

Bills Committee on the Race Discrimination Bill

Response by the Administration to the outstanding issues raised by Bills Committee Members in relation to Clause 3

Introduction

At previous meetings of the Bills Committee, Members raised a number of issues relating to the application of the Bill to Government (i.e. Clause 3 of the Bill). Some of the issues have been addressed in previous papers submitted by the Administration. This paper provides the Administration's response on the other issues raised. Where necessary, the key considerations in drafting the Bill are recapitulated in this paper. The headings of the paragraphs follow the notations in the List of issues prepared by the Legislative Council Secretariat and circulated under LC Paper CB(2)2753/06-07(05).

Item 1(a): Allegation of Clause 3 granting a broad exemption to Government

2. A key consideration which called for the introduction of the Race Discrimination Bill was that the human rights protections under the Hong Kong Bill of Rights Ordinance (HKBORO) bind only the Government and public authorities. They do not cover acts of racial discrimination in the private sector. This was the cause of concern, both locally and with the United Nations Committee on the Elimination of All Forms of Racial Discrimination.

3. It was against this background that the Bill was introduced into the Legislative Council, specifically to address concerns over the lack of specific legislation "protecting persons from racial discrimination to which they may be subjected by private persons, groups or organizations." For the sake of parity of treatment, we have proposed in Clause 3 that the Bill, when enacted, would apply "to an act done by or for the purpose of the Government that is of a kind similar to an act done

by a private person.” In other words, the proposed provisions will apply to both the Government and the private sector. Clause 3 is not meant to be an exception clause and ought not be regarded as “granting a broad exemption”.

Item 1(b): Avenues for redress or remedy to address complaints against racial discrimination

4. There are various existing avenues for complaints against government officials and public authorities for any alleged racial discrimination. The HKBORO has operated in Hong Kong since 1991 and people from all sectors irrespective of their race are able to seek legal redress against the Government for contravention of the Bill of Rights.

5. Apart from seeking redress and remedy in courts, other avenues are available to address such complaints. They include the Ombudsman, the Complaints Against Police Office and complaint channels in bureaux and departments. These mechanisms have operated effectively in safeguarding the legitimate interests and rights of individuals in Hong Kong.

Item 1(c): Fulfillment of international obligation in the elimination of racial discrimination

6. The Government firmly upholds the principles of equality and recognises protection against racial discrimination to be a fundamental human right for all persons. In connection with our obligation under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) to take steps “to prohibit and to eliminate racial discrimination in all its forms”, we have a good track record in ensuring the necessary safeguards and in providing additional support service to promote integration of and equal opportunity for people irrespective of their race. The particular concern of United Nations Committee on the Elimination of All Forms of Racial Discrimination was over the lack of specific legislation to prohibit acts of racial discrimination in the private sector. The Race Discrimination Bill was introduced especially to

address this concern, in fulfillment of our international obligation for the elimination of racial discrimination.

Item 1(d): Background in the United Kingdom (UK) leading to the addition of 19B to the Race Relations Act (RRA) in 2000

7. The 2000 Amendments to the UK RRA were made against the background of decades of racial violence and institutional racism in the country. There were Cardiff riots in 1919 and various subsequent others in modern British history. A Home Office study on the subject in 1991 clearly warned that racial attacks presented a serious problem in the UK. According to statistics, in 1994-98, reported racist incidents in the Metropolitan police area were around 5,000 each year. That figure rose to 11,050 in 1998-99 and to 23,346 in 1999-2000. In England and Wales, police recorded 25,100 racially aggravated offences in 2000-2001, of which 12,455 incidents were of racially aggravated harassment, 4,711 incidents of racially aggravated common assault and 3,176 incidents of racially aggravated wounding.

8. As noted by the UK Home Secretary when introducing the 2000 RRA Amendments in Parliament, the trigger point to the Amendments was the inquiry into the death of Stephen Lawrence, an 18 year old black youth who was stabbed to death on 22 April 1993. The incident which led to his murder lasted less than a minute, was undoubtedly racially motivated and involved five or six white male youths.

9. Stephen Lawrence and his friend were on the way home when they came at around 10:30 pm to the bus stop in Well Hall Road, Eltham. Stephen went to see if a bus was coming, and his friend called out to ask if he saw the bus coming. There was a group of about 5 or 6 white youths on the opposite side of the road and one of the youths called out "what, what nigger?" With that the group came quickly across the road and literally engulfed Stephen. During this time one or more of the group stabbed Stephen twice. Stephen had been stabbed to death of about five inches on both sides of the front of his body to the chest and arm. Medical evidence indicates that Stephen was dead before he was removed by the ambulance men some time later.

10. Prolonged police investigations produced no witnesses. The case was eventually taken to trial in 1996 in a private prosecution brought by the Lawrence family but failed because of the lack of sufficient evidence. The controversy and public uproar which ensued finally culminated in an inquiry which was commissioned by the UK Home Secretary in July 1997. The report of the inquiry led by Sir William Macpherson was laid before Parliament on 15 February 1999.

11. The main conclusion of the inquiry was that “there is no doubt but that there were fundamental errors. The investigation (by the police) was marred by a combination of professional incompetence, institutional racism and a failure of leadership by senior officers.” The underlying cause of the police failure was found by Macpherson to be, not purely incompetence, but institutionalised racism. The report observed that “the case must have been thrown or at least slowed down because officers approached the murder of a black man less energetically than if the victim had been white and the murderers black”. While the Police Commissioner did not accept that there was institutional racism within his force, he stated during the inquiry proceedings that “I recognise that individual officers can be, and are, overtly racist. I acknowledge that officers stereotype, and differential outcomes occur for Londoners. Racism in the police is much more than ‘bad apples’.”

12. The Inquiry Report contained 70 recommendations with an overall aim of eliminating racist prejudice and disadvantages and the demonstration of fairness in all aspects of policy. The suggestion to amend the Race Relations Act is in Recommendation 11 which reads as follows:

“That the full force of the Race Relations Legislation should apply to all police officers and that Chief Officers of police should be made vicariously liable for the acts and omissions of their officers relevant to their legislation.”

13. In response to the recommendations, the Home Secretary announced a series of measures to be implemented on the police service to ensure more effective handling and investigation of racist crimes.

He also pledged that the RRA 1976 would be extended to cover the police and the public services. These amendments were subsequently enacted through the Race Relations (Amendment) Act 2000.

14. The above sets out the background to the amendment to the Race Relations Act in 2000. The situation in Hong Kong is entirely different and the Administration does not consider it appropriate to incorporate a similar provision in our Race Discrimination Bill.

Item 1(e): Proposed expansion of Equal Opportunities Commission's (EOC's) remit to act on complaints under the HKBORO

15. The EOC was established in 1997 specifically to implement the Sex Discrimination Ordinance. Its responsibility has since been expanded to cover implementation of the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance. This will further be expanded to cover the Race Discrimination Ordinance when it is enacted. Given the much broader ambit of the HKBORO and the availability of existing avenues of redress, we do not consider it advisable to expand the EOC's remit to act on complaints under the HKBORO.

**Constitutional and Mainland Affairs Bureau
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