

立法會
Legislative Council

LC Paper No. CB(2)360/07-08

(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, 8 October 2007, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Margaret NG (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 LI Fung-ying, BBS, JP
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 Abraham SHEK Lai-him, SBS, JP (Deputy Chairman)
Dr Hon LUI Ming-wah, SBS, JP
Hon CHOY So-yuk, JP
Hon Albert CHAN Wai-yip
Hon Daniel LAM Wai-keung, SBS, JP

- Public Officers attending** : 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
- Ms Roxana CHENG
Senior Assistant Solicitor General
- Miss Betty CHEUNG
Senior Government Counsel
- Miss Shandy LIU
Senior Government Counsel
- Ms LAI Yuen-man
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)2751/06-07]

The minutes of the meeting on 26 June 2007 were confirmed.

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II. Meeting with the Administration
[LC Paper No. CB(3)176/06-07 - The Bill]

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. Deputy Secretary for Constitutional and Mainland Affairs (1) briefed members on the Administration's response to the Legislative Council Secretariat's paper on "Scrutiny progress of the Bill" [LC Paper No. CB(2)2753/06-07(01)].
4. Members raised no questions on the following papers which were provided by the Administration since the last meeting -

<u>LC Paper No.</u>	<u>Title</u>
CB(2)2753/06-07(02)	-- "Comment of the United Nations Human Rights Committee on the applicability of the rationality and proportionality principle"
CB(2)2753/06-07(03)	-- "Measures taken to assist new arrivals' integration to the local society"
CB(2)2753/06-07(04)	-- "Discrimination by, or in relation to, barristers"
CB(2)2573/06-07(01)	-- "Flexibility in the application of Chinese language requirement for the admission of non-Chinese speaking students into UGC-funded institutions"

Admin

5. The Administration undertook to provide -
 - (a) a written response to the paper entitled "Hong Kong's Race Discrimination Bill: A Critique and Comparison with the Sex Discrimination and Disability Discrimination Ordinances" [LC Paper No. CB(2)2232/06-07(01)] submitted by Professor Carole Petersen before the next meeting;
 - (b) a written response to Mr Ronny TONG's concern that the Government would use Clause 3 as currently worded as a defence in lawsuits filed against the Government under the Hong Kong Bills of Rights Ordinance (HKBORO) concerning alleged discriminatory acts on the ground of race in the performance of functions and powers of the Government and his suggestion that

Action

the Administration should amend Clause 3 to reflect clearly the Government's position that it would not do so;

- (c) a legal analysis elaborating (with specific examples) on the extent of regulatory control to be imposed on the Government by this Bill and its acts to be excluded by Clause 3, as well as the scope of the Government's legal liability in the area of racial discrimination under HKBORO;
- (d) numbers of students admitted under the Joint University Programmes Admission System (JUPAS) and the "non-JUPAS route" respectively in respect of whom the Chinese Language requirement for admission had been waived;
- (e) result of the Administration's latest discussion with the eight institutions funded by the University Grants Committee on acceptance of alternative qualifications in Chinese e.g. the General Certificate of Secondary Education (Chinese) examination, for admission to universities; and
- (f) a written response to Miss CHAN Yuen-han's view that a policy decision must be made to ensure that vocational training institutions would have adequate resources to cater for the needs of ethnic minorities including those who knew little English.

Way forward

6. The Chairman suggested that, given the divergence of views between the Bills Committee and the Administration over the fundamental issues as reflected in the Administration's response [LC Paper No. CB(2)2753/06-07(01)], the Bills Committee should conduct an internal discussion at the next meeting to decide how to proceed with its scrutiny work, e.g. whether the Bills Committee or individual members would move Committee Stage amendments and whether it would be necessary to receive further views from deputations. Members agreed. Members also agreed that the attendance of the Administration at that meeting would not be necessary.

III. Any other business

Proposed meeting schedule

7. At the suggestion of the Chairman, members agreed to defer discussion on the proposed meeting schedule until the Bills Committee had decided on its way forward.

Action

Dates of next two meetings

8. Members agreed to hold the next two meetings on the following dates -
 - (a) Monday, 29 October 2007, at 8:30 am; and
 - (b) Wednesday, 7 November 2007, at 8:30 am.
9. There being no other business, the meeting ended at 12:10 pm.

Council Business Division 2
Legislative Council Secretariat
15 November 2007

**Proceedings of the meeting of Bills Committee on
Race Discrimination Bill
on Monday, 8 October 2007, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000119	Chairman	Confirmation of minutes of meeting held on 26 June 2007 [LC Paper No. CB(2)2751/06-07]	
000120 - 000650	Chairman Dr YEUNG Sum Mr Howard YOUNG	The Chairman's suggestion of conducting an internal discussion on the way forward for the Bills Committee at the next meeting.	
000651 - 002156	Admin Mr Martin LEE Chairman	Introduction of the Administration's paper by Deputy Secretary for Constitutional and Mainland Affairs (1) [LC Paper No. CB(2) 2753/06-07(01)] The Chairman reminded members that the Administration had also provided some other papers since the last meeting and invited members to raise questions on these papers if any.	
002157 - 002653	Dr Fernando CHEUNG Admin Chairman	Dr CHEUNG's request for the Administration's clarification of the application of the Bill to the Government. The Administration's response that an act done by the Government would fall within the scope of application of the Bill only if the act was of a kind similar to an act done by a private person. The Chairman requested the Administration to provide its outstanding written response to Professor Carole Petersen's paper entitled "Hong Kong's Race Discrimination Bill: A Critique and Comparison with the Sex Discrimination and Disability Discrimination Ordinances" [LC Paper No. CB(2)2232/06-07(01)] before the next meeting.	Admin to provide written response to Professor Carole Petersen's paper before the next meeting (para. 5(a) of minutes)

