

## **Issues Concerning the Racial Discrimination Ordinance**

### What is the Racial Discrimination Ordinance (RDO)?

The Racial Discrimination Ordinance (RDO) is a law demanded by non-governmental organizations (NGOs), various ethnic groups and the government aimed at eliminating racial discrimination in all forms. The ordinance should protect all people from being discriminated against, harassed and vilified on the ground of race. It should bind the government, public and private organizations and individuals preventing any discriminatory behaviour in areas of employment, education, provision of facilities and services, club membership administration, and awarding of professional qualification and advertising. The ordinance will provide for the scope of application, its enforcement mechanism and remedies available under the law.

There are already three anti-discrimination ordinances in Hong Kong. They are the Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO) and the Family Status Discrimination Ordinance (FSDO). It is expected that the government will introduce a RDO structurally similar to the existing ones.

### How to legislate?

The government will draft a Bill. It will publish a consultation on the contents of the Bill. The draft Bill, possibly after some revision, will be introduced into the Legislative Council for debate, amendments and passage.

### When to legislate?

The bill is being drafted and a consultation paper on its contents will be released for public consultation soon after the September Legislative Council elections. In 2005, the Bill will be introduced into the Legislative Council for debate. The legislation is expected to be enacted in 2005/2006.

### Why do we need RDO?

In Hong Kong, cases of racial discrimination are on the rise. On numerous occasions between 1996 and 2002, several United Nations human rights treaty bodies and the United Nations High Commissioner for Human Rights have called for the enactment of a law to prohibit racial discrimination. Hong Kong is part of China and China is a state party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Therefore, Hong Kong has an obligation to fulfill the Convention's requirement, which include enacting a law to eliminate racial discrimination in all its forms. The Hong Kong Bill of Rights Ordinance (BORO)

already provides for equality to all races, but its provisions are broad and difficult to enforce. Also, BORO applies only to Government and public bodies which means that it is not applicable to acts of private organizations and individuals. To offer comprehensive and detailed protection, RDO is necessary.

Why is it inadequate to eliminate discrimination through educational means?

Education can change people's views and attitude. It is one of the ways to combat discrimination, but it takes a long time. Furthermore, some people will still discriminate despite education. Legislation, however, is an effective tool to protect victims of discrimination and to provide them with remedies. What's more, legislation can be an education tool, which helps clarify the line between what is legal and illegal. Therefore, public education is not enough; legislation is essential.

Why do I support the enactment of RDO?

"All humans are born equal." Everyone who supports freedoms, human rights and equality agrees with this. The enactment of RDO ensures that this value will not be compromised on the grounds of race. This is important to the creation of an equitable society. Although you may not be the ethnic minorities, you should still support the enactment of RDO if you believe in the principle of equality. Moreover, while RDO is essential for the protection of the ethnic minorities, the same law equally protects ethnic Chinese from being discriminated against on racial grounds.

What is meant by discrimination on racial grounds?

According to the definition given by ICERD, discrimination based on racial grounds includes 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin.' Like other international conventions, ICERD is the minimum standard of protection required of its States Parties or its nationals. It does not specify the category, the conditions, the remedy or the mechanism of implementation. These elements are up to state government's will, provided that the details are in accordance with the spirit of the convention. Therefore, ICERD does not interfere with how individual states parties implement the convention. For instance, in its Race Relations (Amendment) Act 2000, the United Kingdom added the grounds of protection, *nationality and citizenship*, to those provided in ICERD. This does not violate the convention. On the contrary, it makes the protection more comprehensive and explicit.

Does the Bill include "new arrivals"?

With regard to new arrivals from the Mainland, the Homes Affairs Bureau rejected

express inclusion of “new arrivals” in legislation because ICERD does not address discrimination of the same ethnicity, quoting Mainland Chinese as ethnically the same as Hong Kong Chinese. However, the HKSAR government has in its policies a consistent tradition of interpreting “new arrivals” as one of the grounds covered in the convention. In policy areas such as social service, education or information provision, there are often specialized provisions addressing the need of “new arrivals”. It is difficult to understand why the government should reverse this practice and interpretation on the issue of anti-racial discrimination legislation. In fact, the convention would not stop the government from specifically stating the protection of “new arrivals” even if it is not a requirement set by the convention. It is because the convention states the minimum standards of protection and expects states parties to provide a more comprehensive protection in their national laws. For example, as discussed above, the UK also includes a social ground in their national law outside the convention.

