

The Hong Kong Council of Social Service

Views and Concerns On
The Consultation Paper on Legislating Against Racial Discrimination

4 February 2005

1. Introduction

The Council welcomes the government's decision in principle to introduce a Race Discrimination Bill into the LegCo to prohibit racial discrimination in certain areas. Legislation with wide-reaching social implications requires the support of the community, including the social service sector, to be effective. The Council has organized a number of meetings as well as conducted a survey to collect views and they are summarized as follows.

2. Purpose of Legislation

The Government states in the Consultation Paper that the main aims of the Bill are to render unlawful discrimination based on racial grounds, to make provision against racial harassment and vilification, and to implement the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

Strategies to tackle the problems of racial discrimination need to be a combination of legislation, government policies, supportive measures and public education. To effectively implement the strategies, commitment from the government and community participation are essential.

The extent and rigor of anti-racial legislation should match with the actual context in Hong Kong. It should aim mainly at protecting the racially discriminated, and avoid the unintended consequence of turning "good doers" into "wrong doers", who are just unable to meet new requirements due to the lack of supporting resources arising the legislation. Also, The NGO Sector is ready to participate in formulating a practicable Code of Practice in the future bill enacted.

The Council acknowledges that the government needs to strike a balance between the duty to protect the racially discriminated and the practicability of the measures, in the scope and contents of legislation. However, even if some of the protection cannot be included in the legislation, the government still has the duty to provide remedies for the socially or culturally discriminated (though not then defined as unlawful).

3. Comments on Specific Contents of the Consultation Paper:

3.1 Areas in which the legislation should cover:

3.1.1 Para. 2 Direction of Protection

The direction of the legislation to protect all people from being discriminated against, harassed and vilified on the ground of race is welcomed. Legislation is a basic tool to protect victims of discrimination and to provide them with remedies, and on the other hand, is a clear way to draw the line between what is lawful and unlawful.

3.1.2 Para. 24 –25 Position of New Arrivals from the Mainland

According to the consultation paper, new arrivals from the Mainland China is outside the intended scope of the bill, for their experience of being discriminated is seen as not based on race, but a form of social discrimination. Hence, new arrivals are deemed as not falling within the definition of Article 1 of the ICERD.

The Sector has different views on whether new arrivals from the Mainland China should be within the scope of the legislation. Their different grounds are deliberated as follows:

i) The views for including new arrivals from Mainland China:

A broader sense of the definition of race or re-titling of the future proposed bill to include Mainland Chinese new arrivals could be considered with the following reasons:

- The definition in “ICERD” is only a basic threshold to reach, it does not restrict the government to extend the scope.
- There are signatories of ICERD (e.g. People’s Republic of China and Australia) go more than the basic threshold of ICERD, in accordance with their actual societal contexts, and future ruling by courts;
- Slight amendment of the definition of “national origin” to include “any jurisdiction of the People’s Republic of China” can cover new arrivals from the Mainland China;
- New arrivals have always been categorized by the government as a special group in accessing to social service, education, and in immigration control;
- New arrivals face similar problems as ethnic minorities’ in their daily life especially in respect of discrimination;
- The differences between the “integration of the ethnic minorities” and the “assimilation of new immigrants” in government policies will just imply the anticipated duration of intense discrimination, not denying the need for legislating against discrimination on the new immigrants;
- Different signatories have used diversified titling of legislation to implement their duties to the ICERD, according to their actual social situations. If the government accepts the suggestion to cover new arrivals in the proposed Bill, re-titling of the future bill can be considered (e.g. “Race and Related Discrimination Bill”).

ii) The views with reservation on including new arrivals from Mainland China:

- It may not be convincing to say that they are of different race under one country;
- The new arrivals are not of different ethnic and cultural background. Their cultural difference can gradually become insignificant in the process of assimilation, through living in Hong Kong.
- The needs of the new arrivals and the barriers affecting their integration are not the same as the ethnic minorities and should therefore not be covered by the same legislation.

iii) Nevertheless, the sector agrees in general that the government will need to indicate how it will address new arrivals’ problems of being discriminated with sufficient vigor and supportive measures; e.g. relevant policy review, social support programmes, public education, school curriculum, community campaign, or formulating another non-race based anti-discrimination bill.

3.1.3 Para 46 – 48 Employment

It should be made unlawful for an employer to discriminate against an employee on the ground of race.

- The bill should not only protect employees from racial discrimination by their employers, or agents in the work place, but also by other employees in the work place.

Otherwise, the racially discriminated cannot sustain in one's employment.

3.1.4 Para. 51 Education

It should be made unlawful for the responsible body of an educational establishment (a school, institute or university) to discriminate on the ground of race in respect of admissions or the treatment of students.

- The proposed bill should not only protect persons from discrimination by educational institutions but by other parties in education settings such as teachers, other students, etc. The education institutions should also be bound by the bill to prevent a racially hostile environment from developing in their premises.

3.2 Areas in which supportive measures are required:

To achieve the main aims of the bill, legislation is only a powerful and core measure, various supportive measures are required to address the discrimination based on racial ground at implementation level effectively and more practicable, to win the support of the community to respond positively to meet new requirements arising from the enactment of legislation.