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002654 - 003627	Mr Ronny TONG Admin Chairman	<p>Mr TONG's concern that the Government would use Clause 3 as currently worded as a defence in lawsuits filed against the Government under the Hong Kong Bills of Rights Ordinance (HKBORO) concerning alleged discriminatory acts on the ground of race in the performance of functions and powers of the Government.</p> <p>The Administration's response that it was not its intention that Clause 3 would absolve the Government and public authorities from its existing obligations under the Basic Law and HKBORO.</p> <p>Mr Ronny TONG's suggestion that the Administration should amend Clause 3 to reflect clearly the above position.</p> <p>The Administration's explanation that Clause 3 concerned with the scope of Government acts that might constitute a statutory tort under the provisions of the Bill. Liability for a statutory tort proposed under the Bill was distinct from liability under HKBORO. The mere fact that Clause 3 prevented an act from constituting such a statutory tort did not affect how HKBORO applied to the act.</p> <p>The Chairman's request for the Administration to provide a legal analysis elaborating (with specific examples) on the extent of regulatory control to be imposed on the Government by this Bill and its acts to be excluded by Clause 3, as well as the scope of the Government's legal liability in the area of racial discrimination under HKBORO.</p>	Admin to provide written response to Mr Ronny TONG's concerns and a legal analysis (para. 5(b) and (c) of minutes)
003628 - 004344	Mr CHEUNG Man-kwong Admin Chairman	Mr CHEUNG's view that the Administration should be able to deduce the number of local non-Chinese speaking students currently studying in local universities by obtaining the numbers of students who had been admitted under the Joint University Programmes Admission System (JUPAS) and the "non-JUPAS route" respectively in respect of	Admin to provide figures and progress report (para. 5(d) and (e) of minutes)

Time marker	Speaker	Subject	Action required
		<p>whom the Chinese Language requirement for admission had been waived.</p> <p>Mr CHEUNG's enquiry of the latest progress of the Administration's discussion with the eight institutions funded by the University Grants Committee (UGC) on the suggestion of accepting alternative qualifications in Chinese for admission to universities and his expression of dissatisfaction with the slow progress in the regard.</p> <p>The Administration's undertaking to liaise with UGC-funded institutions for the requisite numbers and information.</p>	
004345 - 005029	Mr Jeffrey LAM Admin	<p>Mr Jeffrey LAM's view that the Bill should apply equally to the Government and private organizations/persons and such application should be reflected clearly in the provisions of the Bill.</p> <p>Mr LAM's concern the Court might be overloaded and the operation of Government affected if any question of whether an act done by the Government is of a kind similar to an act done by a private person would have to be determined by the Court in the light of the relevant circumstances of each individual case, as set out in the Administration's paper.</p> <p>Mr LAM's suggestion that the Administration should provide concrete examples of Government acts that would be covered by the Bill and make reference to the relevant ordinances in overseas jurisdictions suitable for adaptation to Hong Kong in drawing up a clear definition of "racial discrimination" under the Bill.</p>	

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005030 - 005621	Miss CHAN Yuen-han Admin Chairman	<p>Miss CHAN Yuen-han's view that a policy decision should be made to ensure that vocational training institutions would meet the training needs of ethnic minorities including those who knew little English. She considered that, due to resources constraints, vocational training institutions might give low priority to making special arrangements to cater for the language needs of these people.</p> <p>The Administration's briefing of the efforts made by the vocational training institutions and the Employees Retraining Board in providing courses for non-Chinese speaking adults and students.</p>	Admin to provide a written response to Miss CHAN Yuen-han's concerns (para. 5(f) of minutes)
005622 - 010744	Ms LI Fung-ying Miss TAM Heung-man Admin Chairman	<p>Ms LI Fung-ying's and Miss TAM Heung-man's expression of dissatisfaction with the Administration's brief response to members' concern about the inadequate supports services provided for the new arrivals from the Mainland to address the problem of discrimination encountered by these new arrivals.</p> <p>Ms LI's question of what measures the Administration would take to address such discrimination if the Administration considered it inappropriate to tackle the problem by legislation.</p> <p>The Administration's reiteration that new arrivals did not constitute a distinct ethnic or racial group under the definition of "race" under the Bill and its briefing of the existing services provided for the new arrivals from the Mainland.</p>	
010745 - 011204	Miss CHAN Yuen-han Chairman Admin	<p>Miss CHAN Yuen-han's view that the Administration's lack of positive response to address members' concern about the prevalent problem of discrimination faced by the new arrivals from the Mainland would force members not to support the Bill.</p>	

Time marker	Speaker	Subject	Action required
011205 - 011917	Mr Jeffrey LAM Admin Chairman	<p>Mr Jeffrey LAM's view that, as the issue of legislating against discrimination encountered by the new arrivals from the Mainland was a very complicated issue, it should be dealt with separately from this Bill.</p> <p>Mr LAM's suggestion that, if the Administration could not accept any suggestion made by the Bills Committee, it should address relevant concerns by proposing new measures as an alternative, and the views of the business sector should also be sought.</p> <p>The Administration's reiteration of its efforts in this regard.</p> <p>The Chairman's remark that, compared with previous discussion, the Administration had adopted a more rigid position in responding to views and suggestions raised by the Bills Committee.</p>	
011918 - 012350	Chairman Miss CHAN Yuen-han	Dates of next two meetings and deferred decision on the meeting schedule of the Bills Committee	