

立法會

## *Legislative Council*

LC Paper No. LS14/07-08

### **Bills Committee on Race Discrimination Bill**

**Paper prepared by the Legal Service Division  
for the meeting on 21 November 2007**

### **Discussion Drafts of Committee Stage Amendments for Members' Consideration**

At the meeting of the Bills Committee held on 29 October 2007, Members requested that discussion drafts of Committee Stage Amendments to the Bill be prepared to facilitate Members' consideration of the available ways of effecting amendments in respect of the four fundamental issues identified in the LC paper No. CB(2)2501/06-07(01) and the options listed in paragraph 30 of that paper. This paper sets out the draft amendments and relevant information as follows—

- (a) in relation to the provisions on Application to Government, at Appendix I;
- (b) in relation to the provisions on Racial Discrimination, at Appendix II;
- (c) in relation to the provisions on New Arrivals from the Mainland, at Appendix III; and
- (d) in relation to the provisions on Exemption from Languages, at Appendix IV.

The amendments are in marked-up form with the additions underlined.

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*Clause 3 - Application to Government*

**OPTION A**

Clause 3 is deleted and substituted by the following:-

**3. Application to Government**

This Ordinance binds the Government.

**OPTION B**

Clause 3 is amended in the following manner:-

**3. Application to Government**

(1) This Ordinance applies to an act done by or for the purposes of the Government that is of a kind similar to an act done by a private person.

(2) For the avoidance of doubt, it is declared that nothing in this Ordinance shall operate to absolve the Government from any liability under any provision of the Hong Kong Bill of Rights Ordinance (Cap. 383).

**OPTION C**

Clauses 34A and 49A are added—

**34A. Public authorities**

(1) It is unlawful for a public authority in carrying out any functions of the authority to do any act which constitutes discrimination.

(2) In this section “public authority”—

(a) includes any person certain of whose functions are functions of a public nature; but

(b) does not include [e.g. the Legislative Council, the Executive Council and other authorities exercising functions specified in the Basic Law.]

(3) In relation to a particular act, a person is not a public authority by virtue only of subsection (2)(a) if the nature of the act is private.

(4) This section does not apply to—

- (a) any judicial act (whether done by a court, tribunal or any other person);
- (b) any act done on the instructions of, or on behalf, of a person acting in a judicial capacity;
- (c) any act of, or relating to, making or approving arrangements, or imposing requirements or conditions, of a kind excepted by section 56; or
- (d) any act of, or relating to, making, confirming or approving any subsidiary legislation, statutory notice or any instrument made by a public officer under an enactment.

(5) Nothing in this section makes unlawful any act of discrimination which—

- (a) is made unlawful by virtue of any other provision of this Ordinance;  
or
- (b) would be so made but for any provision made by or under this Ordinance.

#### **49A. Government appointments outside section 10**

(1) Subsection (2) applies to any appointment by the Chief Executive, any principal officials appointed under the Basic Law or a public officer (hereinafter referred to as “the relevant official”) to an office or post where section 10 does not apply in relation to the appointment;

(2) In making an appointment and in making the arrangements for determining who should be offered an office or post, the relevant official shall not do any act which would be unlawful under section 10 if the Government were the employer for the purposes of this Ordinance.

(3) Subsection (4) applies to—

- (a) any recommendation made by the relevant official in relation to an appointment to an office or post where section 10 does not apply to the appointment;
- (b) any approval given by the relevant official in relation to such an appointment;

(c) any recommendation made by the relevant official in relation to a conferment by the Government of a dignity or honour; and

(d) any approval made by the relevant official in relation to any such conferment.

(4) In making the recommendation, or giving the approval, and in making any arrangements for determining who should be recommended or approved, the relevant official shall not do any act which would be unlawful under section 10 if the recommendation or approval were an offer of employment and the Government were the employer for the purposes of this Ordinance.

(5) Subsections (3) and (4) do not apply in relation to the making of negative recommendations.

(6) Subsection (7) applies to—

(a) any negative recommendation made by the relevant official or any refusal to make a recommendation by the relevant official in relation to an appointment to an office or post where section 10 does not apply in relation to the appointment;

(b) any approval refused by the relevant official in relation to any such appointment;

(c) any negative recommendation made by the relevant official or any refusal to make a recommendation by the relevant official in relation to a conferment by the Government of a dignity or honour; and

(d) any approval refused by the relevant official in relation to any such conferment.

