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**Combatting Racial Discrimination in Hong Kong-**  
Case studies identifying and examining the characteristics  
and effects of direct and indirect discrimination

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## **Introduction**

The focus of today's conference is to plan, discuss and consider implementing effective race discrimination legislation to meet the needs of Hong Kong. Distinguished international and local speakers will cover a large spectrum of topics ranging from special measures; enforcement mechanisms; the role of NGO's and remedies.

I will address the topic from a different angle, namely from the perspective of persons who have suffered racial discrimination in Hong Kong. I will examine what ways in which legislation can protect a victim's right to recourse before a national court or tribunal and their right to seek just and adequate reparation or satisfaction for any damage suffered as provided in Article 6 of the International Convention of the Elimination of Racial Discrimination. In order to explain this I will examine examples of racial discrimination in Hong Kong and compare them to the treatment of similar cases in other jurisdictions.

I will also introduce the concept of indirect discrimination and suggest how the public can be made more aware of its characteristics and damaging effects with a view to eliminating the practice in Hong Kong.

Finally I provide suggestions for a holistic approach to combatting racial discrimination in Hong Kong.

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**Full paper available on HKHRM website – <http://www.hkhrm.org.hk/>**

## Section 1

### 1. Status in Hong Kong

There are no laws in existence in Hong Kong prohibiting racial discrimination in the private sector. The International Convention on the Elimination of All Forms of Racial Discrimination (the "ICERD" or the "Convention") was extended to Hong Kong in 1969 by the British Government. In 1991, the People's Republic of China notified the United Nations Secretary-General that the Convention would continue to apply to the Hong Kong Special Administrative Region ("HKSAR") with effect from 1 July 1997, the date of Handover of Hong Kong to China. In 1991, 22 years after the application of the Convention to Hong Kong, the Government enacted the Bill of Rights Ordinance (BORO)<sup>1</sup> but this only prohibits discrimination by the Government and public authorities.

In the concluding observations of the most recent reporting by the Hong Kong Government to the Committee on Economic Social and Cultural Rights ("CESCR"), the CESCR stated:

"It is the Committee's view that the HKSAR's failure to prohibit race discrimination in the private sector constitutes a breach of its obligations under article 2 of the Covenant. The Committee calls upon the HKSAR to extend its prohibition of race discrimination into the private sector."<sup>2</sup>

In the concluding observations of the recent reporting by the Hong Kong Government to the Committee on the Elimination of Racial Discrimination ("CERD") at the 59<sup>th</sup> Session at the UN in Geneva, the CERD Committee concluded :

"The Committee does not accept the argument put forward for not initiating such legislation..... It is recommended to the Government of the State party and local authorities of HKSAR that the existing unsatisfactory situation be thoroughly reviewed and that appropriate legislation be adopted to provide appropriate legal remedies and prohibit discrimination based on race, colour, descent or national or ethnic origin similarly to what has been done with regard to discrimination on the grounds of gender and disability."<sup>3</sup>

In 2003 the HKSAR Government announced the intention to enact laws against racial discrimination.

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<sup>1</sup> Cap 383.

<sup>2</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights, E/C.12/1/Add/58 11 May 2001. (Unedited Version)

<sup>3</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/59/MISC.16/Rev.3, 9<sup>th</sup> August 2001. (Unedited Version)

## 2. History of HKSAR Government's opposition to racial discrimination legislation.

These included the following:

- a) That the incidence of racial discrimination in Hong Kong is not serious problem in Hong Kong and therefore does not warrant legislation
- b) That there existed a risk that legislating without the majority support may give rise to ethnic tensions
- c) There have been no instances of racial violence or racial hatred
- d) Public education on racial discrimination is the best approach

In responding to the arguments a key approach was the collection of data, specifically case studies of racial discrimination in Hong Kong.

- 2.1 I will review a sample of case studies of allegations of racial discrimination given to HARD<sup>4</sup>. I have had the opportunity to compare and analyse these cases with the results of litigated cases with broadly similar facts in common law jurisdictions.<sup>5</sup>
- 2.2 Much has been written on the need for legislation in Hong Kong, however, only now has there been increased discussion of the substantive provisions in the event that legislation is forthcoming. Hong Kong can and should learn from the experiences of legislation and operation of equal opportunities enforcement agencies in other regions; this is especially vital at the drafting stage. I aim to demonstrate some of the principal areas that need to be considered, with specific reference to criticisms and suggestions for reform of existing race legislation in two common law jurisdictions, Australia and England.
- 2.3 I am keenly aware of the valid criticism that legislation will not change attitudes or indeed be considered the solution to combating racial discrimination. Although I view laws as potentially being effective instruments for social change, specifically with strategic litigation and its jurisprudential value I also strongly consider that movement outside the court room can be just as effective, whilst the combination of both can only be considered a successful step towards achieving an equal and just society giving everyone an equal chance to work, learn, and live free from discrimination and prejudice. I will therefore conclude by suggesting a holistic plan for combating racial discrimination.

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<sup>4</sup> HARD – Hong Kong Against Racial Discrimination a collation of NGO's

<sup>5</sup> Namely Australia, New Zealand and England.

### **3. Prevalence of Racial Discrimination in Hong Kong**

Various NGO's<sup>6</sup> have been collecting data, case studies and statistics in relation to the existence and nature of racial discrimination in Hong Kong. The data<sup>7</sup> shows that racial discrimination is practised in an extensive spectrum of fields including employment<sup>8</sup>; in hospitals<sup>9</sup>; immigration; accommodation; provision of goods and services; provision of education and training; public transport.

I will demonstrate that the examples given to HARD are not without merit. Similar cases are justiciable, and tribunals have made findings of racial discrimination in each case, essentially applying the basic principle, 'distinction based on race'. I will review a draft Bill proposed by Christine Loh and examine if these cases are justiciable under the provision of that Bill.

#### **3.1 Higher Charges Based on Race in the Provision of Goods & Services**

##### **HK Example**

A leading English language newspaper conducted an investigation into practices of racial discrimination by bars in the Wan Chai District of Hong Kong. This revealed that the bars operated a sliding-scale of entrance fees based on a colour-coding system: a skin colour price code.<sup>10</sup> The

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<sup>6</sup> This list includes, amongst others, Hong Kong Against Racial Discrimination (H.A.R.D.); Hong Kong Human Rights Monitor; Asian Migrants Centre; Amnesty International; Movement Against Discrimination (MAD); Society for Community Organisation; Indian Resources Group.

