

立法會
Legislative Council

LC Paper No. CB(2)1138/06-07

(These minutes have been
seen by the Administration)

Ref : CB2/BC/2/06

**Bills Committee on
Race Discrimination Bill**

**Minutes of meeting
held on Tuesday, 16 January 2007, at 8:30 am
in Chamber of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon Abraham SHEK Lai-him, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Yuen-han, JP
Hon Bernard CHAN, GBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon LI Fung-ying, BBS, JP
Hon Albert CHAN Wai-yip
Hon Audrey EU Yuet-mee, SC, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Alan LEONG Kah-kit, SC
Dr Hon Fernando CHEUNG Chiu-hung
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon TAM Heung-man
- Members absent** : Hon Jasper TSANG Yok-sing, GBS, JP
Hon Daniel LAM Wai-keung, SBS, JP

- Public Officers attending** : Mrs Carrie LAM
Permanent Secretary for Home Affairs
- Mr Donald TONG
Deputy Secretary for Home Affairs(1)
- Mr Victor NG
Principal Assistant Secretary for Home Affairs(4)
- Ms Betty CHEUNG
Senior Government Counsel
- Clerk in attendance** : Miss Flora TAI
Chief Council Secretary (2)2
- Staff in attendance** : Mr KAU Kin-wah
Assistant Legal Adviser 6
- Ms Joanne MAK
Senior Council Secretary (2)2
- Ms Anna CHEUNG
Legislative Assistant (2)2

Action

I. Election of Chairman and Deputy Chairman

Ms Margaret NG and Mr Abraham SHEK were elected Chairman and Deputy Chairman of the Bills Committee respectively.

II. Meeting with the Administration

(LC Paper No. CB(3)176/06-07 - The Bill

LegCo Brief Ref : HAB/CR/1/19/102 - Legislative Council Brief

LC Paper No. LS18/06-07 - Legal Service Division Report on the Bill

Appendix III to LC Paper No. CB(2)859/06-07 - Marked-up copy of the relevant provisions of ordinances to be amended by the Bill

Action

LC Paper No. CB(2)859/06-07(01) - Background brief prepared by the Legislative Council Secretariat

LC Paper No. CB(2)859/06-07(02) - Submission from "15 Teachers in the Faculty of Education, The University of Hong Kong"

LC Paper No. CB(2)859/06-07(03) - Submission from HKSKH Lady Maclehole Centre)

2. The Bills Committee deliberated and raised various issues on the Bill (index of proceedings attached at **Annex**).

Clerk
Admin
3. At the Chairman's suggestion, members agreed that, in order to facilitate future discussion, the Clerk should draw up a list of issues raised by members at the meeting for the Administration to provide written responses accordingly. The Administration undertook to provide papers on these issues for members' discussion at future meetings. The Chairman further suggested that members should inform the Clerk of any additional issues for incorporation into the list which would be updated from time to time.

Admin
ALA6
4. At the suggestion of Dr YEUNG Sum, the Administration and the legal adviser to the Bills Committee were requested to examine whether the definition of "race" in other relevant overseas legislation was restricted to race only or other considerations were also included and revert to the Bills Committee accordingly.

(Post-meeting note : The list of issues was issued to members vide LC Paper No. CB(2)963/06-07(01) dated 26 January 2007)

III. Any other business

Meeting schedule

Clerk
5. Members agreed that the Bills Committee would meet once every two weeks for the scrutiny of the Bill. Members further agreed that the Bills Committee should hold its next meeting on Monday, 29 January 2007, at 4:30 pm. The Clerk was requested to prepare a schedule of future meetings for members' consideration at that meeting.

Public consultation

Clerk
6. Members agreed that the Bills Committee should invite views from the public on the Bill by issuing press releases and posting a notice on the LegCo website. Members also agreed that the Bills Committee would hold a meeting on Saturday, 3 March 2007, from 9:00 am to 12:30 pm to receive views from

Action

interested parties. The Chairman suggested that members should notify the Clerk if they wished to invite any deputations to that meeting. At the Chairman's suggestion, members further agreed that the Bills Committee would schedule further meeting(s) to receive views on the Bill if necessary.

