

立法會
Legislative Council

LC Paper No. CB(2)119/08-09
(These minutes have been seen
by the Administration and cleared
with the Chairman)

Ref : CB2/BC/2/06

**Bills Committee on
Race Discrimination Bill**

**Minutes of meeting
held on Wednesday, 11 June 2008, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon Abraham SHEK Lai-him, SBS, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Yuen-han, SBS, JP
Hon Bernard CHAN, GBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum, JP
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 Daniel LAM Wai-keung, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon Mrs Anson CHAN, GBM, JP

Action

- Public Officers attending** : Constitutional and Mainland Affairs Bureau
- Mr Arthur HO
Deputy Secretary for Constitutional and Mainland Affairs (1)
- Mr Victor NG
Principal Assistant Secretary for Constitutional and Mainland Affairs (5)
- Mr Stanley NG
Assistant Secretary for Constitutional and Mainland Affairs (5)A
- Department of Justice
- 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

I. Meeting with the Administration

- | | | |
|---------------------------|-------|--|
| LC
CB(2)2219/07-08(01) | Paper | No. -- Paper entitled "Administrative guidelines on promotion of racial equality" provided by the Administration |
| LC
CB(2)2219/07-08(02) | Paper | No. -- List of issues raised at the meeting on 3 June 2008 |

Action

LC Paper No. LS14/07-08 -- Paper entitled "Discussion drafts of Committee Stage amendments (CSAs) for Members' consideration"

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

The Bills Committee deliberated the following papers -

- (a) the Administration's paper entitled "Administrative guidelines on promotion of racial equality"; and
- (b) the paper entitled "Discussion drafts of CSAs for Members' consideration" prepared by the legal adviser to the Bills Committee (index of proceedings at **Annex**).

Follow-up actions required

Admin

2. The Administration was requested to provide a paper by 16 June 2008 to further elaborate on the following issues in respect of the proposed administrative guidelines on promotion of racial equality -

On timetable for drawing up the guidelines

- (a) to specify the targeted date of issuing the first set of the guidelines and the Bureaux/Departments to be covered;
- (b) to confirm whether performance pledges would be made;

On co-ordinating mechanism

- (c) to explain how the mechanism would be devised;
- (d) to consider whether a cross-departmental body should be set up to co-ordinate with relevant Bureaux/Departments in drawing up and implementing the guidelines and to oversee the process;
- (e) to explain whether there was any plan to invite participation of non-governmental organizations (NGOs) concerned in the process;

On provision of resources

- (f) to give an undertaking that additional resources would be provided for relevant Bureaux/Departments to implement new initiatives to meet the requirements set out in the guidelines;

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On implementation

- (g) to explain how individual Bureaux/Departments would ensure compliance with the guidelines in collaboration with NGOs concerned;
- (h) to elaborate on the Administration's plan to enhance staff training, particularly those at senior level, to raise their awareness of racial equality and to facilitate the future implementation of the guidelines;
- (i) to explain how the public could obtain information on the guidelines after their implementation, including programme areas covered and the scope of application;
- (j) to elaborate on the work plan to eliminate the language barrier encountered by ethnic minorities in gaining access to public services;

On consultation

- (k) to give an undertaking that, before the resumption of the Second Reading debate on the Bill, at least a meeting would be arranged between the Administration and NGOs, particularly ethnic minorities groups, to solicit their views and expectations in drawing up the guidelines;
- (l) to explain how NGOs concerned could be consulted in the implementation process of the guidelines;

On monitoring

- (m) to explain how the implementation of the guidelines by relevant public authorities or NGOs would be monitored by their corresponding Bureaux/Departments;
- (n) to explain the monitoring role to be played by the Ombudsman and relevant Panel of the Legislative Council;

On written responses to the submission made by the Association for the Advancement of Feminism [LC Paper No. CB(2)2174/07-08(01)] and the joint submission made by the Hong Kong Human Rights Monitor and Hong Kong Unison [LC Paper No. CB(2)2108/07-08(01)]

- (o) to explain how the implementation of the guidelines which would be administrative in nature could be more effective in achieving

Action

the intended results than the application of the Gender Mainstreaming Checklist; and

- (p) to address the query that to achieve racial equality by means of administrative measures instead of legislation could not fulfil the Government's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination as elaborated in the letter dated 7 March 2008 from the Chairperson of the United Nations Committee for the Elimination of Racial Discrimination.

Admin

3. The Administration was also requested to respond to the concerns expressed by the Hong Kong Subsidized Secondary Schools Council and the Association of Hong Kong Chinese Middle Schools in their submissions [LC Paper Nos. CB(2)2206/07-08(01) and (02)] and state whether they were justified.

ALA6

4. The legal adviser to the Bills Committee was requested to -

- (a) consider whether the proposed administrative guidelines would be subject to legal challenge regarding their validity as that pertaining to the Law Enforcement (Covert surveillance Procedures) Order made by the Chief Executive on 30 July 2005 in respect of covert surveillance by law enforcement agencies and revert to the Bills Committee if necessary;
- (b) to draft CSAs on behalf of the Bills Committee adding a new section 9A under a new Part 2A stating that "It is unlawful for the Government to discriminate against a person on the ground of race of that person in the performance of its functions or the exercise of its powers";
- (c) to draft a CSA to delete the word "nationality" from Clause 8(3)(d);
- (d) to draft CSAs on Miss CHAN Yuen-han's suggestion of shortening the duration of the transitional period under Clause 10 to one year;
- (e) to draft a CSA to delete the proposed exemption for partnership with less than six partners under Clause 17; and
- (f) to draft CSAs to limit the validity of Clause 58 for a period of three years subject to further extension by a resolution passed LegCo.