<sup>7</sup> A collection of the data will be included in a Shadow Report to be presented to the ICERD and ICESCR Committee in 2001, in line with Hong Kong's compliance with the reporting procedures.

<sup>8</sup> An applicant to teach English was accepted on the basis of her qualifications, however when the employer discovered she was an ethnic Indian the employer refused to employ her and responded that she was looking for "someone with blond hair and blue eyes".

<sup>9</sup> Harinder Veriah, aged 32, an ethnic Indian solicitor from England. Christina Solano, aged 20, Philippina migrant worker. Two patients in Hong Kong hospitals who before they tragically died told their family members of racial discrimination they experienced at the hands of the staff at the hospital. In both cases the Coroner concluded that the deaths were from natural causes, with no evidence of racial discrimination. In both cases the hospitals involved refused to conduct any investigation into the allegations. At the inquests, it was made clear by the coroner that allegations of racial discrimination made by family members would not be considered without further evidence. The widower of the Harinder Veriah explained that he could not gather any further evidence - his wife was dead. It is difficult to conclude without medical evidence and an investigation whether racial discrimination resulted in their deaths. However in my view a very real issue is that despite the inquest findings both women, in their last hours alive felt that they were being treated without dignity and were receiving unequal treatment because of their race.

<sup>10</sup> South China Morning Post July 26 1998, Gren Manuel, "Bars still put price on skin color" The results revealed that Caucasians were not charged, whilst Chinese were charged a small fee and Indian customers were charged a higher fee, essentially the darker-skinned the patron, the more they were asked to pay.

Government's response after it investigated the allegations was that this was 'a commercial decision' and racial discrimination was not a factor. The first reports of the discriminatory practice emerged in 1998, however as recently as August 2001 it was reported as being a widespread practice.<sup>11</sup>

### **Australian Case - Dennison & Anor v Conroy**

An Aboriginal customer was charged \$9 more when purchasing a cask of wine, than a white customer was for a similar purchase of wine. When the complainant asked about the discriminatory practice the respondent said that he was getting money back for damage he alleged had been caused to the hotel previously by Aboriginals. The tribunal held, inter alia, that the respondent had treated the complainant unfavorably on the grounds of her race. The respondent was ordered to publish an apology in the newspaper and to pay damages in the sum of \$2000<sup>12</sup>

### **Australian Case Elliot v Pearlton Holdings Pty Ltd.**

Aboriginal customers were charged extra for drinks purchased at the respondent's hotel bar. The bar attendant said "...the boss told him to charge a cover charge for aboriginal people". Although the tribunal found that the complaints had been discriminated against on the grounds of their race the complaints were dismissed as the tribunal held that the barman was acting on a frolic of his own and without the authority of the employer.<sup>13</sup>

## **3.2 Accommodation**

### **Hong Kong Examples<sup>14</sup>**

An International Company who had recruited a senior member to work in their Hong Kong Office agreed to the terms of the contract. One term of the contract was the provision of accommodation. The Company was able to take advantage of the economic downturn and sought an apartment in a prestigious location in Hong Kong; The Peak. The landlord expressed his preference for a company lease, at a rate above the market rate. However once the landlord

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<sup>11</sup> South China Morning Post August 31 2001, Ravina Shamdasani Club Colour code 'widespread'

<sup>12</sup> Equal Opportunity Act (WA) S36,46 Elliot v Pearlton Holdings Pty Ltd. T/as Conglomerate Hotel-Equal Opportunity Tribunal Case Note (WA) Reported September 1993 [92-523]

<sup>13</sup> Dennison & Anor v Conroy EOT, NSW(1990) EOC [92-312]

<sup>14</sup> The ambit of this papers limits the examples I can cite. I have selected several to demonstrate both the blatant and subtle forms of racial discrimination in Hong Kong. Several people posed as customers to rent property, all had similar backgrounds and requirements The Caucasian and Chinese customers were shown better quality flats whilst the Pakistani customers were shown fewer flats and of poorer quality, South China Morning Post 16<sup>th</sup> August 1998, Comparable Australian case is Samuels Real Estate v Lamb & NSW EOT(1998) EOC 92-923

became aware of the race of the senior executive he withdrew the offer and refused to rent the flat to the company. The senior executive was an Indian.<sup>15</sup>

### **Accommodation**

#### **Australian Case Lynton v Maugeri & Anor<sup>16</sup>**

This is a case of direct racial discrimination in the area of accommodation. A house was advertised for rent. The complainant made telephone inquiries and the Landlord's wife (agent) agreed to rent it to the complainant, however when the complainant went to visit the house the Landlord's wife, upon discovering that she was an Aboriginal, told her that the house had already been rented out. Despite telling the wife as agent that they had an agreement made during the telephone conversation the wife as agent replied 'No, no, no house not good for you, too much, too good for you...'. The complainant left but arranged for someone to make a telephone call later the same afternoon. The landlord's daughter informed the caller that the house was available for rent, but she asked what colour the caller was as her parents did not want any black people living in the house. The landlord was held liable for his wife's action as his wife was acting as his agent. The Tribunal held that the withdrawal from the agreement breached, inter alia, s. 82(c),(d) of the Anti-Discrimination Act 1991 (Qld), as the conduct constituted discrimination in processing an application for accommodation, and unfavorable treatment. The complainant was awarded \$18,000 in damages<sup>17</sup>.

### **3.3 Employment**

#### **Hong Kong Example - Refusal to employ based on Color of Skin<sup>18</sup>**

A newly arrived domestic helper from the Philippines, came to Hong Kong to commence employment with local Chinese employers. The employers

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<sup>15</sup>LegCo Panel on Home Affairs, on Racial Discrimination, submission by Indian Resources Group September 1998, more recently an Indian businessman was forced to pose as an Italian to secure tenancy of a flat, whilst an Indian couple were informed by an estate agent that the landlord had stipulated "no dog, no cats and no Indians" SCMP June 2001, Mary Ann Benitez

<sup>16</sup> (1995) EOC 92-754

<sup>17</sup> The complainant had been living in emergency accommodation with her husband and six children prior to the incident, and moved subsequent to the incident to a home which was condemned. The tribunal noted that without suitable accommodation, the complainant was unable to secure employment, nor maintain her marriage and created difficulties in educating her children and helping them integrate into the community. The damages I believed reflected these aggravating factors.

