

LEGISLATIVE COUNCIL BRIEF

PUBLIC CONSULTATION ON PROPOSED LEGISLATION AGAINST RACIAL DISCRIMINATION

INTRODUCTION

A At the meeting of the Executive Council on 4 May 2004, the Council ADVISED and the Chief Executive ORDERED that the consultation paper entitled "Legislating Against Racial Discrimination – A Consultation Paper", at Annex A, should be published for public comments.

JUSTIFICATIONS

2. The two principal reasons for introducing legislation against racial discrimination are –

- (a) to prevent and combat racial discrimination; and
- (b) to fulfill Hong Kong's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, which is applicable to Hong Kong.

3. All of us are equal before the law and are entitled to equal protection of the law against all forms of racial discrimination and incitement to racial hatred. Discrimination against individuals and groups by other individuals and groups on the grounds of race, colour, descent, and national or ethnic origin is an obstacle to the development of a just and harmonious society.

4. Although communal relations between the local Chinese majority and ethnic minorities in Hong Kong tend, on the whole, to be harmonious and friendly, instances of racial discrimination and intolerance do occur, particularly against persons of South Asian and Southeast Asian origins. We need legislation to prohibit discrimination against people on racial grounds and to prevent and combat all forms of racial discrimination in Hong Kong.

5. Hong Kong has an international obligation to prohibit all forms of racial discrimination. However, there is as yet no comprehensive proscription on racial discrimination in the private sector. There have been calls, both locally and internationally, for legislation to remedy this deficiency.

6. The International Convention on the Elimination of All Forms of Racial Discrimination applies to the Hong Kong Special Administrative Region by extension of China's ratification of this Convention. Article 5 of the Convention states that:

".... States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law".

Prohibition necessarily entails legislation. The United Nations Committee on the Elimination of All Forms of Racial Discrimination has maintained that the Convention obliges signatories to introduce specific legislation on racial discrimination.

7. The Hong Kong Bill of Rights Ordinance (Cap 383) incorporates into Hong Kong law the provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong. The Hong Kong Bill of Rights proscribes all forms of discrimination (including racial discrimination) in the public, but not the private, sector. Specifically, Article 22 of the Hong Kong Bill of Rights prohibits the

Government and all public authorities, and any person acting on behalf of the Government or a public authority, from engaging in practices which entail discrimination on any ground, including race and colour. However, section 7 of the Ordinance restricts the application of the Hong Kong Bill of Rights to the Government and public authorities. We do not yet have specific legislation against racial discrimination which applies to actions between private parties or individuals. There is a need for legislation to prohibit racial discrimination.

PROPOSED LEGISLATION

(a) Principal aims of the Bill

8. The principal aims of the proposed legislation (to be entitled the “Race Discrimination Bill”) are to prohibit racial discrimination in certain areas of activity (mainly socio-economic activities) and to make provision against racial harassment and vilification. The objects of the Bill are –

- (i) to render discrimination on the ground of race unlawful in certain areas of activity (i.e., “protected” areas of activity);
- (ii) to make provision against racial harassment and vilification;
- (iii) to provide for remedies for racial discrimination and harassment;
- (iv) to make incitement to violence or hatred against any racial or ethnic group an offence;
- (v) to extend the jurisdiction of the Equal Opportunities Commission to include discrimination on the ground of race;
- (vi) to implement the International Convention on the Elimination of All Forms of Racial Discrimination; and
- (vii) to provide for related and consequential matters.

(b) Approach

9. It is proposed that the Bill should be modelled on the structure and format of the three existing anti-discrimination Ordinances, namely, the Sex Discrimination Ordinance (Cap 480), the Family Status Discrimination Ordinance (Cap 527) and the Disability Discrimination Ordinance (Cap 487).

(c) Implementation body

10. It is proposed that the Equal Opportunities Commission should be the body responsible for implementing the Bill. It should be empowered to handle complaints, conduct formal investigations, provide conciliation service between parties in dispute, and provide assistance to aggrieved persons. It should also be responsible for undertaking research programmes and public education to promote racial equality and communal harmony and for issuing codes of practice to provide practical guidelines for compliance with the Bill.

(d) Types of racial discrimination

11. It is proposed that six types of discrimination should be covered by the Bill –

(i) Direct racial discrimination

A person should be regarded as discriminating against another person if on racial or ethnic grounds he treats that person less favourably than he treats or would treat other persons. “Racial or ethnic grounds” should be defined to mean race, colour, descent, or national or ethnic origin. An example of direct discrimination is that if a Chinese landlord refuses to let his flat to an Indian or Pakistani family on the ground of the race of the members of that family.

(ii) Indirect racial discrimination

A person should be regarded as indirectly discriminating against another person if he applies to that other person a requirement or condition which he applies or would apply to persons not of the same racial or ethnic group as that other person but -

- (1) which is such that the proportion of persons of the same racial or ethnic group as that other person who can comply with it is considerably smaller than the proportion of persons not of that racial or ethnic group who can comply with it;
- (2) which he cannot show to be justifiable irrespective of the race, colour, descent, or national or ethnic origin of the person to whom it is applied; and
- (3) which is to the detriment of that other person because he cannot comply with it.

A “racial or ethnic group” should mean a group of persons defined by reference to race, colour, descent, or national or ethnic origin, and references to a person’s racial or ethnic group refer to any racial or ethnic group into which he falls. An example of indirect discrimination is that if a Chinese landlord refuses (without any justifiable cause) to let his flat to anyone who cooks curry in the premises. One effect of this would be that Indian or Pakistani families would be excluded.

(iii) Discrimination on the basis of the race or ethnicity of the spouse or a relative of a person

A person discriminates against another person, if on the basis of the racial or ethnic background of the spouse or a relative of that other person, he treats him less favourably than he treats or would treat a person of a different racial

or ethnic background. An example of this type of discrimination is that if a Chinese landlord refuses to let his flat to a Chinese woman because her husband is an Indian.

(iv) Discrimination by way of victimization

A person (the discriminator) discriminates against another person (the person victimized) if he treats the person victimized less favourably than he treats or would treat other persons because the person victimized asserts his rights under the Bill (for example, by complaining to the Equal Opportunities Commission).

