

Hong Kong Christian Institute's Submission to the Legislative Council

**SAR Government's Implementation of the
International Covenant on Economic, Social and Cultural Rights**
February 7, 2003

Introduction

The Hong Kong Christian Institute (HKCI) is a non-profit Christian organization whose objective is to gather concerned Christians to be active participants in civil society and to advocate for the basic human rights of the most marginalized people in our community. We believe that rights are universal with every person being entitled to them by virtue of being a human being. The responsibility for the protection of rights is both international and domestic. In this submission, we will highlight five particular groups that for historical, cultural or economic reasons are vulnerable and that consequently require special protection for the equal and effective enjoyment of their human rights in Hong Kong—right-of-abode seekers, new Chinese immigrants, foreign domestic helpers and racial and sexual minorities.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was extended to Hong Kong in May 1976 by the British government. The rights enshrined in this covenant were further protected by Article 39 of the Basic Law, which states that “the provisions of . . . the International Covenant on Economic, Social and Cultural Rights . . . as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.” Moreover, in March 2001, the People's Republic of China (PRC) ratified the ICESCR. Thus, it is evident that the covenant is applicable in the Hong Kong Special Administrative Region (HKSAR) with effect from July 1, 1997, the date of Hong Kong's transfer of sovereignty to the PRC.

In 1991, 22 years after the application of the ICESCR to Hong Kong, the government enacted the Bill of Rights Ordinance that prohibits discrimination by the government and public authorities. It is unclear though whether the Bill of Rights is applicable to offices of the PRC central authorities in Hong Kong.

In addition to the ICESCR, the HKSAR government is also responsible for enacting legislation to eliminate all forms of racial discrimination in Hong Kong. Even though the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) has been in force in Hong Kong for 32 years, the government has failed to enact legislation prohibiting racial discrimination in the private sector during this time.

Right-of-Abode Seekers

The U.N. Committee on Economic Social and Cultural Rights expressed deep concern last year about credible accounts that approximately 10,000 right-of-abode seekers face expulsion from Hong Kong and the subsequent separation of their families. The

committee expressed its regret that one year after the adoption of its concluding observations the HKSAR government has not implemented the committee's recommendations but has instead acted in breach of them, notwithstanding the rights in the ICESCR. Lastly, the committee urged the HKSAR government to undertake immediate measures for a just and humane solution to the problem of abode-seekers and to ensure that families will remain united.

We are saddened that Regina Ip, the secretary for security, instead of taking the U.N. committee's views into consideration, has argued that the HKSAR government has observed the principles of human rights while handling right-of-abode cases, adding that the U.N. committee was biased as it only listened to the claimants and their supporters.

Following the comments of the U.N. committee, in order to settle the right-of-abode issue and respect family union as a human right, we thus urge the HKSAR government to implement the following policies:

1. do not remove right-of-abode claimants, thereby splitting their families forever or for an indefinite period of time, and exercise instead its discretionary powers to expand the concession policy to allow all PRC-born children of Hong Kong residents involved in previous litigation to settle in Hong Kong;
2. ascertain the actual number of such children by conducting a registration drive and introduce a mechanism, in conjunction with the proper PRC authorities, to enable the speedy reunion of split families and to prevent the further separation of families.

We believe that, unless these proposals are adopted, there will be more separated families in the future and the right-of-abode issue will not be resolved, for splitting families will only cause more social problems.

New Chinese Immigrants, Ethnic Minorities and Foreign Migrant Helpers

In addition to the right-of-abode seekers, new immigrants from mainland China, ethnic minorities and migrant workers in Hong Kong systematically face discrimination with abuse based on their colour, race, ethnicity, nationality, class and gender. These groups are crucial in upholding the community's prosperity, and yet they are clearly denied the same fundamental rights as other members of Hong Kong society. Studies shows that racial discrimination is widespread in Hong Kong in such areas as housing, employment, politics, relations with public servants and commercial establishments.

Following amendment of the Immigration Ordinance in July 1997, mainland children, regardless of their status as right-of-abode holders, not only have to apply for a one-way entry permit, but they also have to obtain a certificate of entitlement from both the Hong Kong and Chinese governments, which generally entails a wait of more than eight years before they can join their parents in Hong Kong.

Furthermore, new immigrants face discrimination when trying to find a home. To be allocated public housing, for instance, the existing residence rule requires half of a household to have lived in Hong Kong a minimum of seven years by the time of allocation. As a result, the applications of more than 8,000 new immigrants have been

frozen, including single mothers. Since most of the new immigrant families are poor, they can only afford to seek accommodation in caged homes, cubicles and rooftop huts. Living in such congested conditions naturally causes many family disputes.

New immigrants are also discriminated against in the area of access to social security. To be an eligible recipient of Comprehensive Social Security Assistance (CSSA), the applicant must have stayed in Hong Kong for more than one year regardless of whether the applicant has right of abode. This policy hinders the poverty-stricken new immigrants from receiving CSSA and makes their integration into the community much more difficult.