<sup>18</sup> There is an exemption in the Code of Practice for Employment where an employee is required to work at the residence of the employer. I accept that a balancing exercise between the rights of an employee and employer in a domestic situation must be conducted, particularly where the employee resides with the employer in the employer's private residence. I would recommend this exemption be closely monitored as it has the potential for serious abuse.

withdrew the offer to employ her because they said that her "skin was too dark and she looked like a monkey".<sup>19</sup>

## **New Zealand Case**

### **Race Relations Conciliator v Marshall Case Note**<sup>20</sup>

A woman of dark skin was informed through a third party that after her interview for a nursing position at a nursing home the matron who interviewed her was concerned about the patients' reactions on waking up and discovering the complainant's dark face. The Tribunal found that the defendant "omitted to engage the complainant for work that was available and for which the complainant was qualified, by reason of her colour" and was thus in breach of s. 5(1)(a), of the Race Relations Act NZ. She was awarded \$1,500, costs and received an apology from the defendant.<sup>21</sup>

### **3.4 Discrimination in Education**

In my view education is the keystone of equality of opportunity. It has been seen, however, that educational systems often perpetuate discrimination and racism causing the victimised group to become chronic underachievers: thus continuing the inequality from generation to generation creating a cyclical trap.

A research project conducted by the Centre for Comparative and Public Law, HKU which interviewed young members of the ethnic minority communities, their parents, teachers, education officials and social workers found the following major findings<sup>22</sup>;

1. Limited school choices and places
2. School fees ( families struggle to pay fees of schools on the government's list of 'Educational Facilities for Non-Chinese Speaking Children'
3. Language of instruction (mother tongue teaching policy has limited the number of schools available for non-Chinese speaking students. If

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<sup>19</sup> Later after some thought the employer, elaborated that her children would feel scared at the appearance of the domestic helper.

<sup>20</sup> Race Relations Conciliator v Marshall Case Note (NZ) Reported 1993 [92-540]

<sup>21</sup> The equivalent law in England in relation to employment is the Race Relations Act s.4(1), unlawful to discriminate on the grounds of race, an employer must not discriminate, whether directly or indirectly, in relation to recruitment, selection or interviewing techniques, see Tower Hamlets LBC v Rabin [1989] ICR 693 EAT.

<sup>22</sup> Extract from Race and Equality: A Study of Ethnic Minorities in Hong Kong's Education System – A research project by the Centre for Comparative and Public Law and Unison Hong Kong for Ethnic Equality February 2004, with kind permission from CCLP and Unison. and author Kelley Loper Full Report is available on website <http://www.hku.hk/ccpl/>.

Chinese-language classes are provided, they are not at a level to enable students to function at school.

4. Perceived poor quality of education
5. Lack of information about the education system (much of the information about the education system is only in Chinese)
6. Interaction with Chinese students limited
7. Lack of coherent policy in relation to ethnic minority students.

The report concludes that certain local education policies could constitute direct or indirect racial discrimination.

### **Indirect Discrimination**<sup>23</sup>

*“Developments in Europe and the United Kingdom*

As international definitions of racial discrimination are evolving to incorporate state practice and developing norms, definitions of racial discrimination in European and UK law have also progressed. While the definitions of both direct and indirect discrimination in Hong Kong’s three EO laws were based directly on UK legislation from the 1970s, the UK laws have since been amended in response to recent European initiatives such as the European Directives on employment discrimination and discrimination on the basis of race and ethnicity (Employment Directive and Race Directive). These two Directives stemmed from Article 13 of the Treaty of Amsterdam, adopted by the EU Council of Ministers in 1997. This treaty established the non-discrimination principle as one of the founding principles of the EU. The United Kingdom has attempted to comply with the two Directives by passing the Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations 2001 and the Race Relations Act 1976 (Amendment) Regulations 2003 (Race Regulations). However, the corresponding Hong Kong provisions have not yet incorporated the Directives or the subsequent changes to UK law.

An evolving understanding of the meaning of indirect discrimination has particular relevance to this discussion of the Hong Kong education system since many of the policies discussed in the previous sections could amount to indirect, rather than direct, discrimination. For example, admissions policies in Hong Kong based on language requirements may seemingly apply equally to all races and ethnicities. In effect, however, these policies limit access to education for certain ethnic groups who may be less likely to speak or read Chinese.

The concept of indirect discrimination is not widely understood or utilized in Hong Kong and has not been substantially tested in Hong Kong courts.<sup>24</sup> According

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<sup>23</sup> Ibid.

<sup>24</sup> While awareness of the meaning of discrimination generally may be increasing due to the implementation of equal opportunities legislation and the work of the EOC, one expert suggests that the lack of Hong Kong case law could

to a study by the Centre for Comparative and Public Law of complaints processed by the EOC under the three EO laws, only 7.8% of 451 complaints involved claims of “indirect” discrimination.<sup>25</sup> A thorough analysis of developments in the meaning of indirect discrimination - in the context of this discussion as well as debate over the content of a new race law - could contribute to raising awareness of this important aspect of equality rights in Hong Kong.

Although not widely understood, indirect discrimination is nevertheless unlawful in Hong Kong under the three EO laws and under the BRO. The High Court found in the case brought by expatriate civil servants against the government, discussed above, that one of the policies under review constituted indirect discrimination and was therefore unlawful under the BRO.<sup>26</sup> The Hong Kong SDO definition of indirect discrimination was modeled on, and is identical to, the original UK definition in the Sex Discrimination Act 1975 (Article 1(1)(b)) and is also similar to the definition in the UK Race Relations Act 1976. The SDO provides that an unlawful act of sex discrimination includes the application of a “requirement or condition” to a woman or a man which is equally applicable to someone of the opposite sex, but

“(i) which is such that the *proportion* of women who can comply with it is *considerably smaller* than the proportion of men who can comply with it;

(ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied; and

(iii) which is to her *detriment* because she cannot comply with it”.<sup>27</sup>

The definition of indirect discrimination contained in the two Directives is broader than this definition and can therefore be more effectively applied. According to the Race Directive, indirect discrimination occurs when “an apparently neutral *provision, criterion or practice* ... would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons”.<sup>28</sup> It also provides for an “objective justification” test to determine whether such treatment can be considered discriminatory: “[i]ndirect discrimination shall not be taken to occur where the provision, criterion or practice can be *objectively justified* by a legitimate

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stem from limited public understanding of the meaning of indirect discrimination and the restrictive definition contained in the Sex Discrimination Ordinance, based on the outdated UK provisions. See Carole Petersen, comments in an e-mail to the Kelley Loper, 11 November 2003 (on file with the Kelley Loper).