(v) Racial harassment

A person (the harasser) harasses another person (the person harassed) if the harasser engages in unwelcome or unwanted conduct (which may include verbal abuse or hate mail) on account of the racial or ethnic background of the person harassed in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated by that conduct. An example of racial harassment is that if a person frequently makes racist remarks against an Indian colleague at work in order to humiliate or intimidate him.

(vi) Vilification

Racial vilification is an act whereby a person, by any activity in public, incites hatred towards, serious contempt for, or severe ridicule of, another person on the ground of the person's racial or ethnic background.

(e) Protected areas of activity

12. It is proposed that, under the Bill, protection against racial discrimination should cover the following fields –

- (i) employment;
- (ii) education;
- (iii) provision of goods and services and access to and use of facilities and premises;
- (iv) advisory and statutory bodies;
- (v) pupillage and tenancy in barristers' chambers;
- (vi) clubs; and
- (vii) Government.

(f) Exceptions

13. It is proposed that there should be a number of exceptions from the anti-discrimination provisions of the Bill including –

(i) Exception for small companies and employers

An exception from the anti-discrimination provision in the field of employment should be made in the case of an employer who has less than six employees (for example, a company or shop with five or less employees). However, there should be a “sunset” clause under which this exception would expire three years after the Bill comes into effect. The purpose of this exception is to give some time to small companies and employers for them to adjust to the new regulatory regime.

(ii) Genuine occupational qualification

It is proposed that an exception should be provided in the case where being of a particular racial or ethnic group is a genuine occupational qualification for a job. For example, a producer should be allowed to limit his casting to actors of Indian origin to play the role of an Indian in a film or play.

(iii) Exception for small dwellings

It is proposed that an exception from the provisions of the Bill dealing with the disposal of premises should be made in the case of premises forming part of small dwellings (for example, a flat) which are shared by the landlord and the lodger or tenant.

(iv) Exception for certain voluntary bodies and clubs

An exception from the relevant provisions of the Bill should be made in the case of voluntary bodies which restrict membership to a particular racial or ethnic group. An exception should also be made if the main object of a club is to enable the benefits of membership to be enjoyed by persons of a particular racial or ethnic group.

(v) Special measures

The Bill should provide that any special measures taken in respect of persons of a particular racial or ethnic group to give equal opportunities with other persons should not be rendered unlawful under the Bill. For example, special measures such as “headstart programmes” or “remedial classes” for children of ethnic minorities should be exempted.

(vi) Charities

It is proposed that certain charities which provide benefits

to certain groups of people defined by reference to racial or ethnic origins should be protected against provisions of the Bill which might otherwise make the provision of such benefits unlawful.

(vii) Special training

It is proposed that the Bill should make clear that it would not be unlawful to provide special training to only persons of a particular racial or ethnic group to help them find employment.

(viii) Ministers of religion

It is proposed that an exception should be provided in the Bill for an organized religion to limit employment to a person from a certain racial or ethnic group for a job related to that religion, provided that the purpose of such restriction is to comply with the doctrine of that religion or to avoid offending the religious susceptibilities common to its followers.

(ix) Immigration legislation

As regards persons not having the right to enter and remain in Hong Kong, it is proposed that the Bill should not affect any immigration legislation governing their entry into, stay in and departure from Hong Kong, or the application of any such legislation.

TIMETABLE

14. The proposed timetable for the public consultation exercise and the Bill is as follows:

- | | | |
|-----|---------------------------------|----------------|
| (a) | Issue of the consultation paper | September 2004 |
|-----|---------------------------------|----------------|

(b)	Public consultation	September – December 2004 (3 months)
(c)	Gazettal of the Bill	March 2005
(d)	Introduction of the Bill into Legislative Council	April 2005

IMPLICATIONS OF THE PROPOSAL

B 15. The proposed legislation against racial discrimination is in conformity with the Basic Law, including the provisions concerning human rights. It has no civil service implications. Annex B addresses its financial, economic and sustainability implications.

PUBLIC CONSULTATION

16. We have consulted interested parties in the course of the drafting of the consultation document with a view to addressing the concerns that they may have. These included, among others, the Committee on the Promotion of Racial Harmony, the Human Rights Forum, the Ethnic Minorities Forum, the Coalition for Racial Equality and the Equal Opportunities Commission.

17. We plan to consult the 18 District Councils, concerned advisory and statutory bodies and non-governmental organizations interested in human rights matters as part of our public consultation exercise.

PUBLICITY

18. A press release will be issued and a press briefing will be held to introduce the consultation paper. A spokesman will handle media and

public enquiries.

ENQUIRIES

19. In case of enquiries, please contact Mr Stephen Fisher, Deputy Secretary for Home Affairs at 2835 1368, or Mr John Dean, Principal Assistant Secretary for Home Affairs at 2835 1552.

Home Affairs Bureau
September 2004

Legislating Against Racial Discrimination

A Consultation Paper

**Home Affairs Bureau
Government of the Hong Kong
Special Administrative Region**

September 2004

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INTRODUCTION

The Government has decided in principle to introduce a bill into the Legislative Council to prohibit racial discrimination in certain areas. It has also decided that a consultation paper on the proposal for a race discrimination bill should be published for public consultation. Legislation with wide-reaching social implications requires the support of the community to be effective. This is particularly true of anti-discrimination legislation. The purpose of this paper is to consult the public on the Government's legislative proposals.

2. All of us are equal before the law and are entitled to equal protection of the law against all forms of racial discrimination and incitement to racial hatred. Discrimination against individuals and groups by other individuals and groups on the grounds of race, colour, descent, and national or ethnic origin is an obstacle to the development of a just and harmonious society. There is a need to introduce legislation to prevent and combat all forms of racial discrimination in Hong Kong.

WHY LEGISLATE?

3. There are two main reasons why the Government intends to introduce a bill to make discrimination on the ground of race unlawful, namely –

- (a) to prevent and combat racial discrimination; and
- (b) to fulfill Hong Kong's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, which is applicable to Hong Kong.

A copy of the text of the Convention is at Annex A.

