

立法會
Legislative Council

LC Paper No. CB(2)2138/06-07

(These minutes have been
seen by the Administration)

Ref : CB2/BC/2/06

**Bills Committee on
Race Discrimination Bill**

**Minutes of meeting
held on Monday, 23 April 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
Dr Hon LUI Ming-wah, SBS, JP
Hon CHEUNG Man-kwong
Hon CHAN Yuen-han, JP
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 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 James TO Kun-sun
Hon LI Fung-ying, BBS, JP
Hon Daniel LAM Wai-keung, SBS, JP

- Public Officers attending** : Mr Donald TONG
Deputy Secretary for Home Affairs(1)
- Mr Victor NG
Principal Assistant Secretary for Home Affairs (4)
- Miss Betty CHEUNG
Senior Government Counsel
- Miss Shandy LIU
Senior Government Counsel
- Ms LAI Yuen-man
Senior Government Counsel (Ag.)
- 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
- Miss Kiwi NG
Legislative Assistant (2)2

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I. Meeting with the Administration

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

LC Paper No. CB(2)1594/06-07(01) - The Administration's response to issues raised by deputations/individuals at the meeting on 3 March 2007

LC Paper No. CB(2)1594/06-07(02) - Major issues raised by deputations/individuals

LC Paper No. LS48/06-07 - Table of comparison of the provisions of the Race Discrimination Bill with those of the Race Relations Act 1976 of the United Kingdom

LC Paper No. CB(2)1594/06-07(03) - List of issues raised by members

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(as at 17 April 2007))

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

Discussion of the Administration's response to issues raised by deputations /individuals at the meeting on 3 March 2007 [LC Paper No. CB(2)1594/06-07(01)]

2. The Bills Committee completed discussion on "Application to new arrivals from the Mainland" and item (a) under "Criteria for determining "justifiability".

3. Members agreed that the Bills Committee would further discuss -

- (a) issues relating to application of the Bill to new arrivals from the Mainland when detailed response was provided by the Administration; and
- (b) the definition of "race" in Clause 8 during the clause-by-clause examination of the Bill.

Admin

4. The Administration was requested -

- (a) to provide the number of cases during the past one year in which the Director of Social Welfare had exercised discretion to waive the residence requirement for the provision of Comprehensive Social Security Assistance;
- (b) to provide information on the public education programmes launched in the past five years to eliminate discriminatory attitude towards new arrivals from the Mainland (including the resources allocated for such programmes) and on the assessment of the effectiveness of such programmes;
- (c) to arrange for the display of the relevant Announcement of Public Interest at the next meeting scheduled for Tuesday, 15 May 2007;
- (d) to explain why the Administration considered that inclusion of new arrivals from the Mainland within the scope of the Bill might adversely affect their integration into Hong Kong whereas granting protection to ethnic minorities by this Bill would not have the same effect; and
- (e) to explain in concrete terms the criteria which should be considered by the public in assessing whether the test of

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"justifiability" under Clause 4 would be met and provide the relevant guidelines to be issued to the public after enactment of the Bill.

Clerk

5. As regards paragraph 4(d), the Chairman requested the Legislative Council Secretariat to gather information on any research findings on whether designating new arrivals from the Mainland as a protected category would or would not marginalise and segregate them from the society.

6. Mr WONG Ting-kwong requested to put on record that it was indisputable that any discrimination against new arrivals from the Mainland was wrong and every effort should be made to render assistance to them. The issue was whether these new arrivals should be included within the scope of the Bill and this view should not be regarded as discrimination against new arrivals from the Mainland.

