

# **Views on the Race Discrimination Bill**

**Submission to  
Bills Committee on the Race Discrimination Bill**

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## **A. Introduction**

The Hong Kong SAR government has, after repeated pressure from United Nations and the local community, finally announced the Race Discrimination Bill (the bill). We welcome the long awaited legislation, but are seriously concerned about the proposals made in the bill.

It is very disturbing that the government already from the outset is determined not to include new immigrants from Mainland China in the law as a protected group. The government must recognize that new immigrants equally face racial discrimination from local people and they must be included in the bill. Secondly, the government has excluded racial discrimination based on language and religion. Given the presence of religious minorities and the large number of ethnic minorities who do not speak Cantonese or English it is important that discrimination on the grounds of language and religion is adequately protected against. Thirdly, the Immigration Ordinance must be brought into the purview of the law, and include asylum seekers, refugees and torture claimants as a protected group. Furthermore the sunset period for companies or employers with less than six employees must be reduced to a minimum, and a broader definition of indirect discrimination must be adopted in order to fully protect minorities against racial discrimination. Lastly a duty to provide special measures must be included in the bill to promote equality and the Equal Opportunities Commission should be given adequate powers to assist victims of racial discrimination.

## **B. New immigrants from Mainland China**

The Government will not consider the status being an immigrant from Mainland China as a ground of discrimination under the Racial Discrimination Bill on the basis that the new immigrants are of the same ethnic group as local Chinese. The Government suggests in the bill that the discriminatory treatment experienced by new immigrants is based on *social* rather than racial grounds.

However, the treatment afforded by the Government to recent immigrants from Mainland China was different before June 2003. The status being a new immigrant from China was considered as a ground of discrimination on the basis that racial discrimination against identifiable minorities is included in race related issues under the concern of international bodies<sup>1</sup>. In 2000, in its submission to the Committee on the Elimination of All Forms of Racial Discrimination, new immigrants were also considered as a protected group.<sup>2</sup> On 12 March 2003, the legislative councillor, Miss Audrey Yu moved on a motion debate in the legislative council. The motion requested that the Hong Kong Government to legislate against racial discrimination and that the protected groups should include new immigrants from mainland China, ethnic minorities and foreign domestic helpers. The legislative councillors passed the motion unanimously. This demonstrates that there is substantial social support for the legal protection for new immigrants as a protected group under the RDO.

Also the Hong Kong Census and Statistics Department has conducted special reports to provide a profile of new immigrants from Mainland China having resided in Hong Kong for less than 7 years. In the past 7 years, about 380,000 new immigrants have settled in

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<sup>1</sup> Hong Kong Home Affairs Branch, "Consultation paper on Equal opportunities: A study of discrimination on the ground of race", Hong Kong, 1997.

<sup>2</sup> Hong Kong Special Administrative Region, Report of the Hong Kong Special Administrative Region under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, 2000, paragraph 23-24, 43-55, CERD/C/357/Add.4 (Part II), 19 April 2001, ([www.hab.gov.hk](http://www.hab.gov.hk) 10/5/2004).

Hong Kong where they have faced severe racial discrimination<sup>3</sup>. Besides, according to the surveys and reports from NGOs<sup>4</sup> as well as newspapers<sup>5</sup>, new immigrants suffer from severe racial discrimination. In a survey conducted by Society for Community Organization in 2001, where 90% of the 100 respondents came from Guangdong Province, it was found that over 80%<sup>6</sup> complained that they have experienced discrimination because of their new immigrant identity, behaviour or appearance. This figure has now risen to be more than 91% in 2004<sup>7</sup>. Regarding discrimination nearly 30% of them were rejected for employment when the employer saw that their identity card did not show permanent residence status or because their dialect was different from that of Hong Kong people. Near 40% of them received lower wages than that of local people. Near 60% of them received inferior service or treatment than that of local people when the service provider recognized them as a new immigrant. 60% of them had been racially vilified in public area. Over 90% of them felt that local Hongkongers racially discriminated against new immigrants. It was also found that over 60% of them encountered racial discrimination when they sought help from the Government Department concerned.

The government argues that new immigrants are no different from the local Chinese, but in fact the government does distinguish them through different policies. New immigrants from Mainland China do not enjoy the same treatment as the local Hong Kong permanent residents under the Government policies. The rights to political participation and welfare are only enjoyed by the Hong Kong permanent residents with 7 years residence or above. New immigrants are less privileged than the Hong Kong permanent residents. They constitute a minority in society and legal protection should be given to them.

