

**Application of the Race Discrimination Ordinance
to Government Functions**

Purpose

During the scrutiny of the Race Discrimination Bill (RDB) by a Bills Committee of the Legislative Council in 2008, the Administration explained its views regarding the scope of application of the proposed ordinance to Government functions vis-à-vis the provisions under the Basic Law and the Hong Kong Bill of Rights Ordinance. This paper summarises the relevant information on this issue.

Equality guarantees under the Basic Law and the Hong Kong Bill of Rights Ordinance

2. The principle of equality is enshrined in Article 25 of the Basic Law (BL 25), which provides that –

“All Hong Kong residents shall be equal before the law.”

3. The right to equality is also protected by Article 22 of the Hong Kong Bill of Rights (HKBOR) contained in the Hong Kong Bill of Rights Ordinance (Cap. 383) (HKBORO). Article 22 of the HKBOR, which incorporates Article 26 of the International Covenant on Civil and Political Rights (ICCPR) into our domestic law, provides that –

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

4. In addition, Article 1(1) of the HKBOR provides that the rights recognised in the HKBOR “shall be enjoyed 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.”

5. The equality guarantees under the HKBOR cover the substance of law and its enforcement, and can be invoked provided that the alleged discriminatory act is committed by the Government or a public authority or their agent (section 7 of the HKBORO).

Avenues for redress or remedy to address complaints against racial discrimination under the HKBORO

6. The HKBORO has been operating in Hong Kong since 1991. People from all sectors regardless of their race can use the HKBORO to bring legal proceedings against the Government for any racially discriminatory act of the Government. Section 5AA of the Legal Aid Ordinance (Cap. 91) provides specifically that the Director of Legal Aid may waive the limit of financial resources under the “means test” for legal aid, “in proceedings in which a breach of the HKBORO, or an inconsistency with the ICCPR as applied to Hong Kong is an issue”. The provision ensures that no one will be denied access to court for legal redress under the HKBORO due to lack of means.

7. Section 6(1) of the HKBORO also provides that the court may “grant such remedy or relief, or make such order, in respect of such a breach, violation or threatened violation as it has power to grant or make in those proceedings and as it considers appropriate and just in the circumstances.” Orders that may be made include an order of certiorari, mandamus or prohibition and may also include an order for financial compensation.

Other avenues of complaints

8. Apart from seeking redress and remedy in courts under the HKBORO, there is an existing array of avenues available to address complaints, including The Ombudsman, the Complaints Against Police Office and complaint channels in Bureaux and Departments as well as the Legislative Council. These mechanisms have been operating effectively in safeguarding the legitimate interests and rights of individuals in Hong Kong.

Enactment of the Race Discrimination Ordinance

9. When the RDB was introduced into LegCo on 13 December 2006, a major consideration was that, whilst the HKBORO prohibits the Government and public authorities from engaging in practices that would entail any form of discrimination, including discrimination on the ground

of race, these legislative provisions are not applicable to acts of discrimination committed by private individuals or organisations. The Bill, which targeted at discriminatory practices on the ground of race in various specified areas, would protect the public from racial discrimination by private organisations or individuals. However, when enacted, the Bill would prohibit racial discrimination in both the public and the private sectors in various specified areas, although the Government and public authorities have already been prohibited from practising racially discriminatory acts under the HKBORO.

10. To make clear this intention and having taken into account views of the Bills Committee, clause 3 of the Bill (now section 3 of the Race Discrimination Ordinance (RDO)) had been amended to “This Ordinance binds the Government”.

11. The RDO does not absolve the Government and public authorities from obligations under the HKBORO. Any person who suffers racial discrimination in the public sector can continue to make a claim against the Government or a public body under Article 1 or Article 22 of the HKBOR, even in areas not specifically covered under the RDO.