7. There being no other business, the meeting ended at 10:30 am.

Council Business Division 2
Legislative Council Secretariat
23 February 2007

**Proceedings of the meeting of Bills Committee on
Race Discrimination Bill
on Tuesday, 16 January 2007, at 8:30 am
in Chamber of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000346	Mr Martin LEE Dr YEUNG Sum Miss TAM Heung-man Ms Margaret NG	Election of Chairman	
000347 - 000533	Chairman Mr Martin LEE Mr Abraham SHEK	Election of Deputy Chairman	
000534 - 003229	Chairman Admin	Powerpoint presentation by the Administration [presentation materials issued vide LC Paper No.CB(2)883/06-07]	
003230 - 003750	Chairman Mr Ronny TONG Admin	<p>Mr Ronny TONG's query about the justifications for singling out pupillage and tenancy in barristers' chambers as one of the fields to which the protection provisions of the Bill covered, and his suggestion of alternative drafting approach.</p> <p>The Administration's responses that</p> <ul style="list-style-type: none"> - separate provisions were made for the barristers' profession because the arrangements relating to pupillage might not strictly speaking come under employment; - the drafting approach was consistent with the existing anti-discrimination ordinances and the same approach was adopted for the Race Relations Act in the United Kingdom; - the Race Relations Unit of the Home Affairs Bureau had not received any complaints on racial discrimination by or in relation to barristers. 	

Time marker	Speaker	Subject	Action required
003751 - 004449	Chairman Miss TAM Heung-man Admin	<p>Miss TAM Heung-man's request for detailed explanations on the rationale for each exception provided for in the Bill.</p> <p>Miss TAM's concern about exclusion of new arrivals from the Mainland from the scope of the Bill.</p> <p>The Administration's explanation that the exception provisions could be divided into four categories on the basis of purposes :</p> <ul style="list-style-type: none"> - to ensure that special measures intended for bestowing benefits on ethnic minorities would not be regarded racial discrimination; - to strike a balance between safeguarding the rights of ethnic minorities and the legitimate rights and freedoms of others; - to provide for lawful and justified protection for other purposes which were justified on policy considerations; and - to delineate clearly the scope of the Bill. <p>The Administration's explanations on the rationale for excluding differential treatment based on the status of being new arrivals from the Mainland from the scope of racial discrimination for the purpose of the Bill and on the administrative measures to tackle the problem of discrimination against new arrivals from the Mainland.</p> <p>The Chairman's query as to why the Government resorted to non-legislative measures and public education only in tackling the problem of discrimination against new arrivals from the Mainland instead of protecting them by legislation.</p>	

Time marker	Speaker	Subject	Action required
004450 - 005029	Chairman Mr Jeffrey LAM Admin	<p>Mr Jeffrey LAM's suggestion that the Administration should clearly explain to the public whether any particular ways of addressing members of ethnic minority, e.g. "阿差", might constitute racial discrimination under the Bill.</p> <p>The Administration's advice that, after enactment of the Bill, relevant complaints could be lodged to the Equal Opportunities Commission (EOC) which would resolve the dispute by mediation, and, if unsuccessful, might require the case to be heard by the court to decide on whether it constituted racial harassment under clause 7.</p>	
005030 - 010522	Chairman Dr YEUNG Sum Admin	<p>Dr YEUNG Sum's expression of great dissatisfaction with the absence of mandatory requirement for modification of the medium of instruction in education and vocational training as it would allow the unfairness suffered by non-Chinese speaking (NCS) ethnic minority children under the relevant existing arrangements to continue to exist.</p> <p>Dr YEUNG's expression of concern about the need to review the recruitment policy of civil service in order not to preclude members of ethnic minorities from appointment.</p> <p>The Administration's advice that the Education and Manpower Bureau had proposed measures to enhance support for NCS students.</p>	