<sup>25</sup> Gabrielle Rush, “Key findings from a study of 451 complaints concluded by the EOC between 1 July 2000 and 31 March 2001”, p. 3, available at the Centre for Comparative and Public Law website: <http://www.hku.hk/ccpl/pub/conferences/documents/14062003a-KeyFindings.pdf>.

<sup>26</sup> Expatriate Civil Servants Case (n 66 above), p. 5.

<sup>27</sup> Hong Kong Sex Discrimination Ordinance, available at the Hong Kong Equal Opportunities Commission (EOC) website: <http://www.eoc.org.hk> [emphasis added].

<sup>28</sup> See Commission for Racial Equality (CRE) website, section on “Article 13, Proposals from the European Commission for Combating Discrimination” at:

[http://www.cre.gov.uk/legaladv/art13\\_key.html](http://www.cre.gov.uk/legaladv/art13_key.html).

aim and the means of achieving that aim are *appropriate and necessary*”.<sup>29</sup> This definition of indirect discrimination is more flexible than the original UK provisions or the Hong Kong SDO definition for several reasons. First, “provision, criterion or practice” could catch a larger range of discriminatory treatment, including informal practices, than the narrower terms “condition or requirement”.<sup>30</sup> In addition, the method of proof is less stringent in the Directive since it does not require proof that a considerably smaller proportion of people from a particular racial group can comply with the provision, criterion or practice in question.

The definition contained in the Race Regulations is similar, but not identical, to the Race Directive definition. The Regulations provide that indirect discrimination occurs when a person applies to another person:

- a provision, criterion or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins as that other, but -
- (a) which puts or would put persons of the same race or ethnic or national origins as that other at a particular disadvantage when compared with other persons,
  - (b) which puts that other at that disadvantage, and
  - (c) which he cannot show to be a *proportionate* means of achieving a legitimate aim.<sup>31</sup>

The main difference between the definitions in the Race Directive and the Race Regulations is that the Regulations do not entirely incorporate the Race Directive’s “objective justification” test.<sup>32</sup> The UK Commission for Racial Equality (CRE) has criticized this omission, arguing that the “proportionality test” in the Regulations is more limited since a means to achieve a legitimate aim could be proportionate but not necessary. The test in the Race Directive requires that the means are both “appropriate and necessary” encouraging employers, for example, to consider alternatives to discriminatory treatment in order to achieve the legitimate aim even where the means are proportionate. The CRE cites the example of a “no beard” rule in a chocolate factory. This rule may indirectly discriminate against people of a particular ethnicity if men are expected to grow beards for cultural or religious purposes. While the aim may be legitimate for hygienic reasons, the means may not be necessary since another method, such as covering up the beards, could be

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<sup>29</sup> The Council of the European Union, “Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin” (Race Directive), (19 July 2000), L180 *Official Journal of the European Communities* 22, 24, article 2(b), [emphasis added].

<sup>30</sup> See the CRE website, section on “Indirect Discrimination” at: [http://www.cre.gov.uk/legaladv/rra\\_regs\\_indirect.html](http://www.cre.gov.uk/legaladv/rra_regs_indirect.html).

<sup>31</sup> The Race Relations Act 1976 (Amendment) Regulations 2003, 20 June 2003, article 3, available at: <http://www.hmso.gov.uk/si/si2003/20031626.htm>, [emphasis added].

<sup>32</sup> CRE, “The Race Relations Act 1976 (Amendment) Regulations 2003, Briefing by the Commission for Racial Equality”, June 2003, p. 4, available at the CRE website: [http://www.cre.gov.uk/downloads/docs/race\\_regs.doc](http://www.cre.gov.uk/downloads/docs/race_regs.doc).

implemented instead.<sup>33</sup> In Hong Kong, a more complex example demonstrating this difference might be the mother-tongue teaching policy. It could be argued that this policy indirectly discriminates against members of ethnic groups who may not speak and read Chinese at adequate levels to attend CMI schools, and therefore effectively restricts the number of schools willing to accept them as students. However, the policy could achieve legitimate and proportionate educational aims – for example, the large majority of the Hong Kong population may benefit from learning all subjects in Chinese. At the same time, however, the means by which the policy was carried out may not be necessary. If the Hong Kong government had been required to consider alternative means, it may have taken more creative approaches that would ensure all children, including those from ethnic minority communities, had equal and full access to the Hong Kong public education system. This may have included, for example, providing adequate Chinese as a second language courses within Chinese Medium Schools, changing admissions requirements, or providing a standard code of practice for schools on assisting non-Chinese speakers integrate.

The judgment in the expatriate civil servants case discussed earlier recognizes the desirability of finding non-discriminatory solutions to policy problems wherever possible, even where the objectives are legitimate. The test used in the case for determining discriminatory treatment retains the proportionality element - “the difference in treatment should be proportionate to the need which justifies it”.<sup>34</sup> However, when applying the test to one of the challenged policies in the case, Justice Keith writes that despite the need for the objectives driving the policy, “those objectives could have been achieved without departing from art 21(c) [of the BRO]”.<sup>35</sup> He therefore finds that the policy was discriminatory and unlawful. This articulation could have implications for any future tests of education policy under the BRO and may encourage Hong Kong courts to consider whether alternatives are available and whether the difference in treatment is really as “limited as possible”.<sup>36</sup> In any case, since this decision occurred before the changes in European and UK laws, any future applications of equality law in Hong Kong should reconsider a reliance on the proportionality principle and the new race discrimination law should take these changes into consideration.

Another criticism of the new UK definition is that it only applies to discrimination on the grounds of race and ethnic origin.<sup>37</sup> The Race Directive only applies to these grounds and, therefore, the UK definition of discrimination on other grounds, such as colour and nationality which are covered by the 1976 Act, remain unchanged. The CRE rightly observes that this could cause unnecessary confusion

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<sup>33</sup> *Ibid.*

<sup>34</sup> Expatriate Civil Servants Case (n 66 above), p. 21

<sup>35</sup> *Ibid.*, p. 34.

<sup>36</sup> *Ibid.*, p. 21.

<sup>37</sup> CRE, (n 88 above).

since some people may claim discrimination on a number of grounds at the same time.<sup>38</sup> A Hong Kong definition should avoid this lack of uniformity.

### **More examples of Discrimination in Education**

A Principal of one of the schools catering to the ethnic minorities admitted that the teachers are less willing to teach ethnic minorities, which he considered was mainly due to prejudice and communication problems. These difficulties he believed resulted in low self-esteem and passivity amongst the students. Social Workers revealed that during discussions with some of the students they reflected a fatalistic view about the opportunities available for minorities. Some social workers and teachers consider priority should be given to "our people", namely Hong Kong Chinese, before helping 'outsiders', the obvious irony here is that the vulnerable group, who need the most assistance are denied basic assistance.

