

Society for Community Organization
Comments on "An outline of the topics in the third report of the Hong Kong Special Administrative Region under the International Convention on the Elimination of All Forms of Racial Discrimination" (November 2015)

The Hong Kong Special Administrative Region Government (hereinafter ‘HKSARG’) has drafted an outline of the topics in the third report of the report of the Hong Kong Special Administrative Region under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)". Our Organization deeply concerned about the report and urged the HKSARG should include the reply and discussion to the following issues raised in its report as follows:

Issue 1: Discrimination against new immigrants from the Mainland China

Current situation: There is a widespread discrimination against new immigrants from the Mainland China among the Hong Kong society, including the discrimination on housing, social welfare and other social policies, as well as the social discrimination by local Hong Kong people. According to SoCO’s surveys from 2001 to 2014, it was found that over 80% of new immigrants from Mainland China had experienced discrimination because of its place of origin. Moreover, it is not uncommon to find that certain protestors of nativists surrounded the mainland visitors by kicking their luggage bags and shouting rudely. However, the HKSARG did not take any action or enforce the public order law, such as the charge of disorder in public places. [Section 17B of Public Order Ordinance (Cap. 245)]

Furthermore, although the Government admitted the problem of discrimination against new immigrants and mainland visitors for years, it rejected to enact any legislation to prohibit discrimination against new immigrants and mainland visitors. The government has excluded the Mainlanders or new immigrants from Mainland China from the Race Discrimination Ordinance (RDO). It is argued that both new immigrants from the mainland China and local Hong Kong people are Chinese and the discrimination cannot be defined as ‘race’. It does not recognize immigration status as a basis of race discrimination nor does it recognize new immigrants as a separate ethnic group. Worse still, racial vilification and racial harassment have not been criminalized in Hong Kong and the punishment of offence of serious vilification is too light which cannot reflect the seriousness of an offence.

The Equal Opportunities Commission (EOC) has conducted a public consultation to review the existing 4 discrimination ordinances in Hong Kong, including Race Discrimination Ordinance (RDO), since 2014, while did not have any progress announced to the public until November 2015.

SoCO recommendation:

1. The Government should explain its position and reply if it would amend the RDO by including mainlander or new immigrant from Mainland China status and amend section 45 and 46 of the Race Discrimination Ordinance so that acts of vilification are rendered criminal.
2. In view of the specific reservation on article 20 of the ICCPR in relation to the legislation have practical concern in the interests of public order (*ordre public*), it is urged that the HKSARG to withdraw the reservation and incorporated domestically by amending the Bill of Rights Ordinance, i.e. “[any] advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”
3. The HKSARG should report whether if it has any action to be taken to arrest or charge the persons or groups who threaten the people and visitors from the Mainland China by current criminal legislation, such as the charge of disorder in public places. [Section 17B of Public Order Ordinance (Cap. 245)]
4. The HKSARG should report the progress of public consultation by the Equal Opportunity Commission. In view of the increasing discrimination against new immigrants from mainland China, apart from public education, the HKSARG should explain its stance on whether to introduce any legislation, complaint mechanism or other measures to tackle the problem. As the current RDO only prohibits racial discrimination by both public and private sectors in many specified areas such as employment, education and the provision of goods, services and facilities, but not include all public functions, including the immigration service, police force, foreign domestic workers, as well as to all grounds of discrimination, including nationality, citizenship and residence, the HKSARG should explain whether it would extend the coverage of the RDO. Without adequate legislation to protect people from discrimination, the HKSARG should tell whether it admits that it is in contravention of the CERD.