3.2.1 Role and positive duty of the Government:

Under the notification letter, dated 10 June 1997, issued by the Government of the People's Republic of China, State Parties of ICERD, to the United Nations Secretary-General, ICERD would apply to the Hong Kong SAR with effect from 1 July 1997. Hence, Hong Kong has the undertakings to implement the role and positive duty to the following articles:

- (i) *"Take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists". - ICERD Article 2 (c) -*

Supportive measures:

- The government needs to list out the key areas of laws, government policies, regulations which will need amendments, when the future Race Discrimination Bills is introduced into the LegCo.
- The government and public authorities should take a leading role to promote race equality and harmony by performing positive duty to combat discrimination with adequate resources such as:
 - Research monitoring on the situation of racial discrimination;
 - Public education on the legislation;
 - Reviewing current policies with consideration of specific needs and characteristics of different races, etc.

- (ii) *"Not to sponsor, defend or support racial discrimination by any persons or organizations;" - ICERD Article 2 (b) -*

Supportive measures:

- The NGO Sector has been close partners of the Hong Kong SAR Government and is financially sponsored (subvented) to provide about 2/3 of the social welfare service for the population, including the ethnic minorities. As a good partnership, when NGOs could not meet the requirements due to the new legislation, the government shall provide necessary support to the NGOs, so that both the NGOs and the government could fulfill the ICERD's terms.
- Upon the enactment of the future Race Discrimination Bill, the NGO Sector will require additional support from the government (as mentioned in para. 3.2.2), to

implement the purpose of the legislation and fulfilling new requirements after the legislation. The government should show commitment to the resources implication of legislation, policy review and public education.

3.2.2 Additional Support from the Government

Supportive measures in other areas required:

- set up lists of interpreters network,
- government sponsored telephone interpretation service,
- translation service,
- cultural sensitivity training,
- updated referral service information,
- legal advice and training,
- training of interpreters specialized in counseling context (such needs has been clearly demonstrated in the impacts of the Asian mega tsunami on the South Asians who have relatives and friends in the disaster areas) etc.

3.2.3 Para. 51 Education

An alternative syllabus of colloquial and simpler Chinese Language and related public examination should be designed and provided for non-Chinese students.

3.2.4 Para. 71 Equal Opportunity Commission (EOC)

The government should make a commitment to adequate resources be rendered to EOC to perform its tasks on the bill such as legal advice and legal aid, investigation and litigation etc.

Resources from Race Relations Fund should be maintained to promote public education and other related work instead of being transferred to EOC for implementation of the bill.

3.2.5 Para. 74 Code of Practice

The Commission should be empowered to issue codes of practice on the elimination of race discrimination and the promotion of racial equality.

The code of practice as a guideline for different sectors to follow to avoid any acts in breach of the bill should be formulated at earliest time. Full participation of stakeholders should be involved in its formulation.

3.3 Areas in which clarifications are required:

There are a number of situations the NGOs would like for ask for clarifications from the government, especially concerning liability to indirect discrimination. They are listed in the Annex A and Annex B.

**NGO's Practical Concerns on
Possible Implications of the Legislation to be Clarified**

Service Providers Affected	Arising Concerns
1. Agency Management	<p>1.1 Whether a staff and an agency will be against the law:</p> <ul style="list-style-type: none"> ➤ if the staff oneself offers lower standard of service to ethnic minority users than to other users? or ➤ if the staff himself performs discriminating act during providing service? ➤ how can the agency avoid committing the offence? <p>1.2 Would it be against the law, if an agency does not cater for specific religion needs of its' ethnic minority staff?</p>
2. School Social Work	<p>2.1 Under the one-school-one-social worker policy, if a social worker cannot offer equal standard of service to an ethnic minority student than Chinese students, due to lack of supportive measures from his agency, would the SSW and the agency be committing indirect discrimination which is against the law?</p>
3. Services in Centres	<p>3.1 Will an agency be responsible to provide service information with languages other than Chinese to the ethnic minorities? Under what circumstances, the agency will be against the law? Can there be any exemption?</p>
4. Residential Service	<p>4.1 Would it be against the law when a residential service provider fails to meet the request of ethnic minority users who, based on religious ground, ask for no pork in their meals or food without sauce or oil refined from pork?</p>
5. Family and Counselling Service	<p>5.1 Would it be an offence for agencies and social workers, if agencies cannot render supportive measures and training to their staff, their staff cannot offer equal standard of service to ethnic minority's users than Chinese users?</p>
6. Employment and Supportive Service	<p>6.1 <i>Para 46 – 48 Employment</i> <i>The bill should render it unlawful for an employment agency to discriminate on the ground of race in relation to employment services provided by the agency.</i></p> <p>(1) Would it be an offence for a training body, if it does not cater for the needs of ethnic minority users through mutually communicable training language media?</p> <p>(2) If an agency assists ethnic minorities users in getting jobs which offer lower remuneration package to them, than to users of the same work requirements and conditions but of other race, would it be against the law? Would the referral staff and the referral agency be unlawful?</p>

Other Contents requiring more clarifications

Contents	Arising Concerns
1. General Exceptions from anti-discriminatory provisions	<p>7.1 Para. 63 & 65 <i>Exception for certain voluntary bodies, clubs and charities</i></p> <p>It is agreed that certain organizations serving particular target groups are exempted from the law, but it is desirable to clarify more clearly the criteria to indicate which kinds of organizations can be exempted. It is also suggested that the conditions should be clearly stated in the future code of practice to avoid controversy.</p>
2. Special measures and special training	<p>8.1 Para. 64 & 66 <i>Exception for special measures and special training</i></p> <p>(1) The definition of special measures and special training should be introduced clearly (e.g. temporary measures, no other existing alternatives etc.), for instance, if it is a bridging program only to help the ethnic minorities to catch up with the mainstream in specific respect on account of their unequal footing.</p> <p>(2) It is also suggested that the conditions should be clearly stated in the future code of practice to avoid controversy.</p>