

立法會
Legislative Council

LC Paper No. CB(2)1592/06-07

(These minutes have been
seen by the Administration)

Ref : CB2/BC/2/06

**Bills Committee on
Race Discrimination Bill**

**Minutes of meeting
held on Wednesday, 28 February 2007, at 8:30 am
in Conference Room A 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
Hon CHEUNG Man-kwong
Hon Bernard CHAN, GBS, JP
Hon Jasper TSANG Yok-sing, 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
Dr Hon Fernando CHEUNG Chiu-hung
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon TAM Heung-man
- Members absent** : Dr Hon LUI Ming-wah, SBS, JP
Hon James TO Kun-sun
Hon CHAN Yuen-han, JP
Hon Daniel LAM Wai-keung, SBS, JP
Hon Alan LEONG Kah-kit, SC

- Public Officers attending** : Mr Donald TONG
Deputy Secretary for Home Affairs(1)
- Mr Victor NG
Principal Assistant Secretary for Home Affairs(4)
- Ms Roxana CHENG
Senior Assistant Solicitor General
- Miss Betty CHEUNG
Senior Government Counsel
- Miss Shandy LIU
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. Confirmation of minutes

[LC Paper No. CB(2)1138 and 1139/06-07]

The minutes of the meetings on 16 January and 29 January 2007 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(2)1152/06-07(01) - Paper entitled "Affirmative action" provided by the Administration

LC Paper No. CB(2)1152/06-07(02) - Paper entitled "The Belgian Linguistics case" provided by the Administration

LC Paper No. CB(2)1152/06-07(03) - Paper entitled "Propriety of support measures for ethnic minorities" provided by the Administration

Action

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

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

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Admission to tertiary education institutions

Admin

3. The Administration was requested to consider whether the following suggestions of Mr CHEUNG Man-kwong would be acceptable on the basis of policy and legal considerations and, if not, to explain why and suggest alternative feasible options -

- (a) to allocate a quota of about only 1% (i.e. not more than five students) of local student enrolment for admitting non-Chinese speaking (NCS) students to local universities on top of the approved student number of 14 500 for first-year-first-degree programmes; or
- (b) to model on the existing scheme of admitting non-local students at the post-secondary levels up to 10% of the approved student number targets and set an enrolment quota for NCS students who participated in the General Certificate of Secondary Education (GCSE) (Chinese) examination in Hong Kong.

Admin

4. The Administration was also requested to advise -

- (a) whether the suggestions in paragraph 3 could be permitted under Clause 49 of the Bill as special measures;
- (b) whether these suggestions would be challenged as in breach of Article 39 of the Basic Law (BL), Articles 2 and 13 of the International Covenant on Economic, Social and Cultural Rights, or Article 2 of the International Covenant on Civil and Political Rights;
- (c) whether clause 49(c) as currently drafted would allow universities to set a quota for NCS students for admission to their first-year-first-degree programmes;
- (d) how to prevent abuses by non-NCS students if alternative qualifications in Chinese e.g. GCSE (Chinese) examination were recognised by local universities; and

Action

- (e) whether the Chinese language requirement imposed on NCS students for admission to local universities would amount to racial discrimination against these students given the exemption of non-local students from such a requirement.

Affirmative action

Admin

5. The Administration was requested to explain the scope of affirmative action referred to in paragraph 18 of the Administration's paper entitled "Affirmative action" [LC Paper No. CB(2)1152/06-07(01)] and to provide a summary and analysis of the minority judgments of the United States Supreme Court on the three cases concerning university admission policies set out in Annex to this paper.

Admin

Issues to be discussed at the meeting on 23 March 2007

6. At the suggestion of the Chairman, members agreed to discuss the Administration's papers on "The Belgian Linguistics case", "Propriety of support measures for ethnic minorities", and "Compatibility with Articles 24 and 25 of the Basic Law" respectively at the meeting scheduled for 23 March 2007 at 8:30 am. The Administration was requested to co-ordinate the attendance of representatives of EMB at that meeting to answer questions relating to education.

Admin

III. Any other business

Date of next meeting

7. Members noted that the next meeting would be held on Saturday, 3 March 2007, at 9:00 am to meet with deputations and the Administration.
8. There being no other business, the meeting ended at 10:35 am.

