



OHCHR REGISTRY

19 MAY 2009

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HONG KONG BAR ASSOCIATION

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7 May 2009

Torsten Schackel,
Acting Secretary of the Committee on the Elimination of Racial Discrimination,
UNOG-Office of the High Commissioner on Human Rights,
Palais Wilson - 52, rue des Pâquis, CH-1201, Geneva,
Switzerland.

Dear Sir/Madam,

Re: Committee on Elimination of Racial Discrimination, 75th Session: Consideration of the 10th to 13th Periodic Reports of the People's Republic of China (including Hong Kong Special Administrative Region)

I refer to the captioned session of the Committee on the Elimination of Racial Discrimination ("Committee").

The Hong Kong Bar Association submits the enclosed Submission which highlights important issues on the implementation of the Convention for the Elimination of All Forms of Racial Discrimination in Hong Kong that the Committee may wish to question the delegates from the Governments of the People's Republic of China and the Hong Kong Special Administrative Region.

I would be most grateful if you can distribute this Submission to the country rapporteur and his or her assistant, as well as all the Committee members soonest possible.

Should you have any queries, please contact me at coleslaw@templechambers.com or Mr. P.Y. Lo at pylo@pacific.net.hk. Thank you for your assistance.

Yours sincerely,

Russell Coleman SC
Chairman

PYL/al

Encl.

香港大律師公會

香港金鐘道三十八號高等法院低層二樓

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Committee on the Elimination of Racial Discrimination

75th Session (3rd to 28th August 2009)

Briefing of the Hong Kong Bar Association

1. The Committee on the Elimination of Racial Discrimination (“the Committee”) has scheduled a hearing to be held in its 75th Session in August 2009 to consider the consolidated 10th to 13th periodic reports of the People’s Republic of China on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (“the Convention”). Part Two of the consolidated reports is concerned with the Hong Kong Special Administrative Region (“HKSAR”).
2. The Hong Kong Bar Association (“HKBA”) submits this briefing to the Committee so as to inform and assist the Committee in its preparation for the upcoming hearing, including the compilation of the list of issues that the Governments of the People’s Republic of China and the HKSAR are expected to address at the hearing.

Race Discrimination Ordinance

3. The HKBA appreciates the follow-up and urgent actions taken by the Committee in August 2007 and March 2008 in respect of the Race Discrimination Bill then in the legislative process before the Legislative Council of the HKSAR.
4. The consolidated reports are not up-to-date in informing the Committee of the legislative process in the HKSAR in enacting a “Race Discrimination Ordinance”.
5. Although the Race Discrimination Ordinance (“RDO”) was enacted on 17 July 2008, only parts of the RDO were put into operation on 3 October 2008 to enable the Equal Opportunities Commission (“EOC”) to prepare codes of

practice and make rules and regulations for the implementation of the RDO. There appears to be no concrete timetable for the full operation of the RDO.

6. The HKBA suggests that the Committee should ask the HKSAR Government for a comprehensive briefing document on the provisions of the RDO, the timetable for its full operation, the administrative and budgetary provisions for its full operation, and the plan or arrangement for the review of its implementation (including timetable, topics of review and criteria for gauging the effectiveness of the implementation of the RDO).
7. The HKBA considers that the RDO remains unsatisfactory in the following areas:
 - (1) While section 3 of the RDO now states that it “binds the Government”, it remains deficient in not having provisions to outlaw racial discrimination by the Government and public authorities (1) in the carrying out of their functions; and (2) in connection with the appointment of posts and offices which are not regarded as employment. Although the HKSAR Government has undertaken to draw up administrative guidelines for government bureaux and departments to follow in their formulation and implementation of policies and measures, the deficiency has left victims of discrimination without an effective remedy. The HKBA believes that the Government should be on the same footing as private bodies when it comes to liability to compensate for acts of unlawful racial discrimination.
 - (2) Section 8 of the RDO defines, inter alia, what constitutes an act done on the ground of race, colour, descent or national or ethnic origin of a person. Sub-section 8(3)(b) to (d) *excludes* acts done on the ground of a person’s immigration status (not being a permanent resident of the HKSAR), length of residence in the HKSAR, or nationality, citizenship or resident status of another country or place from constituting as acts done on the ground of race, colour, descent or national or ethnic origin of a person. The HKSAR Government had