

Legislative Council Bills Committee on Race Discrimination Bill

Compatibility of the Race Discrimination Bill with the Basic Law and international human rights treaties

Introduction

At the meeting held on 16 January 2007, Members asked the Administration –

- (a) to explain how the Race Discrimination Bill as presently drafted is in conformity with Article 25 of the Basic Law, i.e., “All Hong Kong residents shall be equal before the law”; and
- (b) to explain how the Bill as presently drafted could meet the obligations under various international human right treaties applicable to Hong Kong, such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

2. This paper sets out the Administration’s explanation on the matters raised.

Conformity with Article 25 of the Basic Law

3. The Bill as presently drafted is consistent and in conformity with Article 25 of the Basic Law.

4. Article 25 of the Basic Law provides that “all Hong Kong residents shall be equal before the law.”

5. The Bill as presently drafted proposes to prohibit racial discrimination in both the public and the private sectors in various specified areas, eg employment, education, provision of goods, services and facilities. It applies equally to all. All Hong Kong residents, including new arrivals, are protected by the Bill in all the activities coming within the scope of the Bill. Indeed, the Bill’s safeguards are available also to tourists whose presence in Hong Kong is only temporary.

Compatibility with international treaties and obligations

6. The relevant treaty provisions are as follows –
 - (a) Article 5 of the ICERD - “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”;
 - (b) Article 2 of ICCPR - “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”;
 - (c) Article 2 of the ICESCR - “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

7. As explained in the Legislative Council Brief circulated to Members on 29 November 2006, the application of the ICCPR has been implemented in Hong Kong through the Hong Kong Bill of Rights Ordinance (HKBORO). It prohibits the Government from engaging in practices that would entail any form of discrimination, including discrimination on the ground of race. However, the HKBORO does not bind the private sector.

8. The absence of specific legislation in Hong Kong against racial discrimination applicable to the private sector has been the concern of the treaty monitoring bodies. Particularly, in its Concluding Observations on HKSAR’s last report, the Committee on the Elimination of Racial Discrimination has raised concern over our lack of legal provisions “protecting persons from racial discrimination to which they may be subjected by private persons, groups or organisations”. Similar calls for the extension of legal protection to the private sector had also been made by the United Nations Human Rights Committee which

oversees the ICCPR, and the Committee on Economic, Social and Cultural Rights which oversees the ICESCR.

9. Against this background, the Race Discrimination Bill as drafted now seeks to extend the prohibition of racial discrimination to the private sector by creating a new tort. Victims who suffer racial discrimination by the Government, public authorities or private individuals or parties in specified areas can have a cause of action in tort against the discriminator under the Bill. We believe that the Bill meets the concerns raised by the treaty monitoring bodies and is compatible with our international obligations under ICCPR, ICESCR and ICERD.

Home Affairs Bureau
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