What is the difference between actual race and perceived race?

RDO aims to protect the actual race and the perceived race. Such provisions apply specifically to people who are perceived as belonging to a racial group other than their actual racial group, such as people of mixed-race descent, overseas born/educated Chinese or anyone who may be considered as belonging to another racial group because of his/her physical attributes, facial features or language spoken. Without the perceived race protected as an express group, a discriminator may put up an “equal misery” defence where he/she claims to apply the same (discriminatory) treatment to a person of race A (who is perceived of as race B) and a person of race B.

Will the quota system be introduced in the Bill?

The existing SDO and DDO do not enforce a specific proportion across the gender and physical ability boundary in the provision of services, goods and in employment. No quota system will be put forward in the RDO in all likelihood, which means there will be no laws binding the proportion of ethnic minorities in schools, in organizations or in employment. However, if ethnic minorities are mistreated during the admission to schools or clubs or during the process of recruitment, this can be regarded as a discriminatory behaviour.

Should there be any exemptions and grace period for Small/Medium-sized Enterprises (SMEs)?

Since the business community has shown great concern over the bill, the government has reiterated that exemptions should be provided “to address its legitimate concerns.”

In particular, it was suggested that SMEs should be exempted from the bill. However, the existing anti-discrimination laws only give them a grace period of one to three years instead of giving them exemptions. Exemptions should not be given to SMEs, though a one-to-two-year grace period is acceptable so that they can formulate policies complying with RDO. In practice, the adaptation of SMEs in carrying out business to comply with RDO requires less time than that to comply with SDO and DDO.

#### Should charities and voluntary organizations be exempted?

According to SDO and DDO, there are exemptions for charities and voluntary organizations if a service is provided specifically to members of a certain race as long as it is contained in the charitable instrument of the organization. By contrast, there is no restriction as to the extent to which exemptions apply for voluntary bodies as long as the activities are non-profit. For instance, government and private schools may be under the purview of the eventual RDO while those run by voluntary bodies will be exempted from RDO. Given the fact that a large proportion of educational institutes and social services in Hong Kong are currently run by voluntary bodies, the effects of their exemption from RDO cannot be under-estimated.

#### How to ensure the equality in Criminal Justice System?

To deal with crime, law enforcement bodies often adopt racial profiling, which easily reinforce the stereotype that “ethnic minorities are more likely to commit crimes” and also encourages the abuse of the criminal justice system. Racial profiling involves law enforcement officials pinpointing ethnic minorities when they are patrolling, developing biased attitude towards suspects and thus compromising fairness in judgment, neglecting ethnic minorities’ special needs, using discriminatory wording, and failing to provide simultaneous translation or the provision of legal aid fairly, etc. Because of this, enforcement bodies and legal bodies should be responsible for ensuring racial equality and keeping a record of criminal prosecution by race in order to monitor the fairness of the criminal justice system towards ethnic minorities.

#### Why do we need “positive duty”?

Discrimination laws are often worded to prohibit certain discriminatory behaviour. However, such laws may not necessarily and efficiently guarantee an equal access to goods, services and facilities provided by public bodies. Policies that are applicable to all may not ensure that all races can enjoy equal opportunities. In the UK, the Race Relations (Amendment) Act 2000 imposes on public authorities a positive duty to take account of racial equality in the day-to-day work of policy-making so that ethnic

minorities can equally, conveniently and fairly enjoy service delivery. In particular, positive duty also emphasizes a substantial responsibility in the areas of education and employment; for example, keeping a record of racial demographic statistics and publishing evaluation reports about the effects of the policies on different races. The government should consider including such a positive duty provision in RDO.

**Contact us: Civil Human Rights Front**

**Tel: 23854491**

**Email address: [contact@civilhrfront.org](mailto:contact@civilhrfront.org)**

**Website: [www.civilhrfront.org](http://www.civilhrfront.org)**

***(Written by Roddy Shaw and Chong Yiu Kong and translated by Hong Kong Human Rights Monitor)***