

立法會
Legislative Council

LC Paper No. CB(2)1001/04-05
(These minutes have been
seen by the Administration)

Ref : CB2/PL/HA

Panel on Home Affairs

**Minutes of special meeting
held on Saturday, 11 December 2004 at 9:00 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon Tommy CHEUNG Yu-yan, JP (Chairman)
Hon TAM Heung-man (Deputy Chairman)
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Albert CHAN Wai-yip
Hon LI Kwok-ying, MH
Hon Daniel LAM Wai-keung, BBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Patrick LAU Sau-shing, SBS, JP
- Members attending** : Hon Margaret NG
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
- Members absent** : Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon LAU Wong-fat, GBS, JP
Hon CHOY So-yuk

Public Officers attending : Mr Stephen FISHER
Deputy Secretary for Home Affairs (1)

Ms Adeline WAN
Assistant Secretary for Home Affairs (4)

Attendance by invitation : Equal Opportunities Commission

Mrs Patricia CHU
Chairperson

Mr Herman POON
Assistant Legal Adviser

The British Chamber of Commerce

Mr Christopher Hammerbeck
Executive Director

Employers' Federation of Hong Kong

Mr Duncan Abate
Council Member

Hong Kong Human Rights Commission

Miss Annie LIN
Community Organiser

Society for Community Organization

Miss SZE Lai-shan
Community Organiser

The Democratic Party

Mr CHAN Ka-wai
Vice spokesman of Home Affairs Issues

The Association of the Advancement of Feminism

Miss CHOI Wing-sze
Organiser

New Immigrants' Mutual Aid Association

Ms LI Mei-oi
Chairlady

Ms LEUNG Lai-ching
Executive Member

Amnesty International Hong Kong

Ms Melissa Neher
Coordinator, Lawyers Group

Hong Kong Christian Service

Miss AU Kit-ying
Professional Assistant

Mr Daryanani Tarun Kishore Kumar
Service User

Unison Hong Kong

Miss Fermi WONG
Director

Miss Fony CHOW
Executive Director

The Indian Resources Group

Mr Ravi Gidumel
Director

YMCA of Hong Kong – Cheung Sha Wan Centre

Mr Lok POON
Senior Programme Officer

Mr M Tariq
Programme Worker

International Human Rights Forum

Mr Asim Naeem
Chairman

Mr M A Hashmi
Volunteer

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Civil Human Rights Front

Mr CHONG Yiu-kong
Convenor

Miss Baig Raees Begum
Deputy Convenor, Human Rights Commission Task Force

Hong Kong Association for Community Inclusion

Mr FAN Kwok-fai
Committee Member

Miss Rosalinda LAM Man-kei
Committee Member

Hong Kong Christian Institute

Mr FAN Lap-hin
Project Secretary

Gurkha Son & Daughter's Social Organization, Hong Kong

Mr P K Tamang
President

Mr Bishal Basnet
Director

Pakistan Community

Mr Mohamad Sadaquat Khan Mohan
General Secretary

Mr Mohamad Masqsuld Khan
Advisor

Nepalese Youth Club

Mr Limbu Dhan Bd.
Advisor

Mr Limbu Santosh
Executive member

Democratic Alliance for Betterment of Hong Kong

Mr Greg SO
Central & Standing Committee Member

Mr Mohamed I.S. Batcha
Member of Ethnic Minorities Panel

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)2

Staff in attendance : Ms Joanne MAK
Senior Council Secretary (2)2

Miss Sherman WOO
Legislative Assistant (2)2

Action

I. Consultation Paper entitled “Legislating against Racial Discrimination”

[Consultation Paper entitled “Legislating against Racial Discrimination” and relevant Legislative Council Brief (File ref : HAB/CR/1/19/102), LC Paper No. CB(2)155/04-05(01) and IN10/04-05]

The Chairman welcomed the representatives of 22 deputations and of the Administration to attend the meeting.

Meeting with deputations

Equal Opportunities Commission
[LC Paper No. CB(2)391/04-05(01)]

2. Mrs Patricia CHU presented the views of the Equal Opportunities Commission (EOC) as detailed in its submission. Mrs CHU said that EOC supported, in principle, the enactment of legislation against racial discrimination. She further briefed members on the main areas of concern of

Action

EOC regarding the proposals in the Consultation Paper.