### **Nepalese Children deprived of access to education**

Some of you may have read about the Nepalese community forced to rent a disused shopping center to provide a school to educate Nepalese children who had been neglected by the Education department. This feature appeared ironically on the same day as the Chief Executive made announcements in his policy address to improve education in Hong Kong.<sup>39</sup>

### **Youth Pre-employment Training Programme**

Inquires were made to the Labour Department about whether courses provided for school leavers were available in English for young ethnic minority job seekers. The response was 'we only serve the majority who are Hong Kong born-residents who speak Cantonese as their primary dialect and write Chinese'. There are approximately 200 ethnic minority school leavers annually searching for employment. Most are able to speak Cantonese, but few are able to read or write in Chinese. An Assistant Principal, of a secondary school with a large ethnic minority student population explained that the lack of training and support meant that many ethnic minority school leavers were condemned to low-paid jobs with poor career advancement prospects. Most he added have to simply make a living as manual workers on construction sites."<sup>40</sup>

The above examples of unequal treatment would be prohibited under Section 21 of the Draft Bill. The section not only covers, refusal or deliberately omitting to accept applications for admission to the educational establishment but crucially here, it

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<sup>38</sup> *Ibid.*

<sup>39</sup> South China Morning Post, Sherry Lee Learning the Hard Way, 10<sup>th</sup> October 2001.

<sup>40</sup> "Skills course 'neglects ethnic minorities' Felix Chan South China Morning Post 11<sup>th</sup> June 2001

covers the way access to benefits and facilities and services. The term “subjecting him to any other detriment, in my view would bring the above cases with the provision of the draft bill.

### **3.6 Analysis of the cases**

An analysis of the jurisprudence of race discrimination cases, shows that an intention to discriminate or lack of such intention is irrelevant. "The motive of the discriminator is irrelevant to the question of whether the treatment was on grounds of race. Equally, the subjective reason for the treatment, even if the motivation is a good one, is irrelevant"<sup>41</sup>. The test is objective. Accordingly if the complainant would not have received the less favorable treatment but for his race, the treatment is on the grounds of race.

Consequently there is no defence for a discriminator to establish a motive for the discrimination e.g. it was a sound commercial decision, the wishes of my children or my concern for the patients, or customer preference, or to be economical.

### **3.7 Draft Race Discrimination Bill** <sup>42</sup>

The draft Bill provides that if an act is done for 2 or more reasons, and if one of the reasons is based on colour, race nationality descent or ethnic or national origins, it does not matter if it is not the dominant or substantial reason for doing the act. The Hong Kong examples cited above, if litigated under this bill are likely to result in findings of discrimination.

## **4. Criticisms and Proposed Reforms for the Commission for Racial Equality-England**<sup>43</sup>

The reforms encompass legislative changes and recommendations for more effective enforcement and non-legal measures.

### **1. Imbalance between promotional work and law enforcement**<sup>44</sup>

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<sup>41</sup> Butterworths Discrimination Law, issue 0, 1999, Butterworths, London

<sup>42</sup> Draft Bill proposed by Christine Loh, former legislator, Citizens party. The draft bill can be viewed on [www.citizensparty.org](http://www.citizensparty.org).

<sup>43</sup> See brief list of problems in Presentation Outline page 2 by Vandana Rajwani , 9<sup>th</sup> April 2001, For a comprehensive report on recommendations of Equality Law in England see "Reforming Equality Law" EOR No. 93, September /October 2000 page 40-45 Profile Gurbux Singh, Chair, Commission for Race Equality EOR No. 96 March/April 2001 page 27-28.

<sup>44</sup> Gurbux Singh the new Chair of CRE stated " The CRE will not be terribly effective as principally a law enforcement agency, or merely concerned with promotional work. We need to create an integrated strategy. You can do a huge amount of talking trying to persuade people, but there is nothing better than a realisation that the law is also there. Effective use of the law can secure institutional change." See also, Martin MacEwen who criticizes the CRE's initial approach "by rushing ahead with promotion work unrelated to law enforcement, the Commission have put an

2. The Macpherson Report<sup>45</sup> made a number of recommendations including that the RRA be extended to apply fully to cover all activities of Government & public bodies, including police, immigration services, civil service & NHS.

It is likely that the HKSAR Government will insist that the Immigration Department is exempted from the provisions. It will be useful to examine the full report to discern any relevant arguments against any exemption for Immigration Department.

3. Lack of credibility of the legislation and enforcement mechanism<sup>46</sup>

4. The requirement of establishing unfavorable treatment *and* detriment to satisfy the court of discrimination in employment<sup>47</sup>

5. Damages - impact of low damages on victims and jurisprudence<sup>48</sup>

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unwieldy cart before an admittedly ponderous horse". Anti-discrimination law enforcement: A comparative Perspective edited by Martin MacEwen, 1997, Ashgate publishing. Generally the changes reflect moves toward reversing the perception of anti-discrimination legislation, in terms of prohibition, and the introduction of the concept of positive rights to equality

<sup>45</sup> "The Stephen Lawrence inquiry - report of an inquiry by Sir William Macpherson of Clunney This recommendation is contrary to the decision in *R v Entry Clearance Officer, Bombay ex p. Amin* [1983] 2 AC 818 (HL) where the HL held that prohibition against discrimination in RRA s.20 in respect of the provisions of goods, services and facilities applied only to activities analogous to those provided by private undertakings, thereby excluding a wide range of government activities from its scope. Butterworths Discrimination Law, issue 0, 1999, Butterworths, London

<sup>46</sup> In criticizing the existing law Race Relations Act Gurbux Singh, the new chair of the Commission for Racial equality states that the RRA "is unsuited to achieving a modern inclusive, just and fair society. Legislation, he adds needs to be in such terms that employers know that they are likely to be caught if they discriminate unlawfully. At the moment, however, they are unlikely to be caught." EOR No. 90 March/April 2000 page 4 "Race Targets not the answer, says Ouseley"