Council Business Division 2
Legislative Council Secretariat
17 April 2007

**Proceedings of the meeting of Bills Committee on
Race Discrimination Bill
on Wednesday, 28 February 2007, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000448	Chairman	Confirmation of minutes of meetings	
000449 - 002355	Chairman Admin Mr Martin LEE	Introduction of the Administration's paper by Deputy Secretary for Home Affairs (1) [LC Paper No. CB(2)1152/06-07(01)] Correction of typos in the Administration's paper.	
002356 - 003435	Chairman Mr Cheung Man-kwong Admin	Mr Cheung Man-kwong's expression of his major concern about the lack of avenue provided to non-Chinese speaking (NCS) students to attain qualifications in Chinese for admission to local universities and suggestions to address the problem. Administration's response that the Education and Manpower Bureau (EMB) was in the course of discussing with the University Grants Committee (UGC)-funded institutions on the feasibility of accepting alternative qualifications in Chinese such as the General Certificate of Secondary Education (GCSE) (Chinese).	Admin to provide a paper to address Mr CHEUNG's concern and respond to his suggestions (para. 3(a) & (b) and 4(a) of minutes)
003436 - 005012	Chairman Dr YEUNG Sum Admin	Dr YEUNG Sum's criticism that the conclusion drawn by the Administration about "affirmative action" in paragraph 16 of its paper [LC Paper No. CB(2)1152/06-07(01)] was biased. Dr YEUNG's expression of concern about the lack of avenue provided to NCS students to attain qualifications in Chinese for admission to local universities and his query of whether the special support measures to help these students learn Chinese would be considered as violating principles of equality.	

Time marker	Speaker	Subject	Action required
		<p>Administration's response that the special support measures would only be regarded as measures of "affirmative mobilization" and its explanation that the conclusion in paragraph 16 of its paper [LC Paper No. CB(2)1152/06-07(01)] was drawn based on the three court cases in the United States (US) as set out in the Annex to the paper.</p>	
005013 - 005742	<p>Chairman Mr Martin LEE Admin</p>	<p>Mr Martin LEE's view that the Administration was not impartial in providing only majority judgments of the three US cases concerning affirmative action and his query that, since both Chinese and English were the official languages in Hong Kong, why ethnic minority students had to also meet admission requirement in respect of Chinese language for admission to universities if they were meritorious in other subjects.</p> <p>Administration's clarification that information on the three US cases were provided for members' reference only in the light of their discussion on US practices at the previous meeting and its agreement to provide a summary and analysis of the minority judgments of the three cases.</p> <p>Administration's further clarification that it formulated its policy after making an assessment on what measures would bear a rational and proportionate relationship to the ethnic minorities' needs, as well as considering the findings contained in the report entitled "Prevention of discrimination: the concept and practice of affirmative action" written by the Special Rapporteur appointed by the Sub-Commission on the Promotion and Protection of Human Rights under the UN Commission on Human Rights [para 6 to 13 of Administration's Paper LC Paper No CB(2)1152/06-07(01)].</p>	<p>Admin to provide the requisite information (para. 5 of minutes)</p>

Time marker	Speaker	Subject	Action required
005743 - 011055	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG's concern that it would be difficult to ascertain the scope of special measures which would be permitted under clause 49 of the Bill and that legal problems, similar to those pertaining to concessionary public transport fares for persons with a disability under the Disability Discrimination Ordinance (DDO), might arise if the Bill was enacted.</p> <p>Administration's explanation that the legal problems pertaining to concessionary public transport fares for persons with a disability under DDO were not expected to arise under clause 49 in relation to EMB's support measures because they were designed to address a specific need and bear a direct relationship to the objective which was reasonable and justified [paras. 6 to 8 of Administration's paper (LC Paper No. CB(2)1152/06-07(03))]</p>	
011056 - 012103	Chairman Mr Ronny TONG Admin	<p>Mr Ronny TONG's view that the only constraint was to ensure that any provision of the Bill would not breach Article 39 of the Basic Law (BL), Articles 2 and 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 2 of the International Covenant on Civil and Political Rights (ICCPR).</p> <p>Administration's explanation of its policy stance that it did not propose to impose a mandatory requirement for affirmative action to be taken under the Bill.</p>	<p>Admin to confirm whether Mr CHEUNG Man-kwong's suggestions were in breach of BL39 and relevant provisions of ICESCR and ICCPR (para. 4(b) of minutes)</p> <p>Admin to provide further details on affirmative action (para. 5 of minutes)</p>