LOCAL CIRCUMSTANCES

4. Although communal relations between the local Chinese majority and ethnic minorities in Hong Kong tend, on the whole, to be harmonious and peaceful, instances of racial discrimination and intolerance do occur, particularly against persons of South Asian and

Southeast Asian origins. In the course of our discussions with representatives of ethnic minorities and non-governmental organizations which provide social services to members of ethnic minorities, we are made aware of racial discrimination in certain areas of activity, such as finding employment, obtaining goods and services and renting a flat. The Race Relations Unit of the Home Affairs Bureau (which was set up in June 2002) has also handled a large number of complaints from members of ethnic minorities concerning discriminatory treatment and practices. Representatives of ethnic minorities have recounted a number of cases that illustrate the problems encountered by members of their communities. An outline of some of the cases which we have come across is at Annex B.

LEGAL POSITION

5. Hong Kong has an international obligation to prohibit all forms of racial discrimination. However, there is as yet no comprehensive proscription on racial discrimination in the private sector. There have been calls, both locally and internationally, for legislation to remedy this deficiency.

6. The International Convention on the Elimination of All Forms of Racial Discrimination applies to Hong Kong by extension of China's ratification of this Convention. Article 5 of the Convention states that:

".... States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law".

Prohibition necessarily entails legislation. The United Nations Committee on the Elimination of All Forms of Racial Discrimination has maintained that the Convention obliges signatories to introduce specific legislation to deal with racial discrimination.

7. The Hong Kong Bill of Rights Ordinance (Cap 383) incorporates into Hong Kong law the provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong. The Hong Kong Bill of Rights proscribes all forms of discrimination

(including racial discrimination) in the public, but not the private, sector. Specifically, Article 22 of the Hong Kong Bill of Rights prohibits the Government and all public authorities, and any person acting on behalf of the Government or a public authority, from engaging in practices which entail discrimination on any ground, including race. However, section 7 of the Ordinance restricts the application of the Hong Kong Bill of Rights to the Government and public authorities. We do not yet have specific legislation against racial discrimination which applies to actions between private parties or individuals.

ETHNIC GROUPS : THE DEMOGRAPHICS

8. Hong Kong is a largely homogenous society, with about 95% of its people being Chinese (ethnically speaking, Han Chinese). The 2001 Population Census found (by way of self-identification) that there were about 344 000 non-Chinese people in Hong Kong, or about 5% of the population. Not all members of the non-Chinese groups are permanently settled in Hong Kong. In 2001, some 52% (180 000) of them were foreign domestic helpers.

9. Hong Kong's principal ethnic minorities are-

(2001 Population Census)		
(Self-identification)		
<u>Ethnicity</u>	<u>Total number</u>	<u>Number excluding foreign domestic helpers</u>
Filipinos	142 556	16 251
Indonesians	50 494	4 800
British	18 909	18 901
Indians	18 543	17 357
Thais	14 342	9 357
Japanese	14 180	14 172
Nepalese	12 564	12 012
Pakistanis	11 017	11 009

RECENT DEVELOPMENTS

10. In February 1997, the Government published a consultation paper entitled "Equal Opportunities: A Study on Discrimination on the

Ground of Race" to solicit public views. Over 80% of the respondents opposed legislation, particularly the local chambers of commerce. On examining these findings, the Government decided not to legislate at that stage, but to pursue non-legislative measures and public education instead. The Government also decided to periodically revisit the question of legislation to ascertain whether changing circumstances warranted a change of policy.

11. The Home Affairs Bureau revisited the question in 2001-02. The exercise comprised two parts-

(a) Consultations with the business community

25 organizations responded to the consultation exercise. Sixteen of the 25 were broadly in favour of legislation. These included nine overseas chambers of commerce and six local trade associations. The 16 included one local association that, while supportive in principle, considered it inappropriate to legislate at this stage. Of the remaining nine, six were opposed and three had no views.

(b) Consultations with non-governmental organizations and other interested organizations

Of the 55 organizations consulted, 44 (80%) submitted comments. All were in favour of legislation.

12. The results of our consultations indicate that the business sector is more open to legislation than previously, perhaps because it has had time to adapt to the three existing anti-discrimination laws namely, the Sex Discrimination Ordinance (Cap 480), the Family Status Discrimination Ordinance (Cap 527) and the Disability Discrimination Ordinance (Cap 487). The organizations that remain opposed - mainly the local chambers of commerce – expressed their opposition in milder terms than they did in 1997.

13. In a survey conducted between February and March in 2004, about 60% of the respondents supported the introduction of legislation to prohibit racial discrimination. About 65% believed that a race discrimination law would not have a negative impact on the Hong Kong economy. A summary of the survey findings is at Annex C.

EXPERIENCE FROM IMPLEMENTING EXISTING ANTI-DISCRIMINATION LAWS

14. Between 1996 and 2003, the Equal Opportunities Commission received 5 778 complaints under the three anti-discrimination Ordinances. About 58% were employment-related. The Commission has taken 27 cases to court. Five were against the Government/public bodies (one being brought by the Commission itself, four by plaintiffs assisted by the Commission) and 22 were against the private sector (all by plaintiffs assisted by the Commission). Furthermore, private citizens have brought 27 cases without legal assistance from the Commission (eight against the Government/public bodies, 19 against private citizens/companies). Thus, there have been on average seven to eight cases a year or about two or three per Ordinance per year.

15. On the whole, Government has experienced little difficulty in complying with the existing anti-discrimination laws. These laws have generally not adversely affected the general public or the business sector.

PUBLIC DEMAND FOR LEGISLATION

16. Public demand for legislation against racial discrimination has increased in recent years. The situation is summarized below -

(a) Locally

Complaints and enquiries concerning race discrimination against members of South Asian and Southeast Asian ethnic minorities (i.e., Indians, Pakistanis, Nepalese, Filipinos, Indonesians and Thais) have increased. The substance of the complaints has included, among others, refusal to let properties to persons of Indian or Pakistani origin, rejection of members of ethnic minorities for job interviews, less favourable treatment in the workplace for members of ethnic minorities, racial slurs, and advertisements restricting services (or making special offers) to persons of a particular race.

Complaints and enquiries about racial discrimination are handled by the Race Relations Unit of the Home Affairs Bureau. Where we were able to investigate, we have found that some

complaints arose from misunderstandings of language and/or culture. Others have proved to be quite well founded.