<sup>47</sup> According to RRA 1976, complainant must not only show unfavorable treatment on the grounds of race but must also establish suffering a detriment, in *De Souza v The Automobile Association* [1986] IRLR 103, the Court of Appeal found that a racial insult is not by itself enough to be a detriment, even if it caused her distress. She also had to prove that a reasonable worker would take the view that she had been disadvantaged in the circumstances. The same reasoning was applied ten years later in *Elliot v Donnick Hunter Ltd.* [1996] EAT No.1144/94 EOR Digest No. 26 . According to Vanessa Edmonds in 'Harassment at Work' The idea or argument which both De Souza and Elliot put forward, that the offensive nature of racial comment may not be sufficient to amount in law to a detriment, sits uneasily with the EC code, which states that 'it is for each individual to determine what behavior is acceptable to them and what they regard as offensive.' De Souza was criticised, however the same reasoning was applied as recently as in 1996

<sup>48</sup> The enforcement machinery must be functional, we can learn from the Australian experiences where the "enforcement of anti-discrimination legislation has been troubled from the beginning. The particular feature of low damages has received strong criticism. The effect of the low damages has led to the conclusion that tribunal members and members of the judiciary place little value on the suffering experienced by complainants. What has alarmed me as a result of examining the reviews of the Australian anti-discrimination legislation and enforcement procedures is the conclusion reached by the Human Rights Commissioner, who after comparing the award of damages under the RDA

## 6. Indirect Discrimination by public bodies was not covered in the RRA<sup>49</sup>

Consider the difficulties with enforcing the existing Anti-Discrimination Legislation in Hong Kong<sup>50</sup>

7. Failure to meet basic aims of the legislation, namely co-existing social policy. Essentially it was an aim to achieve sustainable change to promote racial equality. In 1976 it was the British Government's policy to enact race relations legislation and complementary social policy. The death of Stephen Lawrence the surrounding investigation, and allegations of racially motivated assault by football player E. Bower and others have exposed colossal and glaring inadequacies in the government's race relations policies<sup>51</sup>

I accept that the suggestions and reforms listed above may not be directly relevant to any proposed race discrimination legislation in Hong Kong however I consider Hong Kong can learn from the operation of anti-discrimination laws and enforcement mechanisms<sup>52</sup> in other jurisdictions and

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and SDA, stated that " race discrimination seems to be considered more trivial than other forms of discrimination Pritchard, "Approaching its Use-by Date? National Enforcement mechanisms: the Case of Australia" in Lonon and Rodrigues, Non-Discrimination Law: Comparative Perspectives (Kluwer, 1999) See also Complaint 17/1999 CERD B.J. v Denmark High court held that the violation of the author's honor committed by the doorman was not of such severity and did not involve such humiliation as to justify the granting of compensation. See alternative view in In Alexander v Home office (1988) 1 W.L.R. 968, the Court suggested that although the damages to be awarded should be restrained in quantum having regard to the difficulty of assessing, the monetary value of injured feelings, the awards made should not be minimal because this would tend to trivialize or diminish the respect for public policy, in Chesson v Buxton (1990) EOC [92-295]

<sup>49</sup> The new Race Relations (Amendment ) Bill, extends the provision of the Act to police and public bodies, and imposes a positive duty on public authorities to eliminate unlawful discrimination and promote equality of opportunity. It also introduces indirect discrimination provisions to extend to public bodies.

<sup>50</sup> Carole Petersen, provides a summary of the initial problems in enforcing the new anti-Discrimination Law in Hong Kong, this includes amongst other, high cost of legal fees, cap on damages (now removed), Columbia Journal of Transnational Law

<sup>51</sup> The British Government White Paper on Racial Discrimination which preceded the 1976 Act was emphatic regarding the need for complementary social policy in recognizing that legislation provided a framework for actions but limited in what it could achieve..."the Government fully recognizes this (the legislative framework) is only part of the subject; that the policies and attitudes of central and local government are of critical importance in themselves and in their potential influence on the country as a whole. It was hoped that most institutions and individuals would respond to the government's positive lead in promoting equality of opportunity and would change their practices voluntarily." However, it is essential in those cases where this does not occur that the law should be capable of providing adequate redress for victims of racial discrimination as well as eliminating discriminatory practices which are against the public interest. Anti-discrimination law enforcement : A comparative Perspective edited by Martin MacEwen, 1997, Ashgate publishing.

<sup>52</sup> One example to consider for Hong Kong is the CRE plans for organizing race sensitivity conferences aimed at senior politicians and administrators from across the public sector. This race sensitivity will stress their new enforcement responsibilities. It will also be useful to review the following CRE report for its recommendations and consider if it can be effected in Hong Kong. Under the RRA s.20 Services of any profession or trade, or any local or other public authority. Provision cover persons in primary health care services for example, to discriminate on racial grounds by refusing or deliberately omitting to provide services; or in relation to the quality of service provided or in

put it in context. Where we can also improve any possible race discrimination laws, is to examine the difficulties encountered in the implementation and enforcement of the Sex, and Disability Discrimination Ordinance.<sup>53</sup>

## Section 2

### 5. Proposed Steps

#### Drafting Stages of the legislation

Lobbying for a commitment to legislate was only the beginning. To ensure that the law is not ineffective the following recommendations are made:

- a) Scrutiny at the Bill's Committee stage
- b) establish a task force and seek consultations with legislators and government officials on drafting the law. Ensure there is ongoing review of the application of the law as has been practiced with the existing anti-discrimination ordinance in Hong Kong.

## PART 2

### 6 Strategies and Tactics - A Holistic Approach

In my view, the law is effective but is limited in its scope to effect social change.<sup>54</sup> A comprehensive social policy needs to be implemented, I make a few suggestions here:

- a) Continued Public awareness Campaigns

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the manner in which, or terms on which, those services are provided. CRE Code of Practice in Primary Health Care Services suggests that ethnic minority communities have suffered and continue to suffer from race discrimination in the provision of health care services. This affects the quality, availability and accessibility of health care for ethnic minority patients and has had an adverse impact on the health of ethnic minority communities. The code suggests that instances of racial stereotyping by primary health care staff prevent ethnic minority patients from receiving recognition and treatment to which they are entitled, and further that there is a lack of awareness and sensitivity on the part of the providers to the range of racial, and linguistic diversity in Great Britain, which affects these patients." See code of Practice in Primary Health Care Services published by the VRE in 1992; Butterworths

<sup>53</sup> Consider various articles, reports written by Anna Wu, Carole Petersen, Andrew Byrnes, Advancement of Feminist [sic] (HK), WSRC etc....