Time marker	Speaker	Subject	Action required
		<p>The Administration's explanation that, without providing for this exception in the Bill, service providers of education and training institutes might feel confused as to whether they were obliged to make special arrangement for holidays or medium of instruction to cater for the needs of ethnic minority students and unnecessary litigations might arise.</p> <p>The Administration's information on recent changes to the recruitment policy of civil servants to allow flexibility in imposing the Chinese language entry requirement on applicants, and on the improvements being made by the Vocational Training Council in catering for the use of English as a medium of learning for ethnic minorities.</p>	
	<p>Chairman Admin Deputy Chairman</p>	<p>Mr Abraham SHEK's expression of support for the Bill and concerns about various issues :</p> <ul style="list-style-type: none"> - the need to ensure equal opportunities for NCS students in receiving education; - whether it was appropriate to single out pupilage and tenancy in barristers' chambers as one of the fields to which the protection provisions of the Bill covered; - how to resolve discrimination on the ground of religion; - the need to strike a balance between safeguarding the rights of ethnic minorities and the legitimate rights and freedoms of others; and - how the Bill could safeguard principles of "equality". <p>The Administration's position that the current Bill could not be expected to cover all other grounds for discrimination occurring in our society. Whether and when to resort to legislation to tackle each specific ground was a matter for further deliberation and extensive consultation.</p>	

Time marker	Speaker	Subject	Action required
010523 - 011312	Chairman Mr LEE Cheuk-yan Admin	<p>Mr LEE Cheuk-yan's query about whether resources implications were the main consideration of the Administration in proposing to provide for the exception for the use or failure to use of particular languages in regard to provision of goods, services and facilities, etc. as well as the justification for exempting small businesses during the first three years of the enactment of the Bill.</p> <p>The Administration's explanation that small businesses would need to implement the relevant code of practice to be prepared under the future Race Discrimination Ordinance and time might be required for them to adapt to the requirements.</p> <p>The Administration's explanation that it was necessary to make clear that any service providers would not be obliged by the Bill to use particular languages in regard to provision of goods, services and facilities, etc. in order to ease their concern.</p> <p>The Administration's citation of a relevant court case in the European Community showing that the court did not consider failure to arrange a particular medium of instruction in educational establishments a violation of human rights.</p> <p>The Administration's view that there was room for review of the need for requiring all students regardless of their background to attain a high level of proficiency in Chinese for entry to local universities.</p>	

Time marker	Speaker	Subject	Action required
011313 - 011921	Chairman Ms LI Fung-ying Admin	<p>Ms LI Fung-ying's query about the justification for the exception for employers in regard to the offer of employment to domestic helpers and whether the Bill also applied to the use of graphic illustrations in advertisements or the imitation of the accent of a racial or ethnic groups in electronic advertisements to incite ridicule of that particular group.</p> <p>The Administration's explanation of the rationale of the exception, and brief explanation of clause 42 and undertaking to provide more detailed information in writing.</p>	
011922 - 012621	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG's concern about :</p> <ul style="list-style-type: none"> - the impact of the seven-year residency requirement imposed on new arrivals from the Mainland; - the exception for use or failure to use a particular languages in regard to provision of goods, services and facilities, etc. might perpetuate the problem of language barrier; and - the justification for the exceptions for immigration legislation and for existing differential treatment on local and overseas terms of employment as well as overseas terms of employment. <p>The Administration's explanation of the relevant justifications and that the same exception for immigration legislation was also provided for under the Hong Kong Bill of Rights.</p> <p>The Administration's advice that government departments had been reminded of the need to ensure that any service they provided would have to cater for the use of English if service users included ethnic minorities.</p>	