(7) In making a negative recommendation or in refusing to make a recommendation or give an approval, and in making the arrangements for determining whether to make such a recommendation or refusal, the relevant official shall not do any act which would be unlawful under section 10 if the recommendation or refusal were a refusal to offer the person concerned employment and the Government were the employer for the purposes of this Ordinance.

(8) Subsections (9) and (11) apply in relation to any appointment to an office or post where section 10 does not apply and—

(a) the appointment is made by the relevant official; or

(b) the office or post is an office or post in relation to which the relevant official has made a recommendation (other than a

negative recommendation) or given an approval.

(9) The relevant official shall not do an act in connection with—

(a) the terms of appointment;

(b) access for the person appointed to opportunities for promotion, transfer or training, or to any other benefits, facilities or services;

or

(c) the termination of the appointment, or subjecting the person appointed to any other detriment;

which would be unlawful under section 10 if the Government were the employer for the purposes of the Ordinance.

(10) In subsection (9)(c), reference to the termination of the appointment includes, where the act is committed on the ground of the race of the person appointed, reference—

(a) to the termination of the appointment by the expiration of any period (including a period expiring by reference to an event or circumstances), not being a termination immediately after which the appointment is renewed on the same terms and conditions; and

(b) to the termination of an appointment by an act of the person appointed (including the giving of notice) in circumstances such that he is entitled to terminate the appointment by reason of the conduct of the relevant official, as the case may be.

(11) It is unlawful for the relevant official to subject to harassment a person who has been appointed, or who is seeking or being considered for, the appointment.

(12) The Court of First Instance may, on an application for judicial review, make a declaration to the effect that the relevant official has contravened—

(a) subsection (4);

(b) subsection (7);

(c) in relation to an appointment falling within subsection (8)(b), subsection (9); or

(d) subsection (11)

and may award damages in respect of the contravention.

(13) In this section references to refusal include references to deliberate omission.

*Clause 4 - Racial discrimination*

**OPTION A**

Clause 4 is amended in the following manner:-

**4. Racial discrimination**

(1) In any circumstances relevant for the purposes of any provision of this Ordinance, a person (“the discriminator”) discriminates against another person if—

- (a) on the ground of the race of that other person, the discriminator treats that other person less favourably than the discriminator treats or would treat other persons; or
- (b) the discriminator applies to that other person a requirement or condition which the discriminator applies or would apply equally to persons not of the same racial group as that other person but—
  - (i) which is such that the proportion of persons of the same racial group as that other person who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it;
  - (ii) which the discriminator cannot show to be justifiable irrespective of the race of the person to whom it is applied; and
  - (iii) which is to the detriment of the other person because that person cannot comply with it.

(1A) In any circumstances relevant for purposes of any provision referred to in subsection (1B), a person (“the discriminator”) also discriminates against another person if the discriminator applies to that other person a provision, criterion or practice which the discriminator applies or would apply equally to persons not of the same racial group as that other person, but—

- (a) which puts or would put persons of the same racial group as that other person at a particular disadvantage when compared with other persons,
- (b) which puts that other person at that disadvantage, and
- (c) which the discriminator cannot show to be a proportionate means of achieving a legitimate aim.

(1B) The provisions mentioned in subsection (1A) are—

(a) Part 3, excepting sections 24 and 25;

(b) Sections 26 to 29;

(c) Sections 34 to 35;

[(d) Section 49A;] and

(e) Part 5, in its application to the provisions referred to in paragraphs (a) to (d).

(1C) Where, if by virtue of subsection (1A), a person discriminates against another person, subsection (1)(b) does not apply to the first-mentioned person.

(2) For the purposes of subsection (1)(b)(ii), a requirement or condition is justifiable either—

(a) if it serves a legitimate objective and bears a rational and proportionate connection to the objective; or

(b) if it is not reasonably practicable for the person who allegedly discriminates against another person not to apply the requirement or condition.