Action

Date of next meeting

5. Members noted that the next meeting was scheduled for Saturday, 14 June 2008, from 9:00 am to 1:00 pm to consider the Administration's responses to all the outstanding issues raised by members, the CSAs proposed by the Administration and those to be moved by the Bills Committee or by individual members.
6. There being no other business, the meeting ended at 10:35 am.

Council Business Division 2
Legislative Council Secretariat
22 October 2008

**Proceedings of the meeting of Bills Committee on
Race Discrimination Bill
on Wednesday, 11 June 2008, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 010329	Chairman Admin Dr YEUNG Sum Mr Howard YOUNG Ms Emily LAU Dr Fernando CHEUNG Ms LI Fung-ying Deputy Chairman ALA6	<p data-bbox="750 510 1165 660"><u>Briefing by the Administration on its paper entitled "Administrative guidelines on promotion of racial equality"</u> [LC Paper No. CB(2)2219/07-08(01)]</p> <ul style="list-style-type: none"> <li data-bbox="750 694 1165 840">- queries on whether a mechanism for monitoring the effectiveness of implementation of the proposed guidelines would be introduced; <li data-bbox="750 873 1165 1086">- concerns about the lack of information in the Administration's paper on whether additional resources would be devoted to the implementation of the proposed guidelines; <li data-bbox="750 1120 1165 1355">- request for more detailed information and a concrete work plan to be provided by the Administration on the implementation of the proposed guidelines and the mechanism for monitoring its implementation; <li data-bbox="750 1388 1165 1545">- concerns about the role played by Ombudsman and the Legislative Council in monitoring the implementation of these guidelines; <li data-bbox="750 1579 1165 1702">- concerns about any plan to involve non-governmental organizations in the implementation process; <li data-bbox="750 1736 1165 2072">- concerns about any undertaking would be given that the Administration would allocate additional resources to implement new measures for the promotion of equal opportunities for ethnic minorities, particularly in overcoming their language barrier in access to public medical service and education; 	

Time marker	Speaker	Subject	Action required
		<ul style="list-style-type: none"> - queries as to whether achieving racial equality by provision of administrative guidelines instead of by legislation could fulfill the Government's international obligations under the relevant international convention; and - concern as to whether the administrative guidelines under discussion would be subject to legal challenge regarding their validity as that pertaining to the Law Enforcement (Covert Surveillance Procedures) Order made by the Chief Executive on 30 July 2005 regarding covert surveillance by law enforcement agencies. 	<p>ALA6 to consider concerns about the validity of the proposed administrative guidelines (Para. 4(a) of minutes)</p>
010330 - 010740	Mr CHEUNG Man-kwong Chairman Admin	Briefing by Mr CHEUNG Man-kwong on possible Committee Stage amendments (CSAs) to be moved by Dr YEUNG Sum on behalf of the Democratic Party.	
010741 - 012044	Chairman Admin Ms Emily LAU	Chairman's summing up of discussion on the administrative guidelines and request for the Administration to provide a further paper to address various concerns raised by members at this meeting.	<p>Admin to provide a further paper on various issues in relation to the administrative guidelines (Para. 2 of minutes)</p>
012045 - 013026	Chairman Ms Emily LAU ALA6 Mr Jasper TSANG Deputy Chairman Miss CHAN Yuen-han Admin	<p><u>Consideration of the paper entitled "Discussion drafts of Committee Stage amendments for Members' consideration" prepared by the legal adviser to the Bills Committee</u> [LC Paper No. LS14/07-08]</p> <p>Appendix I: Clause 3 - Application to Government</p>	<p>ALA6 to prepare draft CSAs for members' consideration (Para. 4(b)-(f) of minutes)</p>
013027 - 013539	Chairman ALA6	Appendix II: Clause 4 - Racial discrimination	
013540 - 013920	Chairman ALA6	Appendix III: New arrivals from the Mainland	

Time marker	Speaker	Subject	Action required
013921 - 015734	Chairman ALA6 Ms Emily LAU Miss CHAN Yuen-han Admin	Appendix IV: Clause 58 - The language exemption	Admin to respond to the submissions of the Hong Kong Subsidized Secondary Schools Council and the Association of Hong Kong Chinese Middle Schools (para. 3 of minutes)
015735 - 015918	Mr James TO Admin Chairman	Concerns about the role played by Ombudsman and the Equal Opportunities Commission in monitoring the implementation of the proposed administrative guidelines.	
015919 - 020344	Chairman Clerk Admin Dr Fernando CHEUNG Miss CHAN Yuen-han Miss CHOY So-yuk ALA6	Outstanding issues raised by members during clause-by-clause examination of the Bill	
020345 - 020545	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
22 October 2008