Time marker	Speaker	Subject	Action required
012622 - 013235	Chairman Mr Martin LEE Admin	<p>Mr Martin LEE's view about amending the definition of racial discrimination in the Bill in order to extend coverage to new arrivals from the Mainland and his enquiry about the measures which had been taken to eliminate discrimination against new arrivals from the Mainland.</p> <p>The Administration's view that it was conceptually wrong to regard new arrivals from the Mainland as people of a different racial or ethnic group and that it was neither the appropriate timing for the introduction of a separate legislation to prohibit discrimination against new arrivals from the Mainland.</p> <p>The Chairman's concern that new arrivals from the Mainland were frequently associated with people of the lower class in Hong Kong and this might be a kind of discrimination against these new arrivals.</p>	
013236 - 013745	Chairman Mr CHEUNG Man-kwong	<p>Mr CHEUNG Man-kwong's concern about the lack of avenue provided to NCS students to attain qualifications in Chinese for admission to local universities and the need for affirmative action to be taken in this regard.</p> <p>The Administration's response that there would be far-reaching implications if the Bill also imposed an obligation for affirmative action like the Disability Discrimination Ordinance.</p> <p>The Administration's undertaking that it would continue to pursue proactive measures to tackle the language problem of ethnic minority students in education.</p>	

Time marker	Speaker	Subject	Action required
013746 - 014327	Chairman Ms Emily LAU	<p>Ms Emily LAU's concern about the effectiveness of protection rendered by the Bill to ethnic minorities and how Article 25 of the Basic Law (BL) could be complied with given the many exceptions provided for by the Bill and the exclusion of new arrivals from the Mainland from the scope of the Bill.</p> <p>Ms LAU's request for the Administration's explanation of its view that "an extension of the scope of the Bill would have significant adverse implications on established Government policies and practices which are based on the seven-year residency requirement".</p>	
014328 - 014846	Chairman Mr James TO Admin	<p>Mr James TO's query about the circumstances under which it was not practicable for Government departments to use English in their provision of facilities/services to the public, and his suggestion of excluding the Government from the application of this exception clause.</p> <p>The Administration's response that the exception clause did not contravene the Government's language policy and undertook to provide further information.</p>	
014847 - 015152	Chairman Dr LUI Ming-wah Admin	<p>Dr LUI Ming-wah's view that there were no practical needs for introducing the Bill as demonstrated by the small number (about 30 only) of relevant complaints received.</p> <p>The Administration's brief explanation of the justifications.</p>	
015153 - 015256	Chairman Mr Ronny TONG	<p>Mr Ronny TONG's suggestion of deleting clause 8(3) so that the scope of the Bill could cover new arrivals from the Mainland, as the definition of "race" in the Bill already included "descent and nationality" which could have covered new arrivals from the Mainland.</p>	
015257 - 015339	Chairman Deputy Chairman	<p>Mr Abraham SHEK's request for provision of bilingual papers by the Administration.</p>	

Time marker	Speaker	Subject	Action required
015340 - 015426	Chairman Dr YEUNG Sum	Dr YEUNG Sum's request for information on whether the definition of "race" in other relevant overseas legislation was restricted to race only or other considerations were also included.	Admin and ALA6 to follow up (para. 4 of minutes)
015427 - 015510	Chairman Mr Howard YOUNG	Mr Howard YOUNG's view that the Administration should consider whether further consequential amendments to other ordinances (in addition to those already proposed in the Bill) would be necessary, such as the Road Traffic Ordinance in relation to the requirement to wear crash helmets	
015511 - 015529	Chairman Ms Emily LAU	Ms Emily LAU's request for the Administration's explanation on how the Bill as presently drafted was in conformity with BL 25 and with the obligations under various international human right treaties applicable to Hong Kong.	
015530 - 015709	Chairman Admin	The Chairman's request for the Clerk's preparation of a list of issues raised by members and for the Administration to provide written responses accordingly.	The Clerk to prepare a list of issues and the Administration to provide written responses accordingly (para. 3 of minutes)
015710 - 020230	Chairman Deputy Chairman Dr YEUNG Sum Mr Martin LEE	<ul style="list-style-type: none"> - Arrangements for inviting views from the public; - Future meeting schedule; and - Date of next meeting 	The Clerk to issue invitation for submission and to prepare a proposed meeting schedule (paras. 5 & 6 of minutes)