

For Information

LegCo Panel on Security

Mainland Women Giving Birth in Hong Kong

Purpose

The purpose of this paper is to respond to issues raised by Members concerning Mainland women giving birth in Hong Kong.

Details

2. According to Article 24(2)(1) of the Basic Law, Chinese citizens born in the Hong Kong Special Administrative Region have the right of abode in Hong Kong. On 20 July 2001, the Court of Final Appeal ruled in the Chong Fung-yuen case (FACV No. 26 of 2000) that Chinese citizens born in Hong Kong have the right of abode in Hong Kong according to the Basic Law regardless of the status of their parents.

3. Although children of Chinese nationality born in Hong Kong have the right of abode under the law, this would not confer any rights on their parents who are not Hong Kong residents. If these parents themselves do not have the right of abode in Hong Kong under the law, it is our policy not to allow them to reside in Hong Kong. Otherwise extensive abuse would arise as a result.

4. The HKSAR Government is concerned about the phenomenon of Mainland women giving birth in Hong Kong. According to statistics for the first 11 months of 2004, the fathers of nearly 70% of the babies born to Mainland women in Hong Kong are Hong Kong residents. Therefore, even if they were not born in Hong Kong, they could still apply to settle here under the One-way Permit Scheme.

5. Meanwhile, we have noticed that the increasing number of cases in which neither parent of the babies born to Mainland women in Hong Kong is a Hong Kong resident. Among the babies born to Mainland women in Hong Kong in 2002, there were 12% whose fathers were not Hong Kong residents. This percentage increased to 18% in 2003 and further to 28% in the first 11 months of 2004.

6. Our reply to Members' suggestions is set out below.

Refusing entry of pregnant Mainland women

7. Visitors (including Mainland visitors) who possess valid travel documents are normally allowed to enter Hong Kong as long as they meet normal immigration requirements (such as having adequate travelling expenses) and the Immigration Department (ImmD) is satisfied with the bona fides of their purpose of visit. ImmD will not refuse entry of a visitor solely on the ground of pregnancy. Even if ImmD lay down rules prohibiting visitors whose pregnancy has reached a certain stage from entering Hong Kong, the effectiveness of such a measure would probably be limited. It is difficult to establish whether an individual visitor is pregnant. The measure might even prompt Mainland women who have the intention to give birth in Hong Kong to enter Hong Kong at an early stage of pregnancy and overstay to give birth.

Requesting the Mainland authorities to bar pregnant women suspected of planning to give birth in Hong Kong from exit or to prohibit women whose pregnancy has reached a certain number of weeks from applying for entry to Hong Kong

8. We understand that it is difficult for the Mainland authorities to prevent pregnant women from leaving the Mainland. It is difficult for them to refuse exit applications from Mainland women solely because they are pregnant. In practice, it is also difficult for the exit and entry authorities in the Mainland to determine whether individual applicants are pregnant or not.

Exploring the possibility of entering into an agreement on mutual legal assistance with the Mainland authorities to enable them to enforce execution writs applied for by the HKSAR Government in respect of default of payment by Mainland pregnant women giving birth in Hong Kong

9. According to information provided by the Administration Wing of the Chief Secretary for Administration's Office, there is at present no arrangement on reciprocal enforcement of judgment between the HKSAR and the Mainland. In the light of the disparities between the legal systems of the HKSAR and the Mainland, and noting that while there is support for a proposed arrangement on reciprocal enforcement of judgment, there are also concerns expressed about such an arrangement, the Administration considers it appropriate to adopt a step-by-step approach. Following consultation with the legal profession, chambers of commerce and trade associations, as well as briefing to the Panel on Administration of Justice and Legal Services, the Administration has proposed that the Arrangement should cover only *money judgments* given by a court of either the Mainland (at the Intermediate People's Court level or higher) or the HKSAR (at the District Court level or higher) exercising its jurisdiction

pursuant to a *valid choice of forum clause* contained in a *commercial contract*. The Administration has since then commenced exploratory discussions with the Mainland authorities on the proposed Arrangement. The Administration last reported the progress of the discussions to the Panel on Administration of Justice and Legal Services in November 2004. The scope of the Arrangement may be subject to review after we have gained practical experience in the implementation of the Arrangement.

10. We will, together with the relevant bureaux and departments of the HKSAR Government, continue to closely monitor the issue of Mainland women giving birth in Hong Kong.

Security Bureau
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