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

Council Business Division 2
Legislative Council Secretariat
11 June 2007

**Proceedings of the meeting of Bills Committee on
Race Discrimination Bill
on Monday, 23 April 2007, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000-001944	Chairman	<p>Introduction of the Administration's paper by Deputy Secretary for Home Affairs (1) [LC Paper No. CB(2)1594/06-07(01)]</p> <p><u>Items (b), (c) and (d) under "Application to new arrivals from the Mainland"</u></p>	
001945-002615	Chairman Mr Ronny TONG Admin	<p>Mr Ronny TONG's view that the imposition of the seven-year residence requirement on applicants for the Comprehensive Social Security Assistance (CSSA) Scheme might constitute discrimination against new arrivals from the Mainland who had, as a result of the policy, suffered from differences in treatment and did not have equal access to social welfare as other Hong Kong residents.</p> <p>The Administration's explanation that imposition of the residence requirement would not constitute discrimination because it applied to all applicants irrespective of their race.</p>	
002616-002852	Chairman Dr YEUNG Sum Admin	<p>Dr YEUNG Sum's view that the Administration should reconsider extending the scope of the Bill to cover new arrivals from the Mainland as these new arrivals constituted a distinct community on the basis of their language and subculture.</p> <p>The Administration's response that the meaning of racial discrimination under the Bill had followed the International Convention on the Elimination of All Forms of Racial Discrimination, and that the Administration had decided not to extend the scope of the Bill to include these new arrivals after very careful consideration. The Administration considered that discrimination encountered by them should be addressed by public education instead of legislation.</p>	

Time marker	Speaker	Subject	Action required
002853-002935	Chairman Dr LUI Ming-wah Admin	Dr LUI Ming-wah's expression of support for imposition of the seven-year residence requirement and request for information on approval to waive such requirement.	Admin to provide number of cases (para. 4(a) of minutes)
002936-003318	Chairman Mr Howard YOUNG Admin	<p>Mr Howard YOUNG's indication of the Liberal Party's position that new arrivals from the Mainland did encounter differential treatment in education and employment, but that the Bill should not cover discrimination against these new arrivals as such discrimination was not based on racial grounds.</p> <p>Mr YOUNG's suggestion that the Administration should increase allocation of resources to enhance work in eliminating such discrimination and facilitating these new arrivals' integration in Hong Kong.</p> <p>The Administration's briefing on the existing programmes and measures in facilitating the social integration of new arrivals from the Mainland in Hong Kong.</p>	
003319-003720	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG's enquiry of the amount of resources allocated to public education for the elimination of discriminatory attitude towards new arrivals from the Mainland in the past five years and the effect achieved.</p> <p>The Administration's briefing on such public education programmes and its undertaking to provide further information in writing.</p>	Admin to provide a paper on relevant public education programmes, resources and effect, including relevant Announcements of Public Interest for playing at next meeting (para.4(b) &(c) of minutes)
003721-004706	Chairman Mr WONG Ting-kwong Admin	<p>Mr WONG Ting-kwong's view that only new arrivals from the Mainland who were not well off suffered from discrimination and his enquiry of measures available to facilitate the social integration of ethnic minorities newly arrived in Hong Kong.</p> <p>The Administration's briefing on the existing integration programmes and services provided by the Administration and non-governmental organisations.</p>	

Time marker	Speaker	Subject	Action required
004707-005515	Chairman Admin	<p>The Chairman's query as to why the imposition of the seven-year residence requirement on applicants for CSSA did not constitute indirect discrimination under Clause 4.</p> <p>The Administration's explanation that it did not constitute indirect discrimination because there should be no substantial difference in the ability of a newly arrived Mainlander and that of a newly arrived ethnic minority member in meeting the seven-year residence requirement.</p>	
005516-010017	Chairman Dr YEUNG Sum Admin	<p>Dr YEUNG Sum's view that, since Hong Kong was not a sovereign state and new arrivals from the Mainland were migrants, not immigrants, residence requirements should not be imposed on them as a condition for obtaining social welfare benefits.</p> <p>The Administration's response that the seven-year requirement applied to all CSSA applicants irrespective of race, colour, descent, national or ethnic origin. In addition, children under 18 were exempted from the residence requirement.</p>	
010018-011525	Chairman Admin Dr Fernando CHEUNG	<p><u>Item (e) under "Application to new arrivals from the Mainland"</u></p> <p>The Administration's view that there was still room for enhancing support services where necessary to facilitate early integration of new arrivals from the Mainland, and providing protection to them through legislation might give rise to uncertainty and unnecessary litigation in the future.</p> <p>Dr Fernando CHEUNG's view that it was necessary to provide protection to the new arrivals from the Mainland by legislation, and the Chairman's query as to why the Administration considered that providing protection to the new arrivals through legislation might affect their integration</p>	<p>The Clerk to provide relevant information of study for members' reference (para. 5 of minutes)</p> <p>Admin to explain its policy decision (para. 4(d) of minutes)</p>