Furthermore there is a legal and social case for treating new immigrants from Mainland China as a protected group under the Bill. The general recommendations 8, 14 and 24 of the International Convention on Elimination of All Forms of Racial Discrimination (ICERD) state the importance of self-identification of the affected group.

The Committee on Economic, Social and Cultural Rights strongly urges the HKSAR to extend the protection afforded by the proposed racial discrimination law to internal migrants from the Mainland, and to put a stop to the widespread discriminatory practices against them on the basis of their origin in its concluding observation in 2005.

In all case law from the common law countries, such as United Kingdom, Australia, New Zealand, the meaning of ethnic origin is broadly defined with social and cultural perspectives. Especially for the case law, in *Commission for Racial Equality v Dutton* [1989] and *King-Ansell v. Police* [1979] 2 N.Z.L.R. 531, 543, it is held that the essential

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3 Hong Kong Immigration Department, 2004; Hong Kong Census and Statistics Department, Special Report No.25, "Persons from Mainland China having resided in Hong Kong for less than 7 years", 2000

4 Society for Community Organization, Research report on the situation of racial discrimination against new immigrants from mainland, 2001 ([www.soco.org.hk](http://www.soco.org.hk) 5/4/2004); Coalition for Racial Equality and Hong Kong Human Rights Commission, Joint Submission to the United Nations Committee on the Elimination of Racial Discrimination on the First Report in respect of Hong Kong Special Administrative Region of the People's Republic of China under International Convention on the Elimination of All Forms of Racial Discrimination, July 2001 ([www.hkhr.org.hk](http://www.hkhr.org.hk), 12/4/2004); Society for Community Organization, Research on the life adaptation of migrant youth, 4/4/1998, ([www.soco.org.hk](http://www.soco.org.hk) 2/4/2004).

5 "Thousand of New Immigrants complained of being racial discriminated against", Ming Pao, (明報·新移民歧視投訴達千宗) 22 June 2003.

"Being called animal, new immigrant university student committed suicide", Ming Pao, 7 October 2003, p.A3(明報·被歧視喚畜生·新移民大學生燒炭亡).

6 Society for Community Organization, Research report on the situation of racial discrimination against new immigrants from mainland, 2001 ([www.soco.org.hk](http://www.soco.org.hk) 5/4/2004); Coalition for Racial Equality and Hong Kong Human Rights Commission, Joint Submission to the United Nations Committee on the Elimination of Racial Discrimination on the First Report in respect of Hong Kong Special Administrative Region of the People's Republic of China under International Convention on the Elimination of All Forms of Racial Discrimination, July 2001 ([www.hkhr.org.hk](http://www.hkhr.org.hk), 12/4/2004); Society for Community Organization, Research on the life adaptation of migrant youth, 4/4/1998, ([www.soco.org.hk](http://www.soco.org.hk) 2/4/2004).

7 Society for Community Organization 2004 《內地來港新移民受種族歧視情況及對「禁止種族歧視法例」期望問卷調查》, September 2004.

criteria for identifying an ethnic group are not the seven conditions<sup>8</sup>, but how the group perceives themselves and how the others perceives the group. Besides, the Court said it is not necessary to come within all seven conditions.

The ethnic groups are identified by their historical or cultural background or sometimes by their self-identification.<sup>9</sup> In *King-Ansell v Police* [1979] 2 N.Z.L.R. 531, 543, the Court provided that self-perception and the perception from the others are the two essential guidelines to identify a racial group by ethnic origin. In the historical development, some ethnic minorities claimed to be a Han Chinese, or Han Chinese claimed to be an ethnic minority. In the Hong Kong situation, it is not enough simply to define Han Chinese or ethnic minorities, it is mainlander or Hongkonger as well as immigrants or locally born. It is not only an issue of biological ethnicity, but also a legal and social development of ethnicity or nationality. The proportion of locally born residents to the whole population was about 30% in the 60's, but now it is about 60%<sup>10</sup>. More and more people were born locally, their national origin is Hong Kong. They have little concept about China. It is different from new immigrants. The Hong Kong Government should take into consideration this social development.