<sup>54</sup> This view is also shared by Mario Gomez in the context of PIL. He explains in his paper Litigating to Change in the context of public interest litigation that "Law is seen as one facet of a larger political struggle for realising economic, political and social reform. Whether law, law reform and litigation succeeds in bringing about change depends on a complex set of factors. The impact of legislative reform would depend on the 'quality of the legislation, the attitude of the judiciary, the commitment and orientation of the implementing agencies like the police and the Attorney-General's department, and the capacity and assertiveness of civil society groups. It would also depend on the 'political space' that exists and the state of public opinion. Mario Gomez, Litigating to Change unpublished paper DM1 page 253

I have listed a Summary of steps.<sup>55</sup>

b) Education a Powerful tool to effect change in attitude

Multi pronged approach should be adopted: educate the public;<sup>56</sup> educate ethnic minorities about their rights; appreciate the cultural context;<sup>57</sup> include the education of and by young children<sup>58</sup>; educate the educators.

c) A credible enforcement mechanism should also consider rectifying obstacles for complainants<sup>59</sup>.

d) Judicial Training has been identified as a key element in the successful utility of discrimination legislation.

## 6.1 Lobbying techniques

### **‘Voices of the Victims’**

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<sup>55</sup> Efforts in determining effective solutions in combating racial discrimination include critically examining the following amongst others; the public perception of racism in Hong Kong; its causes in both present day and in the context of Hong Kong’s colonial past; socio-economic status of ethnic minorities; dimensions of racism. The evaluation of the causes of racial discrimination will also involve exposing the myths and exploring the depth of comprehension of the damaging effect it has on individuals and society. A fundamental misperception that must be corrected is that race discrimination is not a serious problem unless racial violence and institutionalized segregation is prevalent. It has become apparent that some sections of the public in Hong Kong, are unaware of the effects their intolerance. This it has been argued is as a result of the “colour coding” classification of human beings. The attempts by the Hong Kong Government to educate the public have been described as superficial and on occasion patronising, which demonstrates the governments lack of understanding of the very real human rights problem of race discrimination. It must be the aim of NGO’s not to simply convince the HKSAR Government of the need to make racial discrimination unlawful but to launch an extensive public awareness and education program with the aim of raising social consciousness. This I believe is a crucial mechanism in constructively creating an environment of racial harmony, equality and multi culturalism. I would propose that NGO’s, community groups, and interest groups are consulted by the Government and invited to actively participate in the development of public education programs to elevate social consciousness. The establishment of a tasks force or working body incorporating groups to liaise and share information and data will be consistent with this aim.

<sup>56</sup> It will be imperative for the campaign to demonstrate that legislation and education are not mutually exclusive, in fact legislation is an effective tool for education. My personal view is that members of the public learn rapidly about changing their discriminatory practices if the possibility of sanctions exist. This it is hoped will have the consequent effect of increasing awareness of the damaging effects of racism on the society and facilitate a change in attitude and social integration.

<sup>57</sup> Consider racial discrimination in an Asian cultural context. One can learn from other jurisdictions however, given the nature of Asians, one must be aware of a cultural move towards not ‘rocking the boat’ so to speak and to simply be indifferent or “put up with” the discrimination. It will take time to create a supportive environment where complainants are willingly to come forward and talk about what can be a humiliating and denigrating experiences.

<sup>58</sup> Education of children – I consider targeting children and schools an effective method of spreading the word and raising consciousness on the issue. The content of the material must be valuable, not patronizing, or perpetuate stereotypes, but Efrosini Stefanou-Haag, stresses that although it is important in getting the content right, it is also important to 'ensure that the teacher uses teaching and learning strategies which support the learning outcomes for all students.' Trainers are the tools or as Efrosini Stefanou-Haag, puts it Educating the Educators.

<sup>59</sup> See footnote 26, 28,32

I have adopted the title of a special forum at the World Conference Against Racism, next month in Durban. The word 'victim' is a loaded term riddled with controversy, in this context it is not to suggest the success of the perpetrator in victimising his or her target but in the context of articulating the suffering and deprivation as a resulting of being racially discriminated against.

Securing accurate statistics and relevant data is invaluable to support allegations of racism and I will discuss this further below. However experience has shown that the personal stories impact even on the most stubborn of government officials who staunchly support the official policy. Equally if not more importantly is impact on the public whom in many cases seem unaware of the damaging effects of racism.

The stories telling for social change are powerful and compelling in relating the suffering individuals and families experience from being subjected to racism. The feelings of humiliation, degradation, frustration, indignation and abasement are prominent in the stories. The most distressing description of the victims feelings however was that of confusion and helplessness felt by two hospital patients before they tragically died in circumstances where they alleged racial discrimination impacted on the medical treatment they received.

Members of the ethnic community have described themselves being treated as invisible, they feel ignored, marginalised and that their voices are never heard. Amplifying their voices therefore symbolically and substantively is a valuable recognition of the victims has human being and as equals. It humanizes the victims, and lets their personality and character grow and blossom.

I consider the power of 'story telling' as motivating force for social change . This view was further confirmed at a recent event organised by H.A.R.D. Part II of the event was a segment titled "Experiences of Racism" where victims of racism told their stories. Members of H.A.R.D. anticipated an attendance of 100 persons and were encouraged when the turnout was over 200 persons. The follow up media interest, enquiries and crucially more victims coming forward to tell their stories has been overwhelming. The few stories told at that event has given other victims the confidence and inspiration to replace their feelings of shame with desire to speak out publicly for change. The stories coupled with statistics can go long way in commanding progress. The stories had the additional effect of demonstrating that perpetrators of racism dehumanised themselves.

I encourage civic groups and NGO's to organise forums for Voices of the victims<sup>60</sup>. It is a well recognised method and considered to have a powerful effect by giving a voice to the 'victim'<sup>61</sup> In fact the at the UN World Conference Against Racism (WCAR) 2001,a special Forum has been organised on this subject.<sup>62</sup> I am of the view that the story telling also elevates the victims to that of role models and persons worthy of respect. The additional critical benefit is that the press have and remain keen on reporting the 'personal interest stories'.

## 6.2 Scrutiny of Surveys and Statistics

The Government produced a Sample survey of the characteristics of the ethnic minorities in Hong Kong, which was completed in January 2000. A summary of the findings were given to NGO's during a consultation period. The summary only stated one objective of the survey. Of primary concern, was the Government's failure to ascertain the extent of racial discrimination faced by the groups surveyed. In the complete report (located on the internet) it was discovered that the survey had two objectives. The first one was in relation to ascertaining the demographics, whilst the second objective was to identify the 'special needs' and 'difficulties faced' by the ethnic minority group subject of the survey.