(b) Internationally

Representatives of the United Nations Committee on Economic, Social and Cultural Rights and the United Nations Human Rights Committee, in January and February 2001 respectively, made strong calls for legislation in this area. These echoed similar calls made in 1996 and 1999. In February 2000, the then United Nations High Commissioner for Human Rights repeated the call during her visit to Hong Kong. The Committee on Economic, Social and Cultural Rights repeated this in its concluding observations (May 2001) on our initial report under the International Covenant on Economic, Social and Cultural Rights, as did the Committee on the Elimination of All Forms of Racial Discrimination in its concluding observations (August 2001) on our initial report under the International Convention on the Elimination of All Forms of Racial Discrimination.

17. We recognize that different people may have different views on the need and urgency for an anti-racial discrimination law. We would like to have public views on this matter.

LEGISLATION : IMPACT

18. The impact of the proposed legislation on the Government is likely to be mild. The existing anti-discrimination laws have not significantly affected Government operations. Since the Government is already subject to the anti-discrimination provisions in the Hong Kong Bill of Rights Ordinance, an anti-racial discrimination law applying to both the public and the private sectors is unlikely to add to the Government's obligations.

19. As regards the possible impact of the proposed legislation on the public, fewer than 5% of respondents to a telephone survey (March 2001) envisaged that legislation would adversely impact on them. Most of those who thought that it would were homemakers, perhaps reflecting the concerns of employers of foreign domestic helpers.

20. As regards the possible impact of the proposed legislation on business, some respondents - mainly the local chambers - are opposed to legislation, fearing that it would compromise the free market and engender litigation. However, other business respondents, mainly foreign chambers of commerce, consider that legislation would ensure a merit-based level playing field and enhance free market operations.

21. Different sectors of the community may have different views on the impact of an anti-racial discrimination law. We would like to have public views on this matter.

POLICY

22. The Government's policy on race relations is:

- (a) to eliminate and combat all forms of racial discrimination;
- (b) to promote racial equality and communal harmony; and
- (c) to encourage ethnic minorities settled in Hong Kong to integrate into the wider society, while retaining their cultural identity (the integration policy).

23. The integration policy comprises three elements:

- (a) to provide practical assistance to members of ethnic minorities to facilitate their settlement in Hong Kong and their integration into the wider community;
- (b) to address the problem of racial discrimination against ethnic minorities; and
- (c) to promote equal opportunities for all ethnic groups.

POSITION OF NEW ARRIVALS FROM THE MAINLAND

24. Although new arrivals (and others) from the Mainland do sometimes face discrimination by Hong Kong's Chinese majority, almost all of them are of the same ethnic stock as local Chinese (i.e., Han Chinese). The discrimination experienced by new arrivals from the Mainland is not based on race. Rather, it is a form of social discrimination and therefore outside the intended scope of the Bill.

25. New arrivals from the Mainland should, of course, enjoy the same protection against racial discrimination as anyone else in Hong Kong. The proposed legislation should protect everyone from racial discrimination. Under the proposed race discrimination bill, a person is a victim of racial discrimination if he is treated less favourably by the discriminator (who may be of the same race as the victim or of a different race) on the ground of his race or ethnicity. Our view is that new arrivals from the Mainland, per se, do not constitute a racial or ethnic group in Hong Kong. Discrimination against new arrivals from the Mainland by local Chinese is therefore not considered a form of racial discrimination. We recognize that this position may not be accepted by some groups and would like to have public views on the matter.

THE BILL

(1) Approach

26. It is proposed that the Bill should be called the "Race Discrimination Bill". It should be modelled on the structure and format of the three existing anti-discrimination Ordinances, namely the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance.

(2) Objects of the Bill

27. The main aims of the proposed legislation are to render unlawful discrimination based on racial grounds and to make provision against racial harassment and vilification. The objects of the Bill are :

- (a) to render discrimination on the ground of race unlawful in certain areas of activity (i.e., “protected” areas of activity);
- (b) to make provision against racial harassment and vilification;
- (c) to provide for remedies for such discrimination and harassment;
- (d) to make incitement to hatred or violence against any racial or ethnic group in Hong Kong an offence;
- (e) to extend the jurisdiction of the Equal Opportunities Commission to include discrimination on the ground of race (see paragraph 29 below);
- (f) to implement the International Convention on the Elimination of All Forms of Racial Discrimination; and
- (g) to provide for related and consequential matters.

28. It is proposed that the Bill should contain provisions prohibiting discrimination on racial grounds in certain protected areas of activity (mainly socio-economic areas of activity), including employment, education, provision of goods, facilities and services, disposal and letting of premises, and participation in advisory bodies and clubs. Racial harassment should also be prohibited in these protected areas. Prohibited discrimination and harassment could be dealt with by the aggrieved persons bringing civil proceedings before the courts.

(3) Implementation body

29. It is proposed that the Equal Opportunities Commission should be the body responsible for implementing the provisions of the Bill. It should be empowered to receive complaints; provide mediation service and legal advice; conduct public education, and do research on race issues. The Bill should also make provisions for the Commission to have investigatory powers in response to complaints about racial discrimination and the power to initiate investigations on racial

discrimination on its own.

30. Under the proposed Bill, the Equal Opportunities Commission would be empowered to serve enforcement notices. Where there is persistent discrimination, the Commission should be able to apply to court for a restraining injunction.

31. An alternative to putting the race discrimination legislation under the jurisdiction of the Equal Opportunities Commission is the setting up of a dedicated “Commission for Racial Equality” to implement the provisions of the Bill. Public views are sought as to whether the jurisdiction of the Equal Opportunities Commission should be extended to cover racial discrimination, or whether another body should be established to implement the new race discrimination law.

(4) Definitions

32. It is proposed that racial discrimination should be defined as discrimination based on “race, colour, descent, or national or ethnic origin” (as set out in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination).

33. It is also proposed that definitions which are common to the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance should be used. Other terms specific to the Race Discrimination Bill could be adapted from these three Ordinances where appropriate.

(5) Types of racial discrimination

34. It is proposed that the Bill should cover six types of discrimination:

- (a) direct racial discrimination;
- (b) indirect racial discrimination;
- (c) discrimination on the basis of the race or ethnic origin of the spouse or a relative of a person;

- (d) discrimination by way of victimization;
- (e) racial harassment; and
- (f) racial vilification.

These types of discrimination are described below.