According to the survey, over 80% of new immigrants consider themselves different from Hongkongers and feel that they are discriminated against by Hongkongers. They consider themselves Chinese, whereas Hong Kong people consider themselves Hongkongers. In Chung Ting-yiu's public opinion program survey entitled on *Integration or Segregation: The political attitude of new arrivals*,<sup>11</sup> it was found that there was a substantial gap between new immigrants and the locally born. 48.5% of new immigrants perceived themselves as "Chinese", while only 10.3% perceived themselves as "Hongkongers". 21.2% of locally born people perceived themselves as "Chinese", but 40.6% perceived themselves as "Hongkongers". It cannot, therefore be denied that the new immigrants perceived themselves as a different group from the local people. The General Comment 8 of the ICERD also made clear that self-identification is an extremely important component in identifying a group and provides protection to the group.

If ethnic origin is taken in its broader meaning to include self-perception of the group, then the status being a new immigrant from Mainland China can be categorized as a ground of discrimination on the basis of ethnic origin.

Lastly differences among Chinese are recognized on the basis of national or ethnic origin in Mainland China. According to citizens' national or ethnic origin, the Chinese Government provides legal protection according to ICERD even though the different ethnicities and national groups are all Chinese. Some of the recognized minority nationalities in China are not genetically distinguishable from the Han, but their claim for status as minorities is still recognized. New immigrants are ethnic Chinese just as the local people, but this does not mean that their cultural, linguistic and historical aspects are the same as that of local people. Their national and ethnic origin should be assessed.

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<sup>8</sup> The seven conditions include: 1. a long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive, 2. a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance, 3. either a common geographical origin, or descent from a small number of common ancestors, 4. a common language, not necessarily peculiar to the group, 5. a common literature peculiar to the group, 6. a common religion different from that of neighbouring groups or from the general community surrounding it, 7. being a minority or being an oppressed or a dominant group within a larger community.

<sup>9</sup> Arthur (see n 53 above).

<sup>10</sup> Hong Kong Census and Statistical Department, 2001 Population Census – Summary Reports, 2002.

<sup>11</sup> Chung Ting Yiu, Chapter 11: *Integration or Segregation: The political attitude of new arrivals*, Johannes Chan & Bart Rwezaura general editors, *Immigration Law in Hong Kong, An Interdisciplinary Study* (Hong Kong: Sweet & Maxwell Asia, 2003).

The Hong Kong legal system is based on the essential principles of the common law including the principles of equality before the law. The separate legal system also affects Hong Kong's international relationship and its status with respect to international treaties and organizations. There is one country, but two international legal personalities. The new immigrants from Mainland China can be protected under the ground of national origin.

Discrimination against new arrivals from the Mainland is a serious social problem and firm action should be taken to tackle with. It is to suggest that the new racial discrimination legislation should include new arrivals from Mainland China. The bill should prohibit discrimination against new immigrants from Mainland China on the ground of national origin or ethnic origin or new immigrants from Mainland China. The status being a new immigrant from Mainland China should be recognized as a ground of discrimination in the law<sup>12</sup>.

### **C. Discrimination based on language**

The Home Affairs Bureau has proposed only to define racial discrimination in line with article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which includes discrimination based on race, colour, descent, or national or ethnic origin. This definition, however, does not include racial discrimination based on language.

In the proposed race discrimination bill, the government makes it lawful in various areas to refrain from facilitating communication with ethnic minorities who do not speak Chinese or English. According to the bill, the failure to use a specific language in areas such as training, education, provision of goods, services and facilities, disposal of premises or access to clubs, is *not* illegal.

In some countries the ethnic minorities have already integrated into society and speak the local language very well. However, this is not the case in Hong Kong. In fact according to government statistics<sup>13</sup> the difficulty most frequently encountered by ethnic minorities is the language problem.

According to statistics published by the Home Affairs Bureau<sup>14</sup> only 11.2% of the ethnic minorities are fluent in Chinese, while only 60.4% claim to be fluent in English. Thus the rest are not fluent in the official languages of Hong Kong. A further break down by ethnicity reveals some significant differences: While 45.1% of the Thais who claim to be fluent in Cantonese, this only applies to 10.3% of the Pakistanis. And while 85.4% of the Indians are fluent in English, this only applies to 15.1% of the Pakistanis.