It is therefore telling that the survey failed entirely to meet it's second objective. The words 'special needs' was only referred to twice in the report, both in relation it the survey's stated objectives. Further, in the complete 44 page report only 3pages addressed the issue of 'difficulties' encountered by the ethnic minorities. The limited findings on 'difficulties faced' by the ethnic minorities were ambiguous and inadequate and consequently provided no constructive data to address the needs of this group. None of the questions in the survey asked whether or not the respondents had experienced discrimination in Hong Kong.

It is a fact that the Home Affairs Bureau was made aware by legislators and NGO's in 1998 of the flawed approach adopted in the public consultation exercise conducted in 1997, where the majority of the public were asked views about racial

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<sup>60</sup> Her (story) remains irreducibly foreign to Him. The Man can't hear it the way she means it. He sees her as victim, as unfortunate object of hazard. 'Her mind is confused,' he concludes. She views herself as the teller, the un-making subject...the moving force of the story. Trinh T. Minh-ha, *Woman, Native Other*. For many of us who would describe ourselves as teaching for social change, storytelling has been at the heart of our pedagogy. In the context of social change storytelling refers to an opposition to established knowledge, to Foucault's suppressed knowledge, to the experiences of the world that is not admitted into dominant knowledge paradigms. Storytelling is central to strategies for social change in two apparently sites: law and education *The Gaze from the Other Side: Storytelling for Social Change: Looking White People In The Eye: Gender Race, and Culture in Courtrooms and Classrooms*, Sherlene H. Razac, University of Toronto Press.

<sup>61</sup> The term "victim's" is very controversial as it suggests helplessness, another term frequently used is survivor, however the UN Special Forum has been titled 'Voices of the Victims', it is in this context that I use the term in this paper.

<sup>62</sup> The purpose is to give a platform to the victims. Raising their profile draws them away from statistics and figures, but gives a name, a character a story of the harm caused by racial discrimination.

discrimination whilst neglecting to survey the targeted groups experiencing discrimination, namely the ethnic minorities. It is with this knowledge that the Government embarked on this recent costly survey and failed to ask a question on racial discrimination. The only conclusion to draw is that the Government lacks commitment in genuinely attempting to understand and thus combat the very real problem of racial discrimination Hong Kong. The Home Affairs Bureau stated in a meeting with the Legislative Council on 13 February 2001 that they would be presenting the survey to the UN CERD. It seems inconceivable that the Government would perform a survey for the CERD and not ask a question regarding racial discrimination.

### **6.3 Coordination Amongst civic groups and NGO's**

#### **6.4 Media Role**

Take steps to expose the stories and not to perpetuate the stereotypes

### **7. Hong Kong Government's Attitude & Approach – Demonstrates a lack of commitment and lack of genuine attempt to understand the problem**

Finally, I consider the real obstacle to effecting constructive legislation is the Government's attitude and lack of perception of discrimination issues. At the time of writing the Government is embroiled in an inquiry into the unlawful termination of Mr. Patrick Yu, who was to commence employment with the EOC in 2003. This combined with its failure to re-appoint Ms. Anna Wu the former chairperson of the EOC who is widely recognized as assertive and effective Chairperson reflects the Governments lack of commitment to equal opportunities in Hong Kong.

An examination of the history of HK Government's track record on implementing anti-discrimination legislation, and responding to allegations of race discrimination<sup>63</sup>, gives a clear picture of how activists should conduct the

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<sup>63</sup> An example of the Government lacks of commitment and perception of the problem is indicative in the following response to LegCo (Legislative Council) in relation to the discrimination in the bars in Wan Chai, they "discovered that the differential charging practices reflected genuine commercial considerations. We are not convinced racial discrimination was at issue". This attitude alone is the single detrimental impediment to any progress. Another example, is that the Hong Kong Government appears to accept that unskilled migrant workers will necessarily be targets of discrimination, it attributes this to language difficulties or their low economic and social status. Members of the Home Affairs Bureau appeared surprised to hear case studies involving business people and professionals. Further highlighting one of the impediments to combating the problem of racial discrimination, namely the lack of understanding of this harmful form of discrimination by the HKSAR Government. In my opinion the fact that the Government regards the racial discrimination practiced against business professional as more serious than migrant workers is itself discriminatory. They place less value on the harm suffered by the migrant workers.

lobbying, and ongoing scrutiny of any progress in the campaign towards possible legislation.<sup>64</sup>

The major impediment is the Government's attitude. I am aware that achieving legislation is simply the first step in combating this problem and I would like to stress that a long-term holistic approach<sup>65</sup> is needed for genuine change. Commitment by the Government to legislating is only the first step on the ladder. Credibility of the legislation requires commitment in drafting legislation, which possesses effective enforcement mechanisms.

The impact of discrimination laws, especially in the area of employment, continues to be an important component of corporate life in countries such as Australia. As principles of discrimination laws and their methods of operation become more widely recognized and accepted then the use of the laws will inevitably increase. The effect of this hopefully is that organizations comply with the statutory requirements rather than face complaints lodged against them.

Positive steps to create an environment free of discrimination and harassment is a more productive use of resources than fighting off claims of breaches of discrimination laws.<sup>66</sup>

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<sup>64</sup> The HKSAR Government has consistently refused to acknowledge that the problem of racial discrimination in Hong Kong is a serious issue. The HKSAR Government embarked on a lengthy and costly consultation exercise on the issue of racial discrimination in 1997. Government's attitude and approach, was to conduct a survey of majority to seek views on issue affecting the minority. It is of course telling that the consultation drew no distinction between the majority community and minorities who suffer most discrimination, usually from the majority. The Government's readiness to use the views of the majority to suppress the protection for the minorities is clearly deplorable. It is wrong in principle to base a policy in relation to the protection of human rights on a survey conducted seeking the views of a majority, some of who may not know the problem faced by the minorities, be indifferent to it or indeed are the perpetrators of the discrimination. It is also disturbing to note that some of the submissions obtained during the consultation process relied on by the government clearly indicate racist attitudes in their objection to legislation..

Extract of Submission to UN Committee on CERD, and ICESCR written by Vandana Rajwani and Nancy Stafford, research officer Hong Kong Human Rights Monitor.

<sup>65</sup> This view is also asserted by the Australian Commissioner for Human Rights, - Legislation and other elements<sup>10</sup> April 2001 South China Morning Post -Letter to the editor, in response to HARD campaign.

<sup>66</sup> Chris Ronalds Discrimination Law & Practice, 1998, The Federation Press.