(6) Direct racial discrimination

35. It is proposed that, for the purposes of the Bill, a person (the discriminator) should be regarded as discriminating against another person if on racial or ethnic grounds he treats that person less favourably than he treats or would treat other persons (direct discrimination). “Racial or ethnic grounds” should be defined to mean race, colour, descent, and national or ethnic origin. An example of direct discrimination is that if a Chinese landlord refuses to let his flat to an Indian or Pakistani family on the ground of the race of the members of that family.

(7) Indirect racial discrimination

36. Under the Bill, it is proposed that a person should be regarded as indirectly discriminating against another person if he applies to that other person a requirement or condition which he applies or would apply to persons not of the same racial or ethnic group as that other person but-

- (a) which is such that the proportion of persons of the same racial or ethnic group as that other person who can comply with it is considerably smaller than the proportion of persons not of that racial or ethnic group who can comply with it;
- (b) which he cannot show to be justifiable irrespective of the race, colour, descent, or national or ethnic origin of the person to whom it is applied; and
- (c) which is to the detriment of that other person because he cannot comply with it.

Under the Bill, it is proposed that a “racial or ethnic group” should mean a group of persons defined by reference to race, colour, descent, or national or ethnic origin, and references to a person’s racial or ethnic group should refer to any racial or ethnic group into which he falls. An example of indirect discrimination is that if a Chinese landlord refuses (without any justifiable cause) to let his flat to anyone who cooks curry in the premises. One effect of this would be that Indian or Pakistani families would be excluded.

(8) Discrimination on the basis of the race or ethnicity of the spouse or a relative of a person

37. Under the Bill, it is proposed that a person discriminates against another person, if on the basis of the racial or ethnic background of the spouse or a relative of that other person, he treats him less favourably than he treats or would treat a person of a different racial or ethnic background. An example of this type of discrimination is that if a Chinese landlord refuses to let his flat to a Chinese woman because her husband is an Indian.

(9) Discrimination by way of victimization

38. Under the Bill, it is proposed that a person (the discriminator) discriminates against another person (the person victimized) if he treats the person victimized less favourably than he treats or would treat other persons because the person victimized asserts his rights under the Bill (for example, by complaining to the Equal Opportunities Commission).

(10) Racial harassment

39. It is proposed that a person (the harasser) harasses another person (the person harassed) if the harasser engages in unwelcome or unwanted conduct (which may include verbal abuse or hate mail) on account of the racial or ethnic background of the person harassed in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated by that conduct. An example of racial harassment is that if a person frequently makes racist remarks against an Indian colleague at work in order to humiliate or intimidate

him. It is proposed that the Bill should make unlawful racial harassment in the protected areas of activity.

40. In the case of applicants for employment and employees, it should be made unlawful for-

- (a) a person to harass on the ground of race another person who is seeking to be, or who is, employed by that person;
- (b) a person who is employed by another person to harass on the ground of race a person who is seeking to be, or who is, employed by that other person; or
- (c) a contract worker to harass on the ground of race a fellow contract worker.

41. The Bill should also make unlawful racial harassment in other fields, such as education, provision of goods and services, access to and use of facilities and buying and letting of premises. For example, it should be unlawful for a person who is a member of the responsible body for an educational establishment (for example, a university council or a board of governors or trustees) to harass on the ground of race a person who is seeking to be, or who is, a student of the establishment, or for a person (for example, a shopkeeper) to harass another person in the course of offering to provide, or providing, goods, services or facilities to him.

(11) Vilification

42. It is proposed that racial vilification be defined as an act whereby a person, by any activity in public, incites hatred towards, serious contempt for, or severe ridicule of, another person on the ground of the person's racial or ethnic background. Racial vilification should be rendered unlawful under the Bill.

43. The Bill should also provide that a person who, by any activity in public, incites hatred towards, serious contempt for, or severe ridicule of, another person on the ground of the person's racial or ethnic background commits an offence if his conduct includes-

- (a) threatening physical harm towards, or towards any premises or property of that person; or
- (b) inciting others to threaten physical harm towards, or towards any premises or property of that person.

PROTECTED AREAS OF ACTIVITY

44. It is proposed that the protection provisions of the Bill should cover the following fields (protected areas of activity) -

- (a) employment;
- (b) education;
- (c) goods, facilities, services and premises;
- (d) advisory and statutory bodies;
- (e) pupillage and tenancy in barristers' chambers;
- (f) clubs; and
- (g) Government.

Each of the protected area of activity is discussed below.

(1) Employment

45. It is proposed that, under the Bill, it should be made unlawful for an employer to discriminate against applicants on the ground of race. This should include –

- (a) discrimination in the arrangements the employer makes for the recruitment of an employee;
- (b) discrimination in the terms on which the employer offers the applicant the employment; or

- (c) refusal by the employer to offer the applicant that employment on the ground of race.

46. It should also be made unlawful for an employer to discriminate against an employee on the ground of race. This should include –

- (a) discrimination in the terms of employment;
- (b) discrimination in the provision of other benefits, services or facilities;
- (c) discrimination in the way in which he affords that employee access to opportunities for promotion, transfer or training; or
- (d) dismissing that employee or subjecting him to any other detriment on the ground of his race.

47. Protection against racial discrimination should be extended to contract workers. Discrimination by a person who does not himself employ his workers, but obtains their services under a contract with a third party, should also be covered by the Bill.

48. The Bill should render it unlawful for –

- (a) a trade union, an employers' organization, or a professional or trade organization to discriminate on the ground of race in respect of the admission of members or in the treatment of members;
- (b) a professional body to discriminate on the ground of race in conferring any authorization or qualification which is required by a person who engages in a particular profession;
- (c) a vocational training body to discriminate on the ground of race in providing training to individuals; and
- (d) an employment agency to discriminate on the ground of race in relation to employment services provided by the

agency.

49. The Bill should make it unlawful to discriminate on the ground of race against persons who are commission agents (who are defined as persons doing work for a principal and are remunerated wholly or partly by commission).

50. The Bill should make provision for dealing with cases of vicarious liability. An employer or principal should be liable under the Bill for anything done by his employee or agent unless he could prove that he had tried to prevent his employee from doing the act or it was outside the agent's authority.

(2) Education

51. The Bill should deal with racial discrimination in the education field. It should be made unlawful for the responsible body for an educational establishment (a school, institute or university) to discriminate on the ground of race in respect of admissions or the treatment of students.