Issue 2: Split families between Hong Kong and the Mainland China

Current situation: At present, there are approximately 7,000 children (born in Hong Kong or obtained a one-way permit to stay in Hong Kong) whose mothers are Mainland residents and their fathers, who are Hong Kong citizens, died or have abandoned them. These children are not registered in the mainland and courts have ruled that they cannot live outside of Hong Kong. They have to wait for their mothers to apply for One-way Entry Permits (OWP) from the PRC Government before they are allowed to come to Hong Kong and stay with their children. However, these mothers' applications have been denied due to their divorce or the death of their husbands. As a result, their children are left in Hong Kong without their mothers looking after them. These mothers are only allowed to apply for Two-way Permits, and the children have to return to the mainland with their mothers every three months to extend the permits. Their studies have been seriously affected. The scheme allowing parents to apply for Exit-Entry Permit (EEP) (commonly known as "Two-way Permit") multiple times in a year does not cover single-parent families, so they are forced to continue with the mentioned practice of travelling back and forth between Hong Kong and the mainland. The average queuing time for One-way Permits of these families is 6.5 years. The longest waiting time of the cases is 16 years, which is excessively longer than the 4-year queuing time for normal families. Some of them were once issued One-way Permits, but the permits were taken back by mainland authority based on the death of the husbands of these mothers waiting to unite with their children.

SoCO recommendation:

1. The HKSARG should carefully review the One-way Permit system and strengthen the co-operation with mainland authorities to allow reunion of mothers (divorced or whose husbands are dead) with their children in Hong Kong. The PRC and HKSAR Government should increase the flexibility of the issuing of One-way Permits and exercise their discretionary power to issue permits to such split families as special cases. Moreover, a transparent mechanism and screening system should be established to process the applications of family reunion, in order to systematically co-ordinate and monitor the approval process and handle complaints.
2. In view of the plight of the split families, the HKSARG and the mainland Authority should explain whether it will establish mechanism and have time schedule to allow reunion of mothers (divorced or whose husbands are dead) with their children in Hong Kong. Moreover, both Governments should explain if it would setup a transparent mechanism and screening system to process the applications of family reunion.

Issue 3: Widening the gap of income disparity while the conservative public financial ideology tightens public expenditure

Current situation: Since the change of sovereignty in 1997, the number of poor population jumps to 1.33 million (2014) and more than 555,200 households living under poverty, which is the highest since year 2000. The income polarization becomes worse and worse, which can be reflected from the increasing trend of Gini-coefficient (from 0.518 in 1996 to 0.537 in 2011). In view of the deteriorating situation, the Government should introduce an effective wealth distribution mechanism. Social policy of different policy areas, including housing, health, education as well as welfare, should be allocated more public resources in order to assist the underprivileged population. However, as predominant by the idea of low-taxation and the myth that poverty can be alleviated when the upper class can permeate their wealth to the lower, bottom class (trickle-down theory), no effective wealth re-distributive mechanism is established that the disadvantaged remain living under the poverty line.

The HKSARG accumulated a huge surplus since the Handover in 1997, which increased from HKD457.5 billion in 1997/1998 to HKD745.9 billion in 2013/2014.¹ The current huge reserve can maintain around 22 months of Government expenditure.² However, in order to ensure the financial principle of “large market, small government” and “good financial governance”, a neo-conservative public financial ideology existed which suggests controlling the public expenditure for not more than 20% of the Gross Domestic Product. Recurrent public expenditure was suppressed and composed of lower and lower percentage to overall public expenditure which leads new recurrent public expenditure cannot be allocated to develop a sustainable new social policy.³

¹ The original estimate budget, surplus (deficit) of the year and Government reserve of the Hong Kong Special Administrative Region Government (HKSARG) from 1997/98 to 2013/14

Fiscal Year	Original estimate budget (Deficit) (HK\$100 million)	Surplus of the year (Deficit) (HK\$100 million)	Government Reserve in the end of the Year (HK\$100 million)
1997-98	317	868	4,575
1998-99	107	(232)	4,343
1999-2000	(365)	100	4,443
2000-01	(62)	(78)	4,303
2001-02	(30)	(578)	3,725
2002-03	(452)	(611)	3,155
2003-04	(679)	(401)	2,753
2004-05	(426)	206	2,960
2005-06	(105)	147	3,107
2006-07	56	586	3,693
2007-08	254	1,237	4,929
2008-09	(75)	14	4,944
2009-10	(399)	259	5,203
2010-11	(252)	751	5,954
2011-12	(85)	737	6,691
2012-13	(34)	648	7,339
2013-14	(49)	120	7,459
2014-15	91	638	8,195
2015-16 Estimated	368	/	8,563