The British Chamber of Commerce

3. Mr Christopher Hammerbeck said that the British Chamber of Commerce (the Chamber) was of the view that legislative action and continued education would both be necessary for eliminating racial discrimination. Mr Hammerbeck said that the experience of the United Kingdom (UK) was that legislation was a key element in dealing with discrimination of all kinds, including racial discrimination. The Chamber considered that discrimination against the ethnic minorities and new arrivals from the Mainland existed in Hong Kong. Mr Hammerbeck said that if Hong Kong was to become Asia's world city, executives of all sexes, colours and ethnic origins in Hong Kong must be able to live and work without any form of discrimination.

4. Mr Hammerbeck further said that the Consultation Paper failed to deal with many important issues, such as racial discrimination in sport, which would be elaborated in the Chamber's submission to be submitted to the Government shortly. The Consultation Paper also had not set out the possible cost consequences on the business sector. Mr Hammerbeck pointed out that under the current proposal, while new arrivals from the Mainland who were of the same ethnic stock as local Chinese (i.e., Han Chinese) would not be protected under the proposed legislation, paradoxically the ethnic minority groups in China would be protected.

*Employers' Federation of Hong Kong
[LC Paper No. CB(2)348/04-05(01)]*

5. Mr Duncan Abate presented the views of the Employers' Federation of Hong Kong as detailed in its submission. Mr Abate said that the Employers' Federation supported the proposed legislation, provided that it was introduced with sensitivity, care, and with detailed explanation and education given to employers and the society.

*Hong Kong Human Rights Commission
[LC Paper No. CB(2)348/04-05(02)]*

6. Miss Annie LIN presented the views of Hong Kong Human Rights Commission (HKHRC) as detailed in its submission. Apart from expressing support for the proposed legislation, HKHRC urged the Administration to tackle the problem of high unemployment rate among members of ethnic minorities, and require public authorities to put in place measures to ensure that ethnic minority members enjoyed equal opportunities in gaining access to public services.

Action

*Society for Community Organization
[LC Paper Nos. CB(2)348/04-05(02) and (03)]*

7. Miss SZE Lai-shan presented the views of the Society for Community Organization (SOCO) as detailed in its submissions. SOCO urged the Administration to extend the scope of the proposed race discrimination bill to cover discrimination against new arrivals from the Mainland.

The Democratic Party

8. Mr CHAN Ka-wai said that the Democratic Party (DP) welcomed the Consultation Paper but regretted that it had been issued rather late. Mr CHAN further said that DP considered that under the current proposal, racial discrimination was too narrowly defined, which therefore could not cover new arrivals from the Mainland under the proposed legislation. DP considered that the language barrier was often the main cause giving rise to racial discrimination, and the Administration should ensure that members of ethnic minorities would not be excluded from access to social services due to the language barrier. DP regretted that the Consultation Paper was published only in English and Chinese but not in other languages of the ethnic minorities in Hong Kong.

9. Mr CHAN further said that DP suggested that the least exception should be provided under the proposed legislation from its anti-discriminatory provisions and that the proposed “sunset period” for small companies and employers should be one year only. DP suggested that members of ethnic minorities should be appointed to EOC, if EOC was to be appointed as the implementation body of the proposed legislation.

The Association of the Advancement of Feminism

10. Miss CHOI Wing-sze said that the Association of the Advancement of Feminism (the Association) was supportive of enacting legislation to prohibit racial discrimination. The Association urged the Administration to take measures to promote the participation of women of ethnic minorities in the public consultation exercise and ensure that the proposed legislation would render equal protection to both men and women of ethnic minorities. The Association queried whether household employers who employed foreign domestic helpers would be regarded as “small employers” under the proposed legislation and would enjoy exemption from anti-discriminatory provisions.