Another severe problem that new immigrant children encounter is finding a place in school. These children have been rejected by schools repeatedly because of the discriminatory attitude of the schools and the lack of any central assessment of the child's academic ability. Some of them have to appeal to more than 10 schools before they are accepted. Although 70 percent of new immigrant youths over age 15 are eventually offered school placements, 70 percent of these students are channelled to vocational schools or the lowest qualification schools. Meanwhile, more than 28 percent of new immigrant youths are prematurely forced to join the work force or are only able to study at evening schools that were originally designed for adults. Thus, their right to education is blatantly denied due to these discriminatory policies.

Non-Chinese ethnic minorities from Southeast and South Asia who live in Hong Kong, comprising 4.1 percent of the population or 279,600 people, also face severe obstacles in their efforts to become part of Hong Kong society with the major problems being bias or even outright rejection in their search for employment and housing and a lack of appropriate schools for their children. Furthermore, they are prime targets of harassment by the police who subject them to ID checks at will. They also face rudeness and discriminatory attitudes in their interaction with government departments.

The deprivation of educational needs is also confirmed by another study which shows that 15 percent of ethnic minority children had to wait for more than a year to secure a school place. The long waiting list has left some ethnic minorities with no alternative but to operate their own schools without the support of government resources. Consequently, these privately run schools are unsupervised and are usually of a lower standard.

To change this discriminatory environment, the HKSAR government needs to publicly acknowledge that racial discrimination in Hong Kong is an important issue that requires a serious and sustained government commitment to eradicate the problem. The government thus needs to urgently adopt the following steps:

1. create and enact a racial discrimination ordinance (RDO) to provide the necessary legal mechanisms to combat racial discrimination, legislation which should apply to both the public sphere, including all government departments and bodies, including the Immigration Dept., as well as the private sphere;
2. extend the mandate of the Equal Opportunities Commission (EOC) to regulate and monitor the implementation of the RDO;

3. create more effective public education strategies and programmes to promote racial harmony and combat racial discrimination, particularly targeting the civil service, education system and the general public.

Among all racial minorities, foreign domestic helpers (FDHs) are the most vulnerable group in Hong Kong. According to the Asian Migrant Centre (AMC) and the Coalition of Migrant Rights' (CMR) *Baseline Research on Racial and Gender Discrimination towards Filipino, Indonesian and Thai Domestic Helpers in Hong Kong*, 15 percent of Indonesian, Thai and Filipino FDHs are paid under the official minimum wage for FDHs, and more than a quarter of FDHs interviewed suffered verbal and/or physical abuse from all sections of Hong Kong society. Moreover, 4.5 percent, or 9,000 FDHs, have been raped or subjected to sexual abuse; 15 percent, or 30,000 FDHs, have been cheated out of their legal minimum wage; and at least 22 percent are not given the mandated one rest day off. Almost all FDHs felt that they were discriminated against and unfairly treated because they are domestic workers with 22 percent ascribing the reason to their foreign status. The abuses are even more rampant among Indian, Sri Lankan and Nepalese FDHs.

Migrant workers also must face discriminatory attitudes and stereotypes associated with the fact that they come from developing countries, which are often wracked with communal violence, religious extremism and instability. Particularly in the aftermath of the tragedy in the United States on Sept. 11, 2001, many FDHs must endure racial slurs (with Indonesians being most affected) that often blame migrants and their home countries for the cause of global instability. Muslim FDHs especially endure this abuse in addition to limitations imposed on the practice of their faith by some employers, e.g., not allowing them to pray, wear "Muslim cloths" or follow special diets.

Another longstanding criticism by FDH advocates of discriminatory treatment towards FDHs is the new conditions of stay (NCS) policy adopted by the government in 1987. The policy imposes particular restrictions on "the conditions of stay" of FDHs in Hong Kong, including restrictions on FDHs shifting to another employer without approval of the Immigration Dept. and an outright prohibition on FDHs transferring to other non-FDH job categories. It also disqualifies FDHs from gaining right of residency even if they have continuously worked in Hong Kong for more than seven years. Another aspect of the NCS policy is the "two-week rule," which stipulates that an FDH who is terminated has only two weeks, or until the expiration of her visa, to legally stay in Hong Kong.

The government argues that the rule is not racially discriminatory because it applies to all foreign domestic helpers. The fact is that foreign domestic helpers are treated differently under the law than other foreigners working in Hong Kong. This is a classic example of indirect discrimination.

Instead of listening to the advice of migrant groups, the HKSAR government has repeatedly launched attempts to reduce FDHs' benefits during economic slumps, including a wage reduction in 1999 and a continuing wage freeze since then as well as the proposal in 2000 to "relax" maternity protection for domestic helpers.