² The 2014-2015 Budget, Paragraph 159, Estimates of 2014-2015 <http://www.budget.gov.hk/2014/eng/budget42.html>

³ The public expenditure, current income and the Public expenditure to Gross Domestic Product in Hong Kong Special Administrative Region Government from fiscal year 1997/1998 to 2014/2015

Fiscal Year (HK\$100 million)	Recurrent public expenditure (HK\$100 million)	Public expenditure (HK\$100 million)	Recurrent public expenditure to public expenditure (%)	Current income of Government (HK\$100 million)	Gross Domestic Product (Current) (by Year) (HK\$100 million)	Public expenditure to Gross Domestic Product (Current) (by Year) (HK\$100 million) (%)
1997/1998	1,724.19	2,347.80	73%	2,812.26	13,730.83	17.10%
1998/1999	1,878.57	2,664.48	71%	2,161.15	13,080.74	20.37%
1999/2000	1,952.72	2,694.84	72%	2,329.95	12,859.46	20.96%
2000/2001	1,986.19	2,675.07	74%	2,250.60	13,375.01	20.00%
2001/2002	2,104.45	2,693.59	78%	1,755.60	13,211.42	20.39%
2002/2003	2,117.28	2,635.20	80%	1,774.88	12,973.41	20.31%
2003/2004	2,111.02	2,710.98	78%	2,073.37	12,566.69	21.57%
2004/2005	2,054.26	2,571.37	80%	2,381.97	13,169.49	19.53%
2005/2006	2,007.10	2,515.32	80%	2,470.35	14,121.55	17.81%
2006/2007	2,031.62	2,448.68	83%	2,880.14	15,033.51	16.29%

Although the HKSARG re-established a Commission on Poverty in 2013 and introduced an official poverty line in September 2013, it still lacks a long-term comprehensive poverty alleviation strategy and time schedule to reduce poor population and eradicate poverty. In the absence of any long-term policy, the day for eradicating poverty is unclear.

According to the latest report, namely Poverty situation in Hong Kong 2014, it is concluded that the poverty rate of new immigrants' households (32.4%) is generally higher than the overall population in Hong Kong (19.6%). However, the Government did not have a special integration policy or employment policy to tackle the problem.⁴

SoCO recommendation:

1. The HKSARG should adopt a proactive public financial ideology by allocating more public resources on recurrent public expenditure in order to tackle income disparity and other challenges in the society, including housing, education, medical services as well as aging population. The so-called golden rule, namely 20% of the GDP which limited the annual public expenditure should be increased to 25% of the GDP per annum. In addition, having introduced an official poverty line, the Government should confirm if it would introduce a long-term comprehensive poverty alleviation strategy and time schedule to reduce poor population and eradicate poverty.
2. In its report, the HKSARG should explain whether the HKSARG will consider adopting a proactive public financial ideology by allocating more public resources on recurrent public expenditure to tackle income disparity and other social challenges. Moreover, the HKSARG should confirm if it would consider introducing a long-term comprehensive poverty alleviation strategy and time schedule to reduce poor population and eradicate poverty.
3. In addition, the Government should explain if any proactive measures were introduced to assist the poor new immigrants' population escaping from poverty.

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2007/2008	2,121.21	2,524.95	84%	3,584.65	16,507.56	15.30%
2008/2009	2,269.00	3,309.68	69%	3,165.62	17,074.87	19.38%
2009/2010	2,342.36	3,071.92	76%	3,184.42	16,592.45	18.51%
2010/2011	2,231.73	3,205.70	70%	3,764.81	17,767.83	18.04%
2011/2012	2,571.52	3,856.41	67%	4,377.23	19,360.58	19.92%
2012/2013	2,771.74	4,001.79	69%	4,455.06	20,401.04	19.62%
2013/2014	3,005.75	4,573.46	66%	4,421.50	21,318.04	21.45%
2014/2015 Revised	3,238.52	4,260.04	76%	4,706.78	22,457.47	18.97%
2015/2016 Budget	3,427.36	4,741.63	72%	4,775.81	23,243.00	20.40%

⁴ Poverty Situation in Hong Kong 2014 The Commission on Poverty http://www.povertyrelief.gov.hk/pdf/poverty_report_2014_e.pdf