The fact that so many do not speak English or Chinese means that the government must adapt the bill to the special circumstances of Hong Kong and thus make discrimination based on language unlawful.

One may argue against including language as a ground of discrimination by pointing to the indirect discrimination clause. The government argues that situations where people are discriminated because of language are already covered under indirect discrimination.

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12 For details please see [http://www.soco.org.hk/news/new\\_e.htm](http://www.soco.org.hk/news/new_e.htm) : Racial Discrimination in Hong Kong: A Focus on the Treatment of New Immigrants from Mainland China under the Future Racial Discrimination Ordinance, Society for Community Organization (2004), Hong Kong.

13 AC Nielsen 2000: Omnibus Household Survey in the Fourth Quarter of 1999 (Characteristics of the Ethnic Minorities) Prepared for the Home Affairs Bureau, Hong Kong. table 13c

14 AC Nielsen 2000: Omnibus Household Survey in the Fourth Quarter of 1999 (Characteristics of the Ethnic Minorities) Prepared for the Home Affairs Bureau, Hong Kong.

However, not all cases of language discrimination are indirect, and relying on the indirect discrimination clause would significantly limit the possibility for a victim to make a complaint if the type of discrimination was direct and not indirect.

A language discrimination provision would also make it unlawful if ethnic minorities are denied access to government services. Often government front line workers and institutions will use language as an excuse for not providing services. For instance many minorities have not been able to find a job through the Labour Department because the worker told them that they could not help them find a job if they couldn't speak Chinese. In a survey released by the Society for Community Organization (SoCO), only 7.4% of the ethnic minorities who had approached the Labour Department to search a job could find a job through these means. However, language as a requirement seems to be an excuse for the front line officers for not providing adequate service to minorities. In fact language may be used as a mask for racial hostility of individuals who speak other tongues.

Accessing hospital services is a major problem as interpreters are seldom provided. However, the need for interpreters is widespread. A survey by SoCO in February 2004 revealed that more than 1/3 of ethnic minorities has communication problems with hospital staff, and that they cannot fully express their problems to the staff. It is not only those who do not speak Chinese who have problems. Even those who have English as their second language face various difficulties.

The right to health care is a human right. According to the International Convention on the Elimination of Racial Discrimination (ICERD) every person has the right to receive public medical services (article 5(e)(iv)). However, when smooth communication between patient and staff is not provided, the government is eventually barring ethnic minorities from getting optimum health care on an equal basis with Chinese people.

The current language policy only imposes a *de jure* equality where it imposes the same obligations and affords the same opportunities to all citizens. However, this does not mean that there is *de facto* equality, as a big portion of the ethnic minorities do not have the official state language as their mother-tongue.

In fact Hong Kong has a legal obligation to legislate against language discrimination: Article 2(2) of the ICESCR and Article 1 of the Bill of Rights already state that the rights must be exercised without discrimination as to "race, colour, sex, language, religion [...] national or social origin."

The Hong Kong lawmakers must look beyond the ICERD, which only serves as a minimum, and form a law which can serve the uniqueness of the Hong Kong situation by including language as a ground of discrimination.

#### **D. Protective clauses for asylum seekers and refugees**

People who seek asylum in Hong Kong are predominantly from Southeast Asia and Africa. Thus most of them are ethnic minorities and have darker skin colour. This group of people is often discriminated against by government staff and private individuals. For instance they complain that medical staff of hospitals does not examine them properly or that it is difficult to find landlords who are willing to rent a room to them.

However, given the fact that the government treats them as illegal immigrants and does not provide them with any identity documents, they are particularly vulnerable to racial discrimination. Without any legal status, they would feel reluctant to make any complaints against racial discrimination, because contacting any authorities to submit a

complaint would make them vulnerable to arrest and detention. The upcoming race discrimination ordinance should include a protective clause for asylum seekers to ensure that they are equal before the law and that they have real access to complain about racial discrimination.

Secondly, asylum seekers are denied access to health care, education, welfare and housing, and are furthermore subject to detention, solely because the government does not recognize their right to seek asylum. If they approach the Immigration Department to extend their visas or get recognizance they are often rejected and will be asked to leave Hong Kong, which they are unable to. Returning to their country of origin would subject them to torture or persecution.

The fact that the government does not recognize their right to seek asylum, means that they are left without any valid identity documents. This lack of documents leads to denial of health care, welfare and education.

