



Language

and Racial Discrimination

in International Law

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 - Views of the Committee for the Elimination of Racial Discrimination
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International Convention on the Elimination of All Forms of Racial Discrimination

Article I

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.



**UN Committee for the Elimination of Racial
Discrimination: Language is Clearly Part of its
Mandate**

Iceland

The Committee welcomes ... expanded programmes and activities, particularly to assist immigrants and other foreigners in the study of their own language.

Sri Lanka

Also welcomed are legislative and administrative measures ... for the introduction of Tamil as an official language in addition to the Sinhalese language, with English as the link language;

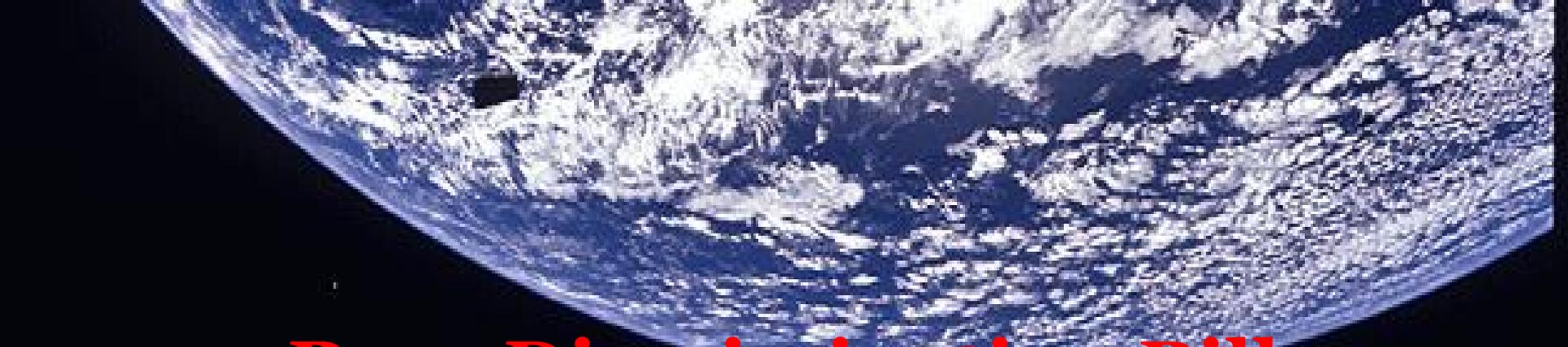


Moldova

Among positive aspects, the Committee welcomed the decrees which the State party has adopted with the purpose of ensuring the functioning and development of languages of ethnic minorities...

Austria

The Committee welcomes [the] establishment of the Immigrants Fund, which assists new immigrants by providing free advice in their native language on questions concerning their integration in Austria;



Race Discrimination Bill

58. Exception for Languages

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

(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.



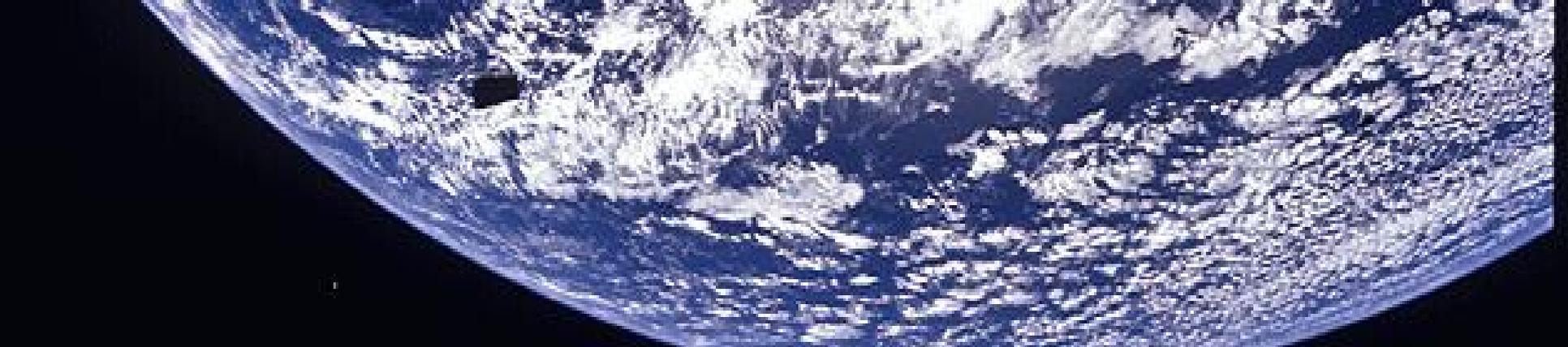
Official Language Policies do not Permit Discrimination or other Violations of International Human Rights Law

Ballantyne v Canada (1993), right to use a language in private activities was guaranteed by freedom of expression, according to the *UN Human Rights Committee*, even if this was contrary to the official language policies of the Government of Québec.



Diergaardt v Namibia (2000), the *UN Human Rights Committee* was of the view that a minority language, Afrikaans, had to be used to some degree by official authorities in addition to English, the official language, in order to comply with non-discrimination on the ground of language, since there was no explanation why only using English was reasonable and justified in the circumstances.

Cyprus v Turkey (2001): the *European Court of Human Rights* concluded (in contradiction to its 1968 Belgian Linguistics Case) that the right to education could include the right to being instructed in a minority language in a state school, even if this is contrary to the official language legislation in place.



National Anti-discrimination Laws do not Exempt Language: On the Contrary!

UNITED STATES OF AMERICA: Title VII of the Civil Rights Act of 1964 is a federal law that protects individuals from discrimination based upon national origin and race. Some courts and governmental agencies have said that discrimination based on language is a form of national origin discrimination because primary language is closely related to the place a person comes from. So if you are being discriminated against for using that language, or because of characteristics having to do with that language, that is considered essentially the same as if you were being discriminated against because of your national origin. (See U.S. Equal Employment Opportunity Commission, Compliance Manual Section 13: National Origin Discrimination, <http://www.eeoc.gov/policy/docs/national-origin.html>)



ONTARIO HUMAN RIGHTS COMMISSION: The **Ontario Human Rights Code**, like most other provincial human rights legislation in Canada, does not include 'language' as a prohibited ground of discrimination. For the Commission to have jurisdiction, the discriminatory action or behaviour must be in relation to a prohibited ground of discrimination in the Code. Although the Code does not explicitly identify 'language' as a prohibited ground of discrimination, the Commission does accept complaints under a number of related grounds, such as ancestry, ethnic origin, place of origin and in some circumstances, race. In the Commission's experience, language can be an element of a complaint based on any of these grounds. (See Ontario Human Rights Commission, Policy on Discrimination and Language, <http://www.ohrc.on.ca/english/publications/language-policy.pdf>)



Conclusion

Provisions such as Section 58 of the Race Discrimination Bill seem to make exceptions for language preferences under the Official Languages Ordinance and Hong Kong's language policies: these are dangerous because they appear to create 'language exceptions' which could – in some cases – involve situations of racial discrimination in violation of international law, and of Hong Kong's obligations under treaties like International Convention on the Elimination of All Forms of Racial Discrimination.



Constantine the Great, 9th Century:

Does not the sun shine equally for the whole world? Do we not all equally breathe the air? Do you not feel shame at authorizing only three languages and condemning other people to blindness and deafness? Tell me, do you think that God is helpless and cannot bestow equality, or that he is envious and will not give it?



謝謝

Merci

ありがとう

Thank
you