(3) Goods, facilities, services and premises

52. It is proposed that the Bill should deal with discrimination in the provision of goods, facilities and services to the public, or in the disposal of premises, or the treatment of occupiers of premises. The Bill should make it unlawful to discriminate in these matters either directly or indirectly or in respect of the terms offered or, in the case of goods, facilities and services, in respect of their quality or the manner in which they are provided.

(4) Advisory and statutory bodies

53. It is proposed that the Bill should make it unlawful to discriminate on the ground of race against a person in determining his eligibility to vote in the elections of or to be elected or appointed to a public body, public authority or a public sector advisory and statutory body.

(5) Discrimination by, or in relation to, barristers

54. It is proposed that the Bill should make it unlawful for a barrister or barrister's clerk to discriminate on the ground of race against a person seeking pupillage or tenancy, or who is a pupil or tenant, in a barristers' chamber.

(6) Discrimination by clubs

55. It is proposed that the Bill should make it unlawful for any club to discriminate on the ground of race against a person by refusing to accept his application for membership or in the terms offered for admission. It should also be unlawful to discriminate against a member in the terms and conditions of membership or with reference to benefits, facilities or services provided to him.

(7) Government

56. It is proposed that the Bill should make it unlawful for the Government to discriminate against a person or group of persons on the ground of race in the performance of its functions or the exercise of its powers.

57. As regards persons not having the right to enter and remain in Hong Kong, it is proposed that the Bill should not affect any immigration legislation governing their entry into, stay in and departure from Hong Kong, or the application of any such legislation.

58. As regards racial discrimination and harassment in other areas, it is proposed that the Bill should make it unlawful for the Government to discriminate against a person in the performance of its functions and the exercise of its powers, except where it is an act done for the purpose of complying with a requirement of an existing statutory provision.

59. Members of the public are invited to comment on the above proposed provisions of the Bill.

GENERAL EXCEPTIONS FROM ANTI-DISCRIMINATORY PROVISIONS

(1) Exception for small companies and employers

60. Unlike large companies and employers, small companies and employers may need some time to adapt to a new regulatory regime. It is proposed that an exception from the anti-discriminatory provision in the field of employment should be made in the case of an employer who has less than six employees (for example, a company or shop with five or less employees). However, there should be a "sunset" clause under which this exception would expire three years after the Bill is enacted into law and becomes operative.

(2) Genuine occupational qualification

61. It is proposed that an exception should also be provided in the case where being of a particular racial or ethnic group is a genuine occupational qualification for a job. For example, a producer should be allowed to limit his casting to actors of Indian origin to play the role of an Indian in a film or play.

(3) Exception for small dwellings

62. It is proposed that an exception from the provisions of the Bill dealing with the disposal of premises should be made in the case of premises forming part of small dwellings which are shared by the landlord and the lodger or tenant.

(4) Exception for certain voluntary bodies and clubs

63. An exception from the relevant provisions of the Bill should be made in the case of voluntary bodies which restrict membership to a particular racial or ethnic group. An exception should also be made if the main object of a club is to enable the benefits of membership to be enjoyed by persons of a particular racial or ethnic group.

(5) Special measures

64. The Bill should provide that any special measures taken in respect of persons of a particular racial or ethnic group to give equal opportunities with other persons should not be rendered unlawful under the Bill. For example, special measures such as “headstart programmes” or “remedial classes” for children of ethnic minorities should be exempted.

(6) Charities

65. It is proposed that certain charities which provide benefits to certain groups of people defined by reference to racial or ethnic origins should be protected against provisions of the Bill which might otherwise make the provision of such benefits unlawful.

(7) Special training

66. It is proposed that the Bill should make clear that, in relation to training, it is not unlawful to afford only persons of a particular racial or ethnic group access to facilities for training which would help to fit them for that work, or to encourage only persons of a particular racial or ethnic group to take advantage of opportunities for doing that work under certain conditions.

(8) Ministers of religion

67. It is proposed that an exception should be provided in the Bill for an organized religion to limit employment to a person from a certain racial or ethnic group for a job related to that religion, if the purpose of such restriction is to comply with the doctrines of that religion or to avoid offending the religious susceptibilities common to its followers.

(9) Immigration legislation

68. As stated earlier, as regards persons not having the right to enter and remain in Hong Kong, it is proposed that the Bill should not affect any immigration legislation governing their entry into, stay in and departure from Hong Kong, or the application of any such legislation.

69. Members of the public are invited to give their views on the above proposed exceptions from the anti-discrimination provisions to the Bill.

DISCRIMINATORY ADVERTISEMENTS

70. It is proposed that the Bill should make it unlawful to publish an advertisement which might reasonably be understood to indicate an intention to do an act unlawful under this Bill (for example, discrimination or harassment in the employment or other fields). The publisher should not be liable if he reasonably relies upon a statement made by the advertiser that the publication of the advertisement concerned would not be unlawful. However, the advertiser who knowingly or recklessly makes such a statement which is false commits an offence. The use of a particular language (say, English or Chinese only) in an advertisement should not, per se, constitute a discriminatory act for the purposes of the Bill. Views are sought on this proposal.

EQUAL OPPORTUNITIES COMMISSION

71. It is proposed that certain functions and powers should be provided to the Equal Opportunities Commission to enable it to take on the duties of implementing the relevant provisions of the Bill. These are set out below.

(1) Jurisdiction

72. The jurisdiction of the Equal Opportunities Commission should be extended to include racial discrimination.

(2) Functions and powers

73. The functions and powers of the Commission, in relation to racial discrimination, should be-

- (a) to work towards the elimination of all forms of racial discrimination;

- (b) to promote equality of opportunities between persons irrespective of race or ethnic background;
- (c) in the case of any act alleged to be unlawful by virtue of this Bill, to encourage persons who are concerned with the matter to which the act relates to effect a settlement of the matter by conciliation or mediation; and
- (d) to keep under review the working of the Race Discrimination Ordinance (if enacted), and when it is so required by the Chief Executive or otherwise thinks it necessary, draw up and submit to the Chief Executive proposals for amending the Ordinance.

(3) Codes of practice

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

(4) Investigations

75. The Commission should be empowered to conduct formal investigations on matters connected with the carrying out of its functions. Terms of reference should be drawn up for each formal investigation.