The current immigration law, which lacks protection for asylum seekers and refugees, is racially discriminatory as it indirectly affects people who mainly come from the African and Southeast Asian continents. In order to ensure equal rights, immigration law should not be excluded from the race discrimination ordinance.

### **E. Indirect discrimination**

According to the Home Affairs Bureau, it is planned that legislation against racial discrimination should be modelled on the existing three discrimination ordinances, that is the Family Status Discrimination Ordinance (FDO), Disability Discrimination Ordinance (DDO) and Sex Discrimination Ordinance (SDO). This poses a problem especially to the definition of indirect discrimination as it has already been amended in laws abroad<sup>15</sup>.

The HK government proposes to define indirect discrimination as occurring when a person applies to another person a *requirement or condition* which he applies or would apply to persons not of the same ethnic group as that other person but 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<sup>16</sup>.

The problem with the above definition is that “requirement or condition” has been interpreted rather narrowly by UK judges, making it difficult to claim indirect discrimination. In fact the judges tended to interpret this as requiring the plaintiff to identify a policy that acts as an “absolute bar” to access some benefit or to hiring or promotion. Examples of case law: *Perera v Civil Service Commission and Department of Customs & Excise (No 2)* [1983] IRLR 166; and *Meer v London Borough of Tower Hamlets* [1988] IRLR 399<sup>17</sup>. If HK adopts the same definition it is highly likely that Hong Kong judges would follow a narrow interpretation as well.

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<sup>15</sup> The definition of indirect discrimination has already been amended in the laws of United Kingdom (Race Relations Act 1976 (Amendment) Regulations 2003) to comply with the Race Directives of the European Council.

<sup>16</sup> The full definition of indirect racial discrimination is the following:

Indirect discrimination occurs when a person applies to another person a requirement or condition which he applies or would apply to persons not of the same 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.

<sup>17</sup> Carole J. Petersen 2004: “Racial equality and the law: Creating an effective statute and enforcement model for Hong Kong” in: 34 *Hong Kong Journal* 459.



Secondly, the above indirect discrimination definition requires one to prove that a *considerably smaller proportion* of persons cannot comply with a requirement. This requires the claimant to provide statistical evidence. This, however, is not the case in the UK.

The Race Directives already adopted in European countries, however, replaces the “requirement or condition” with “*neutral provision, criterion or practice*” and further requires an objective justification test. An objective justification test means that it must be shown by the defendant that the provision, criterion or practice can be *objectively justified* by a legitimate aim and the means of achieving that aim are *appropriate and necessary*.

The advantages of the new definition of indirect discrimination are that the scope of cases is wider and that the claimant is not required to provide statistical evidence, but rather the defendant must prove that the practice is appropriate and necessary.

It is highly disturbing that the government does not want to adopt a more updated and recent definition, as indirect discrimination is widespread in Hong Kong. For instance many ethnic minorities have difficulties in accessing the health care system because they face communication problems with the staff. The lack of provision of an interpreter would thus be a case of indirect discrimination.

#### **F. Discrimination based on religion**

As mentioned above the government does not intend to legislate against racial discrimination based on religion. However, the government has international obligations to make provisions against this kind of discrimination. Thus ICCPR article 26, and Article 2 of the ICESCR, state that the rights 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”. Also Article 1 of the Hong Kong Bill of Rights recognizes the right to be free of discrimination based on religion.

The law against racial discrimination provides a good opportunity for the government to prevent discrimination based on religion, because there is often an overlap between religious and racial identities. According to a survey by the Home Office of the United Kingdom especially minorities who are religiously visible such as Sikhs, Hindus and Muslims, identify a degree of overlap between religious and cultural identities and religious and racial discrimination. Furthermore some religious people make no distinction between religion and ethnicity while others wish to do so.

After the September 11 attacks in the US, discrimination against Muslims has increased worldwide. Muslim organizations in England note that hostility, verbal abuse and unfair media coverage has become more frequent. Also some Muslims in Hong Kong have reported being stereotyped and being negatively associated with terrorism. However, anger at those responsible for the tragic events of September 11 should not be misdirected against innocent individuals because of their religion, ethnicity, or country of origin.

It is important that a specific reference to religion is made in the race bill. Experience from abroad has shown that while some Muslims have been able to find protection under racial or sex discrimination laws, many cannot and fail to take injustices to court.

