

THE HONG KONG COUNCIL OF SOCIAL SERVICE

Comments on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (Re: New Arrivals From Mainland China)

1. Article 2: Policy of eliminating racial discrimination

- 1.1 In 1997, the Hong Kong Government for the first time consulted the public on the issue of racial discrimination and in the consultation document¹, the new arrivals from the Mainland China were also for the first time being officially recognized as one of the minority groups who might be confronted with the problem of racial discrimination.
- 1.2 We welcome the adoption of a broad definition of "racial discrimination" which recognizes the needs of those minorities who may differ in their cultural background, the dialects they speak, but not necessarily their skin colour or blood heritage. The inclusion of new arrivals from the Mainland is a positive action to recognize the subtle situation the new arrivals are in though they basically share the same skin colour and ethnic background with the counterparts in Hong Kong. However, the Government's attitude also contradicts itself. On the one side, though new arrivals as a group is recognized as one of these specific groups of concern, on the other side, the Government refuses to recognize the need of these new comers for specific settlement services.
- 1.3 The Government's attitude towards the issue of race or ethnic has always been very vague. As a matter of fact, the whole concept of race, racial discrimination, cultural diversity / sensitivity has never been rooted in the public. It is rarely talked about or discussed. In the consultation document mentioned above, the Government openly admitted adopting a passive approach towards the issue. As stated in the document, "The dictum 'If it ain't broke, don't fix it.' encapsulates the Government's pragmatism in its approach to anti-discrimination generally and to racial discrimination in particular." The Government has not been actively taking actions to encourage racial harmony and discourage practices or activities which tend to strengthen racial division.
- 1.4 Unfortunately, in the handling of the ruling laid down by the Court of Final Appeal on the right of abode of children born to Hong Kong residents in early 1999, the Government has been criticized by different sectors for instigating tension between the locals and the new arrivals in order to gain support for seeking an alternative explanation to the law thus the ruling from the Central People's Government. The whole issue still has not been fully settled, but a number of incidents have reflected that the tension and conflict between the

¹ Hong Kong Government. (1997). Equal Opportunities: A Study of Discrimination on the Ground of Race – A Consultation Paper.

locals and the new arrivals have been intensified. The resistance of the locals against the settlement of new arrivals in Hong Kong has become an issue of concern.

2. Article 5: Guarantees of rights of everyone without distinction as to race, colour or national or ethnic origin

2.1 Right to residency / right of abode

Differential treatment in the application procedures for Certificate of Entitlement is noted between those who reside overseas and those who live in the Mainland China. Under the present practice, anyone who claims to have right of abode in Hong Kong and wants to apply for the Certificate of Entitlement, if this person resides in countries other than the Mainland China, can submit his / her application via the Chinese Embassy or Consulate in his / her country of residency or by post to the Hong Kong Immigration Department. However, if the person resides in the Mainland, he / she must apply via the offices of the Exit-Entry Administration of the Public Security Bureau in the Mainland and he / she could not send his /her application by post to the Hong Kong Immigration Department.

2.2 Right to housing

Before November 1999, those mainland children born to Hong Kong residents were treated differently in the allocation of public housing units. Even though they had been granted the right of abode, they must have resided in Hong Kong for 7 years before they were considered Hong Kong residents; however, the children who were born locally do not have to meet the criterion of 7 year residency. This requirement was lifted in November 1999 but only for those children under the age of 18. For those aged 18 and above, they still have to live in Hong Kong before they will be considered eligible for allocation of housing units, but the adult children born locally are not bound by this requirement. The new measure still has not fully resolved the issue of differential treatment between the locals and the new arrivals.

2.3 Right to education and training

Meanwhile, though the Education Department has developed a number of measures to assist the new arrival children from the Mainland in their schooling arrangement, the department relies on the children and their parents to take the initiative to contact the Department for assistance. This is one of the reasons accounting for the delay in school admission for some of the new arrival children. According to the figures released by the Education Department, during the academic year 97-98, over 10% of the new arrival children had lived in Hong Kong for six months or more before they were first admitted to primary or secondary schools. Though it is the right of every

child to receive 9 years compulsory education as stated in the law of Hong Kong, the Education Department refuses to pledge to take the initiation to contact all newly arrived children and offer assistance so as to ensure that these children will be able to enter the local education system without unnecessary delay.

2.4 Others

The Government uses different criteria to define the eligibility of new arrivals for different public services. These criteria contradict each other and this has caused considerable confusion to the new arrivals and the public. For instance,

- i. In order to become eligible for Comprehensive Social Security Assistance, the applicant must have resided in Hong Kong for at least one year - "One year" here refers to the actual length of stay in Hong Kong disregarding the date of entry.
- ii. In order to become eligible for education support services, the new arrival children must have resided in Hong Kong for one year or less - "One year or less" here refers to the length of stay since the date of entry, disregarding whether the children have returned to the Mainland after the date of entry.
- iii. In order to become eligible for allocation for public housing units, only those under 18, disregarding the place of birth, will be considered Hong Kong residents as long as one or both of their parents have resided in Hong Kong for 7 years or more. For those 18 or above, if they are born outside Hong Kong, they must have resided in Hong Kong for 7 years in order to be considered Hong Kong residents and eligible.

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File: committee on 8/racialdiscrimination