(3) In determining for the purposes of subsection (2)(b) whether it is reasonably practicable for a person who allegedly discriminates against another person not to apply a requirement or condition, any relevant circumstances of the particular case may be taken into account including those referred to in subsection (4).

(4) The circumstances that may be taken into account include, but are not limited to—

(a) the nature of the benefit or detriment likely to accrue to or be suffered by, or the likely impact on, all persons concerned;

(b) an estimate of the proportion of persons likely to benefit out of all the persons concerned, if the requirement or condition is not applied;

(c) whether any activities of the person who allegedly discriminates against another person will be disrupted if the requirement or condition is not applied and, if so, the extent of the disruption; and

(d) whether the person who allegedly discriminates against another person will need to provide additional services or facilities or incur additional expenditure (including recurrent expenditure), if the requirement or condition is not applied.

(5) Nothing in subsection (3) or (4) is to be construed as requiring the

person who allegedly discriminates against another person or any other person concerned to confer any benefit, suffer any detriment, provide any services or facilities or incur any expenditure which the person or that other person (as the case may be) is not otherwise required to confer, suffer, provide or incur.

(6) It is declared that, for the purposes of this Ordinance, segregating a person from other persons on the ground of the race of that person is treating that person less favourably than the other persons are treated.

### ***OPTION B***

The Promotion of Equality and Prevention of Unfair Discrimination Act 2000 of the Republic of South Africa is an example of legislation aiming at equality of results. Copy extracts of some relevant provisions of the Act are attached as Appendix V for Members' reference.



*New Clause - New arrivals from the Mainland*

**OPTION A**

1. Clauses 5A and 7A are added—

**5A. Discrimination against new arrivals from the Mainland**

(1) In any circumstances relevant for the purposes of any provision of this Ordinance, a person (“the discriminator”) discriminates against a person of Chinese origin (“the victim”) if—

- (a) on the ground of any matters specified in subsection (2), the discriminator treats the victim less favourably than the discriminator treats or would treat other persons; or
- (b) the discriminator applies to the victim a provision, criterion, or practice which the discriminator applies or would apply equally to persons to whom any matters specified in subsection (2) that applies to the victim does not apply, but—
  - (i) which puts or would put persons to whom the same matter specified in subsection (2) applies as the victim at a particular disadvantage when compared with other persons;
  - (ii) which puts the victim at that disadvantage; and
  - (iii) which the discriminator cannot show to be a proportionate means of achieving a legitimate aim.

(2) The matters specified in this subsection are—

- (a) that a person—
  - (i) is not a Hong Kong permanent resident; or
  - (ii) has not the right of abode in Hong Kong;
- (b) the length of residence in Hong Kong of a person; or
- (c) that a person is regarded as a member of the group of persons who have been granted one way permit by the relevant Mainland authorities to come to Hong Kong, and have recently come to settle in Hong Kong from the Mainland.

(3) In this section, “Mainland” means any part of China other than Hong Kong, Macau and Taiwan and “recently” means any time after 30 October 1980.

**7A. Harassment of new arrivals from the Mainland**

(1) In any circumstances relevant for the purposes of any provision of this Ordinance, a person harasses a person of Chinese origin (“the other person”) if, on the ground of any matters specified in section 5A(2) that applies to the other person or a near relative of that other person, the first-mentioned person engages in unwelcome conduct (which may include an oral or a written statement), in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated by that conduct.

(2) In any circumstances relevant for the purposes of any provision of this Ordinance, a person (“the first-mentioned person”) harasses a person of Chinese origin (“the second-mentioned person”) if, on the ground of any of the matters specified in section 5A(2) that applies to the second-mentioned person or his or her near relative, the first-mentioned person, alone or together with other persons, engages in conduct (which may include an oral or a written statement) that renders hostile or intimidating the environment in which the second-mentioned person works, studies or undergoes training, or carries out related or incidental activities.

2. Schedule 5 is amended by adding an item 2—

SCHEDULE 5 [ss. 59(1), 61 & 85]

OTHER MATTERS NOT AFFECTED  
BY THIS ORDINANCE

Item	Provision creating illegality	Matter
1.	Part 4	Any discrimination between persons of different racial groups arising from that policy of the Government known as the portable comprehensive social security assistance scheme under which eligibility for certain assistance is extended only to persons who take up permanent residence in certain places

outside Hong Kong.