Thus the government ought to learn from the years of experience gained from overseas, where provisions already exist to make religious discrimination unlawful. The Council of Ministers has approved two directives proposing minimum standards of legal protection against discrimination throughout the European Union. The Employment Directive requires member states to make discrimination unlawful on grounds of religion or belief, disability, age or sexual orientation in the areas of employment and training<sup>18</sup>. Thus United Kingdom has already put into force The Employment Equality (Religion or Belief) Regulations 2003. Also the Fair Employment and Treatment (Northern Ireland) Order 1998 (FETO) makes it unlawful to discriminate against someone on the ground of religious belief or political opinion in Northern Ireland.

### **G. Exception for companies with less than six employees**

The government has suggested that several exemptions should apply to the future race discrimination law. Among these, there is a three year exemption for small businesses or employers with less than six employees.

However, ethnic minorities who work in small businesses such as restaurants, salons, shops etc. report being discriminated against. They receive lower wages or have worse working conditions than their Chinese counterparts solely because of their race.

The government believes that the small businesses and employers must be exempted because they need time to adapt themselves to the law. However, Hong Kong already has 3 discrimination ordinances in place, which the businesses have had plenty of time to accommodate themselves to. Furthermore the government already published a *Code of Practice Against Discrimination in Employment on the Ground of Race* in 1998, which means that the businesses already have had time to get to know the principles of non-discrimination in employment. Thus the government should make the exemption period as short as possible.

### **H. Special measures**

The government has stated that one of the objects of the bill is to implement the International Convention on the Elimination of Racial Discrimination<sup>19</sup>. Thus it is not only the concept of non-discrimination that must be implemented but also other provisions stated in the convention. One very important article in the convention is article 2(2) of the ICERD which requires that states parties shall take *special measures* to guarantee the equal enjoyment of human rights.

Special measures may also be termed positive discrimination, and require the government to provide measures to tackle general inequalities that specific groups may face, such as a higher unemployment rate, or lack of access to vocational training. Such an approach is different from a non-discrimination approach which only prohibits discrimination but does not attempt to provide equality of outcome.

As ethnic minorities represent a very disadvantaged group in HK society, it is important that a positive approach is adopted. It is the duty of the government to look into the existing inequality, and it must improve the relative position of particular groups. The government must emphasize the actual outcome to achieve an equal impact.

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<sup>18</sup> <http://www.cre.gov.uk/legaladv/art13.html>

<sup>19</sup> Home Affairs Bureau 2004: Legislating Against Racial Discrimination, Hong Kong: page 9,

The Race Discrimination Bill however, does not impose on public authorities a positive duty to promote equality. This duty however, already exists in race legislation abroad. In Great Britain, the Race Relations (Amendment) Act 2000 introduces a duty on public authorities to promote equality of opportunity and good relations between persons of different racial groups. And in Northern Ireland the Fair Employment and Treatment Order 1998 (FETO) imposes on employers certain duties that go beyond non-discrimination. It includes obligations to monitor and periodically review to ascertain if there is fair participation and consideration of suitable affirmative action to address under-representation<sup>20</sup>.

A positive duty to promote equality would be an important step towards equality for ethnic minorities. A positive approach may take form as a positive duty on a public sector employer or a service provider to promote equality of opportunity, or a requirement to monitor the progress of employing ethnic minorities.

There are at least three main areas where special measures should be taken to ensure equality, namely in employment, access to government services and the educational sector.

#### High unemployment rate among ethnic minority residents

Employment is a major area where special measures are needed to address existing inequality. The unemployment rate is significantly high among ethnic minorities. Research has shown that more than 40% of the ethnic minorities are out of jobs, which is much higher than the 6.9% among the overall population. Some few figures can indicate the relatively higher unemployment rate. While 42% of the Nepalese construction workers are out of jobs, the figure was 19% for the overall population in the end of 2003. In fact 33% of the Nepalese respondents in a survey answered that they did not have any income and 48% were living under the poverty line<sup>21</sup>.

The high unemployment rate among ethnic minorities can be contributed to the fact that the government has no specific policy to create jobs for minorities or to eliminate the barriers that minorities face in accessing the labour market. In fact the employment services, especially those in the Labour Department, do not suit the special needs of minorities who do not speak the local Chinese dialect. Furthermore most vocational training courses are only provided in Chinese, thus making it impossible for minorities to attend these courses.

