

**Submission to LegCo Panel on Home Affairs:
for meeting on 10 January 2000
on
Report of the Hong Kong Special Administrative Region
under the International Convention on the Elimination of
All Forms of Racial Discrimination**

Thank you for inviting the Equal Opportunities Commission's comment on the outline ("outline") of HKSAR's Report ("Report") on the captioned Convention. In this submission, the Commission will confine itself to a number of issues arising from the outline and will in due course submit substantive views.

2. The Committee on the Elimination of Racial Discrimination relating to Hong Kong made the following observations at its 48th and 50th Sessions held in February to March of 1996 and March 1997 respectively:

- a) "With respect to Hong Kong, concern is expressed at the failure to include in the 1991 Population Census questions which would help determine the ethnic and racial composition of the population. The identification of minority groups and subsequent analysis of their political, economic and social status is a precondition to determining the difficulties that minority groups may be facing and whether and how any such difficulties may be due to discrimination" (para. 18 of 48th Session); and
- b) "Concern is also expressed that specific legislation against racial discrimination is not yet available in all the Dependent Territories and Crown Dependencies, and that in some cases such legislation should be

deemed unnecessary by the relevant authorities on the ground of the alleged non-existence of racial discrimination in the territories” (para. 19 of 50th Session).

3. We note that consultants have been employed by the Hong Kong SAR Government to conduct a discrete survey between October and December 1999 and that its findings would be included in the Report if they are available in time. This survey would be of considerable value to the community’s understanding of the size of the problem and its perception. We hope that the findings will be published for public discussion.

4. Although racial discrimination is outside the jurisdiction of the Commission, the Commission has received, since its operation in May 1996, a total of 57 complaint cases relating to racial discrimination. In the absence of statutory or institutional support, victims of racial discrimination are often reluctant to come forward with complaints.

5. Article 6 of the Convention requires State Parties to assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any act of racial discrimination which violate his human rights and fundamental freedoms contrary to the 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.

6. Furthermore, we note that the outline does not address any matter beyond Article 7. **Article 14 provides for a mechanism to deal with complaints of racial discrimination. Under this Article, a State Party may declare that it recognises the competency of the Committee on the Elimination of Racial Discrimination to receive and consider communications regarding racial discrimination from victims within its jurisdiction. This Article further provides for the establishment of a recognised domestic body which shall receive and consider complaints or petitions, and maintain a register of the same.**

In the event of failure to obtain satisfaction from the domestic body, the complainant or petitioner may then communicate the matter to the Committee. It would be useful for the Hong Kong SAR Government to highlight this mechanism for public discussion and include within its report views expressed regarding it.

7. The Hong Kong SAR Government must identify how it is fulfilling its obligations regarding reparation and satisfaction under Article 6. While a general prohibition against racial discrimination is available under the BORO, this prohibition does not extend to the private sector. By comparison to the areas of gender, marital status, pregnancy, family status and disability, where detailed laws applicable to both the public and private sectors are available, this area of discrimination suffers from a lack of specific and detailed legislative framework to receive complaints or to provide redress in the public or private sectors.

Equal Opportunities Commission
January 2000