- [2. Section 5A Any discrimination between—  
(a) persons to whom any matters  
specified in section 5A(2) applies,  
and  
(b) other persons  
arising from any policy or practice of the  
Government or any public authority that  
involves a charge on the general revenue.]

3. Clause 8(3) is amended as set out in option (b) below.

### ***OPTION B***

Clause 8(3) is amended in the following manner:-

#### **8. Meaning of “race”, “on the ground of race”, “racial group” and comparison of cases of persons or different racial groups**

- (1) In this Ordinance and subject to subsections (2) and (3) –
- (a) “race” (種族), in relation to a person, means the race, colour, descent or national or ethnic origin of the person;
  - (b) a reference to an act done on the ground of the race of a person is a reference to an act done on the ground of the race, colour, descent or national or ethnic origin of the person;
  - (c) an act constitutes discrimination on the ground of descent only if it constitutes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights; and
  - (d) “racial group” (種族群體) means a group of persons defined by reference to race, colour, descent or national or ethnic origin, and references to a person’s racial group refer to any racial group into which the person falls.
- (2) An act done on the ground of any matter specified in subsection (3) does not constitute an act done on the ground of the race, colour, descent or national

or ethnic origin of a person; and section 4(1)(b) does not apply to a requirement or condition as to any matter specified in subsection (3).

- (3) The matters specified in this subsection are –
- (a) that the person –
    - (i) is or is not an indigenous inhabitant of the New Territories; or
    - (ii) is or is not a person who was in 1898 a resident of an established village in Hong Kong or a person descended through the male line from such person;
  - (b) that the person –
    - ~~(i) is or is not a Hong Kong permanent resident;~~
    - (ii) has or has not ~~the right of abode or~~ the right to land in Hong Kong;
    - (iii) is or is not subject to any restriction or condition of stay imposed under the Immigration Ordinance (Cap. 115); or
    - ~~(iii)~~ has or has not been given the permission to land or remain in Hong Kong under the Immigration Ordinance (Cap. 115);
  - ~~(c) the length of residence in Hong Kong of the person; or~~
  - ~~(c)~~ the nationality, citizenship or resident status of the person under the law of any country or place concerning nationality, citizenship, resident status or naturalization of or in that country or place.
- (4) The fact that a racial group comprises 2 or more distinct racial groups does not prevent it from constituting a particular racial group for the purposes of this Ordinance.
- (5) A comparison under section 4(1) of the case of a person of a particular racial group with that of a person not of that group must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.
- (6) A comparison under section 5 of the case of a person having a near relative who is of a particular racial group with that of a person not having a near relative who is of that group must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

*Clause 58 - The language exemption*

**OPTION A**

Clause 58 is amended in the following manner:-

**58. Exception for languages**

(1) Nothing in section 20, 21, 26, 27, 28, 29, 35 or 36 renders unlawful the use of, or the failure to use, any language in any circumstances relevant for the purposes of the section.

(1A) Subsection (1) does not apply to section 20 when the vocational training course is specifically provided for persons speaking a particular vernacular.

(1B) Subsection (1) does not apply to section 27 when the service provided is medical treatment within the meaning of section 2 of Medical Clinics Ordinance (Cap. 343).

(1C) For the avoidance of doubt, it is declared that nothing in subsection (1B) requires—

(a) a provider of medical treatment to provide to a patient a verbatim translation in the vernacular of that patient of any written or oral communication or medicinal label; or

(b) the presence of a translator of a patient's vernacular when the patient is receiving medical treatment.

(2) For the avoidance of doubt, nothing in subsection (1) affects the Official Languages Ordinance (Cap. 5) or provisions on the use of language contained in any other enactment.

(3) In this section, a reference to the use of, or failure to use, a language includes a reference to the provision of, or failure to provide, a translation, interpretation or transcription into the language; and “vernacular” means the language spoken by a person but does not include a dialect.

**OPTION B**

Clause 58 is deleted and adding in Part 2—

**[5B.] Use of languages**

(1) Subject to the other subsections of this section, if the use of, or the failure to use, any language by a person results in another person being treated less favourably than other persons, the use of, or the failure to use, any language by the first-mentioned person constitutes discrimination within the meaning of section 4(1)(a).