Time marker	Speaker	Subject	Action required
012104 - 012710	Chairman Mr Howard YOUNG Admin	<p>Mr Howard YOUNG's explanation of the position of the Liberal Party (LP) that it opposed the imposition of quotas for ethnic minority members in the fields of employment or education as a mandatory requirement, but it supported putting in place special measures to promote equal opportunities for ethnic minorities with special needs, such as the proposal of accepting alternative qualifications in Chinese e.g. GCSE (Chinese) examination.</p> <p>Mr Howard YOUNG's concern about whether alternative qualifications in Chinese e.g. GCSE (Chinese) examination, if recognised by local universities, would be abused by students who were not NCS.</p> <p>Administration's response that this was one of the issues to be discussed between EMB and the UGC-funded institutions and a response would be given later in the light of further discussions with the institutions.</p>	<p>Admin to address Mr YOUNG's concern (para. 4(d) of minutes)</p>
012711 - 013449	Chairman Mr LEE Cheuk-yan Admin	<p>Mr LEE Cheuk-yan's question of whether the Administration could favour the employment of members of ethnic minorities whose unemployment rate was particularly high on the condition that they met the minimum job requirements, if the Bill was enacted.</p> <p>Administration's response that whether an affirmative action might be considered to have violated principles of equality would depend on the circumstances of individual cases.</p> <p>The Chairman's view that the Bills Committee might need to further examine how far the Bill as currently drafted allowed sufficient special measures intended for bestowing benefits on ethnic minorities to be taken.</p>	

Time marker	Speaker	Subject	Action required
013450 - 014619	Chairman Ms Audrey EU Admin	<p>Ms Audrey EU's view that, if the Administration agreed with members on a policy objective, and, provided that the measures suggested by members to achieve such a policy objective were not in breach of BL, the Administration should not refuse to take such measures merely on the grounds of legal considerations.</p> <p>Administration's response that it agreed with objectives of members in promoting equal opportunities amongst persons of different racial groups. However, imposition of a mandatory requirement for implementing affirmative action by way of, e.g. allocating quotas and automatically giving extra points to members of ethnic minorities in their applications for jobs or admission to universities, would not be acceptable, as such measures might prejudice the legitimate rights of others who were not members of the targeted racial groups and might be subject to legal challenges on discrimination grounds.</p> <p>The Chairman's observation of the difference in position between the Bills Committee and the Administration as follows-</p> <ul style="list-style-type: none"> - members in general were of the view that the policy consideration to ensure equal opportunities for people of different ethnic groups should come before and above legal consideration as long as it was not in breach of Basic Law; - the Administration was of the view that while it was in agreement with the policy consideration, it would be constrained by legal consideration and any special measure which was considered as affirmative action would not be acceptable. 	

Time marker	Speaker	Subject	Action required
		<p>The Administration's clarification and reiteration of its position that measures seeking to promote the interest of ethnic minorities in the nature of “measures of affirmative mobilisation” and “measures of affirmative fairness” as defined in the UN Special Rapporteur’s report were acceptable and permitted under the Bill. However, affirmation actions in the form of “measures of affirmative preference”, which could result in discrimination against those who were not members of the targeted racial group, would not be acceptable.</p>	
014620 - 015115	<p>Chairman Mr Ronny TONG Admin</p>	<p>Mr Ronny TONG's enquiry of whether Clause 49(c) of the Bill allowed local universities to, if they agreed, set a quota for NCS students for admission to their first-year-first-degree programmes, and whether the Administration was determined to avoid the legal problems pertaining to concessionary public transport fares for persons with a disability under DDO from arising under the Bill.</p>	<p>Admin to give responses in writing (para. 4(c) of minutes)</p>
015116 - 015435	<p>Chairman Mr Cheung Man-kwong Admin</p>	<p>Mr Cheung Man-kwong's query as to whether the requirement that NCS students had to meet entry requirements in Chinese whereas Mainland students were exempted from such a requirement amounted to racial discrimination against the former.</p> <p>Administration's response that the Chinese language requirement was in line with the Administration’s policy objective of “Biliteracy and Trilingualism” and that educational institutions would not be obliged by the Bill to use particular languages in regard to their teaching activities, etc. and the Administration would further address the issues in writing.</p>	<p>Admin to address Mr CHEUNG's concern (para. 4(e) of minutes)</p>

Time marker	Speaker	Subject	Action required
015436 - 015739	Chairman Dr Fernando CHEUNG Admin	Dr Fernando CHEUNG's enquiry about the principles to determine whether an affirmative action taken by government or public institutions would be regarded as lawful under the Bill. Administration's brief explanation of the principles of rationality and proportionality in distinguishing legitimate special measures from unlawful discrimination as set out in paragraph 12 of its paper [LC Paper No. CB(2)1152/06-07(03)].	
015740 - 020120	Chairman ALA6	ALA6's advice on the legal effect of the Bill as currently drafted vis-a-vis affirmative action and reference to a court case <i>Equal Opportunities Commission v Director of Education</i> which had illustrated the court's application of the principles of rationality and proportionality in interpreting provisions similar to clause 49.	
020121 - 020344	Chairman Dr Fernando CHEUNG Mr Cheung Man-kwong Admin	Date of next meeting	