In December 2002, the chairman of the Liberal Party, James Tien Pei-chun, recommended to Hong Kong's financial secretary that FDHs should be taxed HK\$500 (US\$64) a month, arguing that it could raise HK\$1.4 billion (US\$179.49 million)

annually to help balance the government's budget deficit. Since the proposal was announced, thousands of foreign domestic workers have staged a series of rallies to protest against this proposed plan.

On Jan. 28, 2003, the government announced that a new proposal may be introduced to cut the wages of FDHs by 5 percent rather than levy the HK\$500 tax. One rationale that has been offered is that this reduction of maids' wages will help offset a possible tax increase this year for Hong Kong's people.

Based on the need to end all forms of discrimination in Hong Kong, especially against its most marginalized members, we urge the HKSAR government to end the two-week rule and not to cut the wages nor levy the HK\$500 tax on foreign domestic helpers.

Sexual Minorities

The last group whose basic rights we wish to support and advocate are the community's sexual minorities. In 1993, legislator Anna Wu urged the Hong Kong government to introduce an Equal Opportunities Bill which would cover many types of discrimination based on gender, age, sexual orientation, disability, race, political and religious beliefs, union membership and previous criminal record. The government delayed the process for a year until the end of 1994 when it finally introduced two bills. On June 28, 1995, the Sex Discrimination Ordinance was enacted prohibiting discrimination based on gender, marital status and pregnancy as well as sexual harassment, a law that was followed one month later by passage of the Disability Discrimination Ordinance. In addition, the legislation created the EOC in 1996 to oversee enforcement of these new anti-discrimination laws. However, the Church in Hong Kong was exempted from these ordinances based on religious freedom.

Unfortunately, the government was successful in lobbying the legislature in 1995 to defeat additional legislative proposals that would have prohibited discrimination on other grounds—sexual orientation, age and race. In 1996, the government launched a survey to gauge public opinion on whether the government should introduce a bill on discrimination based on sexual orientation. Overwhelmingly, 85 percent of those interviewed indicated that they would object.

Six years later the Social Policies Research Institute of Hong Kong Polytechnic University and the Tongzhi Community Coalition jointly conducted a telephone survey about sexual orientation in May 2002 in which they collected 521 responses.

From their findings, although 47.9 percent of the people interviewed felt that homosexuality is a psychological disorder which needs therapy and close to 70 percent thought that it is easier for homosexuals to be infected with AIDS, only 27.7 percent agreed that homosexuals are more promiscuous than heterosexuals. Surprisingly, the survey found that close to 60 percent of Christians, including both Catholics and Protestants, do not agree that homosexuality is a psychological disorder and that 77.8 percent of Christians do not agree that homosexuals are incapable of becoming teachers. However, Christians tend to be more conservative when it comes to their acceptance of homosexuals as church ministers.

Moreover, more than 90 percent of those interviewed agreed that homosexuals should have equal rights in terms of work, education, choice of spouse and religious beliefs, and close to 80 percent agreed that both homosexual and heterosexual partners should have equal rights in terms of forming a family. In addition, 73.6 percent agreed that companies should extend the same benefits as those of a heterosexual spouse to homosexual partners, such as housing, medical insurance, etc. Finally, 61 percent supported their equal rights in terms of adopting children, and more than 80 percent agreed that they should have equal rights in terms of inheriting each other's properties as a spouse. As for Christians, more than 70 percent agreed that homosexuals should have the right to form a family, and close to 70 percent said they should have the right to adopt children.

Compared with the government's survey in 1996, the recent study indicated that the public's attitude toward homosexuals is much more open, and their position on granting homosexuals equal rights in employment, education, housing and welfare as well as forming a family and adopting children is very positive and sympathetic.

Based on the recent findings, HKCI maintains that the government should now enact the Sexual Orientation Discrimination Ordinance and should lower the official male homosexual adult age of consent from 21 to 16, the same as heterosexual male adults. Moreover, the government should introduce the registration of same-sex partners so that homosexual couples can enjoy the same equal rights as heterosexual married couples.

In addition to advocating equal opportunity legislation for homosexuals, we also urge the government to play a more active role in promoting equal opportunity education related to homosexuality, including transforming the school curriculum by introducing an inclusive approach to family, marriage and sexual orientation and, even more importantly, to change the inaccurate concept of blaming homosexuality as a chief cause of infecting people with AIDS.

Human Rights Commission

The U.N. Human Rights Committee and the U.N. Committee on Economic Social and Cultural Rights have commented and suggested on several occasions that the establishment of a human rights commission is an appropriate means for Hong Kong to guarantee human rights protection under the International Covenant on Civil and Political Rights (ICCPR) and the ICESCR. The important role that human rights commissions can play in the protection and promotion of human rights has also been affirmed by the United Nations General Assembly. HKCI agrees with others in the community that if the HKSAR government truly seeks to further promote the spirit of the international human rights instruments in Hong Kong they should immediately initiate a public consultation about the possible establishment of such a commission.

HONG KONG CHRISTIAN INSTITUTE
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