(2) For the avoidance of doubt, nothing in subsection (1) affects the Official Languages Ordinance (Cap. 5) or provisions on the use of language contained in any other enactment.

(3) Subsection (1) does not apply if both the English and Chinese languages have been used and an English translation of the gist of any Chinese written or oral communication has been provided or vice versa.

(4) Subsection (3) does not apply to sections 20 when the vocational training is specifically provided for persons speaking a particular vernacular.

(5) Subsection (3) does not apply to section 27 when the service provided is that of medical treatment within the meaning of section 2 of Medical Clinics Ordinance (Cap. 343). For the avoidance of doubt, it is declared that nothing in this subsection requires—

(a) a provider of medical treatment to provide to a patient a verbatim translation in the vernacular of that patient of any written or communication or medicinal label; or

(b) the presence of a translator of a patient's vernacular when the patient is receiving medical treatment.

(6) In this section, a reference to the use of, or failure to use, a language includes a reference to the provision of, or failure to provide, a translation, interpretation or transcription into the language and “vernacular” means a language spoken by a person but does not include a dialect.

**APPENDIX V**

**EXTRACTS FROM THE PROMOTION OF EQUALITY  
AND PREVENTION OF UNFAIR DISCRIMINATION ACT 2000  
OF THE REPUBLIC OF SOUTH AFRICA**

**PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR  
DISCRIMINATION ACT 2000**

Preamble. - The consolidation of democracy in our country requires the eradication of social and economic inequalities, especially those that are systemic in nature, which were generated in our history by colonialism, apartheid and patriarchy, and which brought pain and suffering to the great majority of our people;

Although significant progress has been made in restructuring and transforming our society and its institutions, systemic inequalities and unfair discrimination remain deeply embedded in social structures, practices and attitudes, undermining the aspirations of our constitutional democracy;

The basis for progressively redressing these conditions lies in the Constitution which, amongst others, upholds the values of human dignity, equality, freedom and social justice in a united, non - racial and non - sexist society where all may flourish;

South Africa also has international obligations under binding treaties and customary international law in the field of human rights which promote equality and prohibit unfair discrimination. Among these obligations are those specified in the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Elimination of All Forms of Racial Discrimination;

Section 9 of the Constitution provides for the enactment of national legislation to prevent or prohibit unfair discrimination and to promote the achievement of equality;

This implies the advancement, by special legal and other measures, of historically disadvantaged individuals, communities and social groups who were dispossessed of their land and resources, deprived of their human dignity and who continue to endure the consequences;



This Act endeavours to facilitate the transition to a democratic society, united in its diversity, marked by human relations that are caring and compassionate, and guided by the principles of equality, fairness, equity, social progress, justice, human dignity and freedom.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: -

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## CHAPTER 2

## PREVENTION, PROHIBITION AND ELIMINATION OF UNFAIR DISCRIMINATION, HATE SPEECH AND HARASSMENT

[\*6] 6. Prevention and general prohibition of unfair discrimination. - Neither the State nor any person may unfairly discriminate against any person.

(Date of commencement of s. 6: 1 September, 2000.)

[\*7] 7. Prohibition of unfair discrimination on ground of race. - Subject to section 6, no person may unfairly discriminate against any person on the ground of race, including –

(a) the dissemination of any propaganda or idea, which propounds the racial superiority or inferiority of any person, including incitement to, or participation in, any form of racial violence;

(b) the engagement in any activity which is intended to promote, or has the effect of promoting, exclusivity, based on race;

(c) the exclusion of persons of a particular race group under any rule or practice that appears to be legitimate but which is actually aimed at maintaining exclusive control by a particular race group;

(d) the provision or continued provision of inferior services to any racial group, compared to those of another racial group;

(e) the denial of access to opportunities, including access to services or contractual opportunities for rendering services for consideration, or failing to take steps to reasonably accommodate the needs of such persons.