11. Miss CHOI further said that the Association considered that the future implementation body should be one with high degree of credibility, transparency and independence. However, the Association was of the view that the Government had been undermining the independence of EOC through the appointment system of EOC Chairperson/members and the funding

Action

allocation system. The Association was of the view that the Government's failure to announce whether or not it would re-appoint the current EOC Chairperson, when her appointment contract was going to expire very soon, was disrespectful to EOC and its Chairperson.

New Immigrants' Mutual Aid Association
[LC Paper No. CB(2)348/04-05(03)]

12. Ms LI Mei-oi presented the views of the New Immigrants' Mutual Aid Association as detailed in its submission. Ms LI said that there was an urgent need for the Government to enact legislation against discrimination encountered by news arrivals from the Mainland, as such discrimination was very serious especially in the fields of employment and education.

Amnesty International Hong Kong

13. Ms Melissa Neher said that Amnesty International Hong Kong had the following main concerns –

- (a) new arrivals from the Mainland should also be protected under the proposed legislation;
- (b) the Immigration Ordinance should be subject to the principles of the proposed legislation; and
- (c) no exceptions should be provided under the proposed legislation regarding its application to small companies and employers.

Ms Neher pointed out that it would be inconsistent with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) if the proposed legislation did not cover new arrivals from the Mainland. Ms Neher said that as regards immigration legislation, it was unfair that migrant domestic workers, who were mostly Filipinos and Indonesians, did not enjoy equal treatment as other migrants who were professionals employed to work in Hong Kong in that the former could not apply for the right of abode even after they had ordinarily resided in Hong Kong for a continuous period of not less than seven years.

14. Ms Neher further said that the Government had not demonstrated a clear reason as to why small companies or employers required more time than others to adapt to the proposed legislation, and that the proposed three-year transitional period was unjustified and unacceptable. Ms Neher added that Amnesty would provide a submission to the Government later.

Action

Hong Kong Christian Service
[LC Paper No. CB(2)377/04-05(01)]

15. Miss AU Kit-ying presented the views of Hong Kong Christian Service as detailed in its submission. Miss AU said that Hong Kong Christian Service urged the Government to resolve the problem of language barrier encountered by ethnic minorities in employment, public medical service, social welfare and legal services. Mr Daryanani Tarun Kishore Kumar urged the Government to provide more opportunities of continuing education for ethnic minority students, especially those who were not promoted to Form Six as most training courses available for these school leavers were only conducted in Cantonese.

Unison Hong Kong

16. Miss Fermi WONG said that the Government should take active measures to promote racial equality and communal harmony, and concerted efforts of different Government bureaux/departments were required to achieve these objectives. She pointed out that the Government had not fully taken into account the needs of ethnic minorities in formulating its education policies and it also lacked a long-term strategy to eliminate racial discrimination through civic education. She urged the Government to tackle discrimination on the ground of language encountered by the ethnic minorities in the field of employment.

17. Miss WONG further said that the Government should take measures to enhance the independence of EOC and ensure that it was provided with adequate resources for implementation of the proposed legislation, if EOC was appointed as the implementation body.

YMCA of Hong Kong – Cheung Sha Wan Centre

18. Mr Lok POON cited examples of unreasonable job requirements which were, in his view, for the purpose of excluding members of ethnic minorities from being eligible to apply for the jobs concerned. He urged the Government to make clear provisions on indirect discrimination under the proposed legislation to protect ethnic minorities and step up public education on equal opportunity.

Indian Resources Group

19. Mr Ravi Gidumel said that the Government should spell out specific steps for achieving its policy goals on race relation as set out in the paragraph 22 of the Consultation Paper and resort to education and legislation to eliminate racial discrimination. The Indian Resources Group was of the view that new arrivals from the Mainland could be considered as people of “descent” different from local Chinese, because of the length of time that Hong Kong people and

Action

the Mainlanders had been apart from each other. The Indian Resources Group also considered that the Government should extend the scope of the proposed legislation to cover discrimination against new arrivals from the Mainland or tackle the problem by taking other measures.

20. Mr Gidumel added that the Indian Resources Group supported EOC to be appointed as the implementation body and appointing members of ethnic minorities to EOC. The Indian Resources Group considered that the proposed transitional period of three years for small companies or employers was excessively long given that the proposed legislation was, to a large extent, similar with the existing three anti-discrimination ordinances, which had been in place for many years.

