the education system should be implemented.

- 2.9 We are also concerned that Hong Kong does not adequately fulfill its obligations to “promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups” in the current school curriculum and through public education. Greater attention to human rights education is part of the comprehensive approach described in paragraph 1.5 above and a crucial part of addressing the racist attitudes described in paragraph 2.5 above.

## **Conclusions**

We appreciate the opportunity to comment on the “Outline of the Topics to be Covered in the Second Report on the Hong Kong SAR under the International Covenant on Economic, Social and Cultural Rights”. We would be happy to discuss these comments with government officials in greater detail

**17 December 2002**

**by Kelley Loper<sup>9</sup>**

---

<sup>9</sup> Kelley Loper is a member of Hong Kong Against Racial Discrimination (H.A.R.D.) and a research officer at the Centre for Comparative and Public Law, Faculty of Law, the University of Hong Kong. She may be contacted at: 2859-1938 or 9863-3103 or by e-mail: kloper@hku.hk.