[\*8] 8. Prohibition of unfair discrimination on ground of gender. - Subject to section 6, no person may unfairly discriminate against any person on the ground of gender, including –

(a) gender - based violence;

- (b) female genital mutilation;
- (c) the system of preventing women from inheriting family property;
- (d) any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and well - being of the girl child;
- (e) any policy or conduct that unfairly limits access of women to land rights, finance, and other resources;
- (f) discrimination on the ground of pregnancy;
- (g) limiting women's access to social services or benefits, such as health, education and social security;
- (h) the denial of access to opportunities, including access to services or contractual opportunities for rendering services for consideration, or failing to take steps to reasonably accommodate the needs of such persons;
- (i) systemic inequality of access to opportunities by women as a result of the sexual division of labour.

[\*9] 9. Prohibition of unfair discrimination on ground of disability. - Subject to section 6 no person may unfairly discriminate against any person on the ground of disability, including –

- (a) denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society;
- (b) contravening the code of practice or regulations of the South African Bureau of Standards that govern environmental accessibility;
- (c) failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such persons.

[\*10] 10. Prohibition of hate speech. - (1) Subject to the proviso in section 12, no person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to –

(a) be hurtful;

(b) be harmful or to incite harm;

(c) promote or propagate hatred.

(2) Without prejudice to any remedies of a civil nature under this Act, the court may, in accordance with section 21(2)(n) and where appropriate, refer any case dealing with the publication, advocacy, propagation or communication of hate speech as contemplated in subsection (1), to the Director of Public Prosecutions having jurisdiction for the institution of criminal proceedings in terms of the common law or relevant legislation.

[\*11] 11. Prohibition of harassment. - No person may subject any person to harassment.

[\*12] 12. Prohibition of dissemination and publication of information that unfairly discriminates. - No person may –

(a) disseminate or broadcast any information;

(b) publish or display any advertisement or notice,

that could reasonably be construed or reasonably be understood to demonstrate a clear intention to unfairly discriminate against any person: Provided that bona fide engagement in artistic creativity, academic and scientific inquiry, fair and accurate reporting in the public interest or publication of any information, advertisement or notice in accordance with section 16 of the Constitution, is not precluded by this section.

## CHAPTER 3

## BURDEN OF PROOF AND DETERMINATION OF FAIRNESS OR UNFAIRNESS

[\*13] 13. Burden of proof. - (1) If the complainant makes out a prima facie case of discrimination –

(a) the respondent must prove, on the facts before the court, that the discrimination did not take place as alleged; or

(b) the respondent must prove that the conduct is not based on one or more of the prohibited grounds.

(2) If the discrimination did take place –

(a) on a ground in paragraph (a) of the definition of "prohibited grounds", then it is unfair, unless the respondent proves that the discrimination is fair;

(b) on a ground in paragraph (b) of the definition of "prohibited grounds", then it is unfair –

(i) if one or more of the conditions set out in paragraph (b) of the definition of "prohibited grounds" is established; and

(ii) unless the respondent proves that the discrimination is fair.

[\*14] 14. Determination of fairness or unfairness. - (1) It is not unfair discrimination to take measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination or the members of such groups or categories of persons.

(2) In determining whether the respondent has proved that the discrimination is fair, the following must be taken into account:

(a) The context;

(b) the factors referred to in subsection (3);

(c) whether the discrimination reasonably and justifiably differentiates between persons according to objectively determinable criteria, intrinsic to the activity concerned.

(3) The factors referred to in subsection (2) (b) include the following:

(a) Whether the discrimination impairs or is likely to impair human dignity;

(b) the impact or likely impact of the discrimination on the complainant;

(c) the position of the complainant in society and whether he or she suffers from patterns of disadvantage or belongs to a group that suffers from such patterns of disadvantage;

(d) the nature and extent of the discrimination;

(e) whether the discrimination is systemic in nature;

(f) whether the discrimination has a legitimate purpose;

(g) whether and to what extent the discrimination achieves its purpose;

(h) whether there are less restrictive and less disadvantageous means to achieve the purpose;

(i) whether and to what extent the respondent has taken such steps as being reasonable in the circumstances to –

(i) address the disadvantage which arises from or is related to one or more of the prohibited grounds; or

(ii) accommodate diversity.

[\*15] 15. Hate speech and harassment not subject to determination of fairness. - In cases of hate speech and harassment section 14 does not apply.