Time marker	Speaker	Subject	Action required
011526-012656	Chairman Mr LEE Cheuk-yan Admin	<p>Mr LEE Cheuk-yan's view that the Administration should tackle discrimination against new arrivals from the Mainland by legislation even though some of them, especially those who had already successfully integrated in Hong Kong, might not need the legal protection.</p> <p>The Administration's reiteration that it had no plan to cover new arrivals under the Bill and considered it more appropriate to eliminate discriminatory attitude towards new arrivals by non-legislative means.</p>	
012657-013334	Chairman Deputy Chairman Admin	<p>The Deputy Chairman's views that (a) excluding new arrivals from the Mainland from the scope of the Bill went against the Administration's policy intent of eliminating discrimination as it would allow discrimination against these new arrivals to continue; and (b) the Bill did not necessarily have to adhere to the definition of "race" of the International Convention on the Elimination of All Forms of Racial Discrimination.</p> <p>The Administration's explanation that if length of residence in Hong Kong was included as a discriminatory ground under the Bill, it might result in an absurd situation e.g., in case of two brothers born to the same parents, the one who was born in the Mainland and migrated to Hong Kong would, unlike his brother born in Hong Kong, have additional statutory protection against discrimination on ground of his status as new arrival despite the fact that they were of same race and ethnic origin.</p>	
013335-013708	Chairman Mr Jeffrey LAM Admin	Mr Jeffrey LAM's view that as the policy intent of the Bill was to tackle discrimination on the ground of race, the scope of the Bill should not include new arrivals from the Mainland.	

Time marker	Speaker	Subject	Action required
013709-014050	Chairman Dr YEUNG Sum Admin	Dr YEUNG Sum's expression of disagreement with the Administration's explanation about the absurdity of including length of residence in Hong Kong as a discriminatory ground. The Administration's reiteration of its position that the Bill would not extend additional protection to new arrivals from the Mainland on ground of their migrant status to or length of residence in Hong Kong.	
014051-014818	Chairman Miss TAM Heung-man Admin Dr Fernando CHEUNG	Miss TAM Heung-man's query of the effectiveness of the publicity and public education measures taken to eliminate discrimination against new arrivals from the Mainland and her criticism of the Administration's indifference to the discrimination suffered by the new arrivals. The Administration's clarification that it was committed to eliminating discriminatory attitude towards new arrivals from the Mainland through sustained efforts in publicity and public education.	
014819-014933	Chairman Mr WONG Ting-kwong	Mr WONG Ting-kwong's clarifications of his view.	
014934-015101	Chairman Admin	<u>Items (f) and (g) under "Application to new arrivals from the Mainland"</u>	
015102-015558	Chairman Admin	<u>Item (a) under "Criteria for determining "justifiability"</u>	
015559-020027	Chairman Dr Fernando CHEUNG Admin Dr YEUNG Sum	Dr Fernando CHEUNG's query of the need to include provisions regarding the justifiable requirement in the Bill but not in the other three anti-discrimination ordinances. The Administration's response that the inclusion of the provisions was for the sake of clarity and its undertaking to explain in writing the criteria for assessing whether the justifiability requirement was met.	Admin to provide information on the criteria and considerations (para. 4(e) of minutes)
020028 - 020047	Chairman	Date of next meeting	