#### Access to government services

Another area where special measures are highly recommended is in the provision of government services. As mentioned above, many ethnic minorities are not fluent in English or Chinese. This seriously hinders their access and equal treatment in government services. One example is the treatment in hospitals. According to a survey conducted by SoCO more than 37% of the ethnic minorities have problems in communicating with hospital staff. This, combined with racial discrimination, may be the

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20 Office of the First Minister and Deputy First Minister 2004: A Single Equality Bill for Northern Ireland. A Discussion Paper on options for a Bill to harmonise, update and extend, where appropriate, anti-discrimination and equality legislation in Northern Ireland. June 2004, Northern Ireland.

21 The poverty line per individual is half of the median wages for the whole population (\$5,500) as defined by the Hong Kong Social Security Society.

reason that 20% feel that staff do not help them well. Some even get wrong medication or treatment. Without provision of professional interpreters<sup>22</sup>, ethnic minorities are denied equal treatment in government services.

## Education

The Government's new school allocation system for ethnic minority children now means that the children can study in a Chinese school, which is preferable to having no choice at all as in the past where the students could only choose English Medium Schools. However, many ethnic minority children face severe difficulties in schooling, especially learning Chinese. Although the government has changed its policy it has not been accompanied by services to match the needs of students who attend Chinese Medium Schools. In fact the change has been too hasty, leaving many ethnic minority children without the special attention and support they need in a new environment. The need for special training for teachers and parents is of outmost importance if the new policy is to help ethnic minorities integrate into the local school system.

## **I. Monitoring mechanism**

In the past years, the Equal Opportunities Commission (EOC) gained a reputable status within local and international communities. However the termination of contract of the former chairperson, Madam WU Hung-yuk, and the unfair dismissal of the directors of operation has had a destructive effect on the credibility of the EOC, and it now seems unfit to promote anti-discrimination movement effectively.

It is important that the government is committed to equal opportunities. The recent happenings can only suggest the opposite and has created flaws in the good reputation of the EOC. It is important that the EOC functions as a fully independent statutory body. Also it must be provided with the necessary resources to ensure that victims are supported through investigation and conciliation.

Regarding the EOC the following should be stressed:

- The EOC must have powers to regularly review government policies<sup>23</sup> towards protection against racial discrimination and for the promotion of equality.
- Ethnic minority representatives should be widely represented in the future board of the monitoring mechanism.
- It must be ensured that multilingual services are available in handling the complaints and that language support is given all through the process.
- The EOC must be given adequate resources to assist claimants.

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<sup>22</sup> Although the government says that interpretation services are available, they are seldom used and hospital staff may not know about the availability of these services. In fact a survey of 43 hospitals and clinics showed that only 1 hospital offered this service on request.

<sup>23</sup> A lot of the current government policies are racially discriminatory, e.g. the 7 year residence rule for application of CSSA and public housing, the levy in employers of foreign domestic helpers and the Immigration Ordinance which splits ethnic minority families and new immigrant families apart.

- The EOC should play a major role in raising awareness among the public about racial discrimination and equality and promote diversity through the media and education/training. The EOC should further play a major role in raising awareness among the ethnic minorities about racial discrimination and the role of the EOC.

**Recommendations:**

1. Include language as a ground of discrimination and cancel the exemptions on language as mentioned in clause 58 of the proposed Race Discrimination Bill.
2. Include a positive duty to provide special measures in the bill especially in relation to employment, access to government services (such as provision of interpreter in hospitals) and the educational sector (including vocational training).
3. Include the status being a new immigrant from Mainland China in the Race Discrimination Bill as a ground of discrimination.
4. Include discrimination on the ground of religion in the Race Discrimination Bill.
5. Reduce the 3-year sunset period for businesses and employers to a maximum of 1 year.
6. Include the Immigration Ordinance under the purview of the Race Discrimination Bill.
7. Include asylum seekers, refugees and torture claimants as a protected group under the Bill.
8. The Equal Opportunities Commission must be given adequate resources and powers to assist victims of racial discrimination such as providing remedies, monitoring and clamping down on abuses. Furthermore, it should provide more effective accessible, multi-lingual and racially/gender-sensitive channels for ethnic minorities to report violations.

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