(5) Power to obtain information

76. The Commission should have the power to obtain information for the purposes of conducting a formal investigation.

(6) Recommendations and reports on formal investigations

77. The Commission should be able to make to any body recommendations for changes in its policies or procedures with a view to promoting equality of opportunity between persons irrespective of racial or ethnic background. The Commission should also be able to make to the Secretary for Home Affairs any recommendations concerning changes in the law.

(7) Restrictions on disclosure of information

78. The Bill should provide that no information given to the Equal Opportunities Commission by any person (the informant) in connection with a formal investigation should be disclosed by the Commission (including any member or employee of the Commission).

(8) Enforcement notices

79. The Bill should provide that, in the course of a formal investigation, the Equal Opportunities Commission could issue an enforcement notice to a person who has committed an unlawful discriminatory act or an unlawful act of harassment requiring him not to perform such an act or to discontinue or change any of his practices or other arrangement which occasioned such an act. A provision should be made to provide for appeal against an enforcement notice.

(9) Help for persons suffering discrimination, harassment or vilification

80. The Bill should provide that the Equal Opportunities Commission should have the power to help aggrieved persons to obtain information for the purpose of initiating proceedings against a person who has committed an unlawful discriminatory act or an unlawful act of harassment.

(10) Assistance by way of conciliation

81. The Bill should provide that the Equal Opportunities Commission should, inter alia, endeavour by conciliation or mediation to effect a settlement of the complaint.

82. Public views are sought on the above proposed functions and powers for the Equal Opportunities Commission if its jurisdiction is extended to cover racial discrimination.

CLAIMS

83. The Bill should provide that a claim by or on behalf of any person (the claimant) that another person (the respondent) has committed an act of discrimination or harassment against the claimant which is unlawful could be made the subject of civil proceedings in the same manner as any other claim in tort.

SUSTAINABILITY IMPLICATIONS

84. The proposed legislation would help foster a culture of mutual respect and tolerance in our society, and fulfill our international obligations of protecting the rights of ethnic minorities. It is conducive to the sustainability principle of fostering an equitable and progressive society.

PUBLIC COMMENTS

85. The proposed legislation against racial discrimination could have significant implications for the community. The impact on Hong Kong should be carefully examined. It is crucial that members of the public should express their views on this subject.

86. Members of the public are invited to comment on the legislative proposals set out in this consultation document. Comments should be sent to:

by post: Division 4
Home Affairs Bureau
31st Floor, Southorn Centre
130 Hennessy Road
Wan Chai
Hong Kong

by fax: 2591 6002
(Attn: Division 4
Home Affairs Bureau)

by email: racelaw@hab.gov.hk

Comments should be sent on or before 31 December 2004.

87. Responses will normally be made available to the general public (if requested) unless you specifically ask us to keep your views confidential.

**International Convention on the Elimination
of All Forms of Racial Discrimination**

Adopted and opened for signature and ratification by
General Assembly resolution 2106A (XX) of 21 December 1965
entry into force 4 January 1969, in accordance with Article 19

The States Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect

for the dignity of the human person,

Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society,

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of *apartheid*, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

Bearing in mind the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organisation in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows:

PART I

Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall 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;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia*:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;

(ii) The right to leave any country, including one's own, and to return to one's country;

- (iii) The right to nationality;
 - (iv) The right to marriage and choice of spouse;
 - (v) The right to own property alone as well as in association with others;
 - (vi) The right to inherit;
 - (vii) The right to freedom of thought, conscience and religion;
 - (viii) The right to freedom of opinion and expression;
 - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
- (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
 - (ii) The right to form and join trade unions;
 - (iii) The right to housing;
 - (iv) The right to public health, medical care, social security and social services;
 - (v) The right to education and training;
 - (vi) The right to equal participation in cultural activities;
- (f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination

and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

PART II

Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the

Chairman of the Committee;

(b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 9

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention: (a) within one year after the entry into force of the Convention for the State concerned; and (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

2. The Committee shall report annually, through the Secretary General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

Article 10

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The secretariat of the Committee shall be provided by the Secretary General of the United Nations.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

Article 11

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.
3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.
4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.
5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

Article 12

1. (a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention;

(b) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.

5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.

6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.

8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

Article 13

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.

2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.

3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

Article 14

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.

5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.

6. (a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications;

(b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

7. (a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged;

(b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph I of this article.

Article 15

1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition

granted to these peoples by other international instruments or by the United Nations and its specialized agencies.

2. (a) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies;

(b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories mentioned in subparagraph (a) of this paragraph, and shall express opinions and make recommendations to these bodies.

3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.

4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (a) of this article.

Article 16

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

PART III

Article 17

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 19

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 20

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.

2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

Article 21

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary General.

Article 22

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

Article 23

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 24

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars:

- (a) Signatures, ratifications and accessions under articles 17 and 18;
- (b) The date of entry into force of this Convention under article 19;
- (c) Communications and declarations received under articles 14, 20 and 23;
- (d) Denunciations under article 21.

Article 25

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.

APPLICATION OF THE CONVENTION TO HONG KONG

On 10 June 1997, the Government of the People's Republic of China issued a letter to the United Nations Secretary-General giving notification that –

The International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as the “Convention”), to which the Government of the People's Republic of China acceded on 29 December 1981, will apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. The Government of the People's Republic of China also makes the following declaration:

1. The reservation made by the Government of the People's Republic of China to Article 22 of the Convention will also apply to the Hong Kong Special Administrative Region. [see note (1)]

2. The Government of the People's Republic of China on behalf of the Hong Kong Special Administrative Region interprets the requirement in Article 6 concerning “reparation and satisfaction” as being fulfilled if one or other of these forms of redress is made available and interprets “satisfaction” as including any form of redress effective to bring the discriminatory conduct to an end.

Note (1) The reservation against Article 22 reads: “The People's Republic of China has reservation on the provision of Article 22 of the Convention and will not be bound by it.”

Racial Prejudice and Discrimination in Hong Kong: Some Examples

The cases below represent some examples of racial prejudice and discrimination in Hong Kong. They are derived from various sources: complaints to the Race Relations Unit, cases reported to the Home Affairs Bureau, referrals by non-governmental organizations and press reports.

Employment

1. An Indian who spoke fluent Cantonese called a warehouse company in response to a recruitment advertisement. She was told there was no vacancy only when the person on the other end of the line realized that she was Indian.
2. A Chinese man who had stayed overseas for many years and spoke native-level English called about a teaching job in a school. He was told that they would only hire Western native English-speaking teachers.
3. A Nepalese man, a restaurant waiter, had to accept a lower cash allowance than that of his Chinese counterparts in order to secure his job.
4. A Pakistani man who used to work as a security guard was terminated on the ground of his race. During the exit interview, his supervisor said, "I fired you because I believe I can work better with a Chinese." A Chinese man subsequently replaced him.
5. A woman of Indian descent from England was denied a job teaching English in a kindergarten. The school head said, "Sorry, we only hire people from England and America ... white people." The lady decided to return to England out of frustration.

Accommodation

6. An Indian who had only recently arrived in Hong Kong was barred by a property agent from viewing a flat because the landlord had instructed the agency not to let to Indians.
7. An Indian man was unable to rent a flat in the “luxury section” of Stubbs Road as the landlord told the agent that he was not interested in renting to Indians. This happened to the Indian man on three different occasions. Finally, he posed as an “Italian” in order to secure his current flat.
8. An Indian woman was rejected on several occasions from renting a flat in the luxury sector because of her ethnicity. In the end she and her agent collaborated on a scheme whereby she posed as the agent while the Caucasian agent posed as the prospective tenant.
9. A middle-class Indonesian woman sometimes arranged parties at home on Sundays. The security guard of the building repeatedly denied visitors (who were Indonesians) access to her flat.
10. An Indonesian woman landed a professional job in Hong Kong. When she tried to rent a flat, the property agent asked, “Are you a domestic helper? Do you earn enough to pay the rent?”.

Transport and services

11. A Pakistani man was verbally abused by a minibus driver for mispronouncing in Cantonese the place where he intended to get off.
12. Chinese and South Asians were charged more than Caucasians at a bar in Wan Chai.
13. A Filipina was refused service at shops on several occasions. The shopkeepers turned their backs on her and ignored her.
14. A tourist from the Bahamas (a black person) queued at a fast food centre. Although she was first in line, a staff member ignored her

and allowed a Chinese customer to queue-jump when it was her turn to be served.

Insults and general intolerance

15. An Indian businessman, who was born in Hong Kong and spoke fluent Cantonese, told us that he had experienced racial jibes and insults frequently. Other Indian professionals and businessmen reported similar experiences.
16. An Indonesian business woman married to a Chinese man was often mistaken for a domestic helper. She was once rudely called “maid” when shopping in a boutique.
17. An Indian felt humiliated when a programme narrator repeatedly used the word “Ah Cha” in a radio programme.

Education

18. A non-Chinese child was denied admission by a school on the ground that he was non-Chinese speaking and the school did not have any teacher who could communicate with him.

Survey on Public Attitudes towards Racial Discrimination Summary of Findings

A survey on public attitudes towards racial discrimination was conducted by way of telephone interviews from 18 February to 16 March 2004. A total of 1,954 respondents were interviewed. The survey was commissioned by the Home Affairs Bureau and conducted by a consultancy firm.

2. 87.4% of the respondents believed that there should be equal opportunities for people of different racial backgrounds. 47.5% perceived that there was a problem of racial discrimination in Hong Kong. 80.2% of the respondents agreed that the Government should “take measures to promote racial harmony and educate the public about racial equality”. 59.1% of the respondents supported the introduction of legislation to prohibit racial discrimination, and 64.7% believed that “a race discrimination law would not have a negative impact on the Hong Kong economy”.

3. The survey sought the respondents’ views on racial discrimination in certain areas. The majority of respondents did not accept racial discrimination, as indicated in the following table.

Table 1 Opinion on racial discrimination in specific situations

<i>Area</i>	<i>Situation</i>	<i>Percentage who rated it unacceptable</i>
<i>Provision of goods and services</i>	A shop refuses to provide goods or services to a customer because of his / her racial background.	89.3%
<i>School admission</i>	A school refuses admission to a student because of his / her racial background.	86.0%

<i>Pay</i>	Two colleagues in identical jobs get different salaries because of their different racial backgrounds.	80.1%
<i>Employment</i>	An employer refuses to employ a qualified person because of his / her racial background.	78.8%
	A recruitment advertisement specifies that only persons of a certain race can apply for the job.	71.4%
<i>Club membership</i>	A social club refuses to admit a person as member because of his / her racial background.	76.2%
<i>Renting accommodation</i>	A landlord refuses to let a vacant flat to a person because of his / her racial background.	70.5%
	A landlord refuses to sublet a room to a person because of his / her racial background.	60.5%

4. The survey also sought the respondents' views on having a friend, colleague or superior of a different racial background. The respondents had very high acceptance levels (ranging from 85.4% to 93.7%) in these areas, as shown in the following table.

Table 2 Attitude towards having a friend, colleague or superior of a different racial background

<i>Acceptable to have a person of a different racial background as –</i>	<i>Racial background of the other person</i>		
	<i>Caucasian</i>	<i>Southeast Asian</i>	<i>South Asian</i>
<i>Friend</i>	92.7%	91.6%	85.4%
<i>Colleague</i>	92.8%	91.2%	88.1%
<i>Superior</i>	93.7%	91.3%	88.1%

IMPLICATIONS OF THE PROPOSAL

Financial implications

It is proposed that the Equal Opportunities Commission should be designated as the statutory agency to monitor, promote and enforce the eventual Ordinance. There would be recurrent cost for the Equal Opportunities Commission. The resources for the promotion of racial harmony and for handling complaints against racial discrimination (about \$5.8 million in 2004–05) would be transferred to the Commission after the Ordinance is enacted.

Economic implications

2. Unlike the existing non-legislative approach, the proposed legislation against racial discrimination, might introduce a certain degree of rigidity to business operations in the economy. Yet the additional compliance cost in overall terms thus entailed, though difficult to quantify, might not be large, given that ethnic minorities constitute only a very small proportion of the local population, and that exemption provisions would be in place to cater for the legitimate needs of the business community.

Sustainability implications

3. The proposal would help foster a culture of mutual respect and tolerance in our society, and fulfil our international obligations of protecting the rights of ethnic minorities. It is conducive to the sustainability principle of fostering an equitable and progressive society.