International Human Rights Forum

21. Mr Asim Naeem said that the International Human Rights Forum welcomed the publication of the Consultation Paper and the extension of the consultation period. He gave examples of racial discrimination in Hong Kong, such as some local Chinese refusing to work for members of ethnic minorities, some Government forms/information being available in Chinese only, applicants for the post of security guard of a local bank not being allowed to have beards, etc. Mr Naeem urged the Government to provide assistance to tackle the language barrier encountered by members of ethnic minorities in the course of finding employment. The International Human Rights Forum also demanded that ethnic minorities should be represented in the Legislative Council or District Councils.

Hong Kong Human Rights Monitor
[LC Paper No. CB(2)391/04-05(02)]

22. Mr LAW Yuk-kai presented the views of Hong Kong Human Rights Monitor as detailed in its submission. Mr LAW said that Hong Kong Human Rights Monitor welcomed the Government's decision to legislate against racial discrimination. However, it expressed concern about the proposed exclusion of new arrivals from the Mainland from the scope of the proposed legislation, and the proposed exception from its anti-discriminatory provisions to be made for the Government when the Government committed a discriminatory act in the performance of its functions, provided that such an act was done for the purpose of complying with a requirement of an existing statutory provision. Hong Kong Human Rights Monitor was also concerned that the Consultation Paper made no proposal on "imputed discrimination".

Civil Human Rights Front
[LC Paper No. CB(2)406/04-05(01)]

23. Mr CHONG Yiu-kong presented the views of Civil Human Rights Front

Action

as detailed in its submission. Mr CHONG said that Civil Human Rights Front welcomed the proposal to legislate against racial discrimination and proposed that the scope of the proposed legislation should cover discrimination against new arrivals from the Mainland. Civil Human Rights Front considered it also necessary to enhance the independence of EOC and for continuity of EOC's work, the Government should appoint the EOC Chairperson for a period of at least five years and at least three EOC members on a full-time basis.

Hong Kong Association for Community Inclusion
[LC Paper No. CB(2)406/04-05(03)]

24. Mr FAN Kwok-fai presented the views of Hong Kong Association for Community Inclusion (HKACI) as detailed in its submission. Mr FAN said that HKACI supported the proposal to legislate against racial discrimination and proposed that racial discrimination should be defined as discrimination based on "culture, race, colour, descent, national or ethnic origin, or religion".

Hong Kong Christian Institute
[LC Paper No. CB(2)406/04-05(04)]

25. Mr FAN Lap-hin presented the views of Hong Kong Christian Institute (HKCI) as detailed in its submission. Mr FAN said that HKCI was supportive of legislating against racial discrimination and extending the scope of the proposed legislation to cover new arrivals from the Mainland. HKCI considered that the Government should review, in the light of the principles of the proposed legislation, the restriction imposed on foreign domestic helpers regarding the maximum two-week period that they could stay in Hong Kong after completing their employment contracts. HKCI also suggested shortening the proposed "sunset period" to one year only.

Gurkha Son & Daughter's Social Organization, HK

26. Mr Bishal Basnet said that the problem of racial discrimination against ethnic minorities had been the most serious in the field of employment and also in the education, medical service and finance sectors. Mr Basnet pointed out that members of ethnic minorities had been excluded from being eligible for many jobs simply because they could not speak Cantonese or Mandarin fluently and most of them could only work as security guards or construction workers.

Pakistan Community

27. Mr Mohamad Sadaquat Khan Mohan expressed support for legislating against racial discrimination. He also took the opportunity to appeal to members for their attention to the misery of the people in Kashmir.

Action

Nepalese Youth Club

28. Mr Limbu Santosh said that the points he wanted to make were same as what Mr Bishal Basnet had said.

Democratic Alliance For Betterment of Hong Kong

29. Mr Greg SO said that Democratic Alliance For Betterment of Hong Kong (DAB) was supportive of the Government's initiative to prohibit all forms of racial discrimination and appointing EOC as the implementation body. Mr SO said that DAB suggested that the proposed legislation should model on the existing three anti-discrimination ordinances, and further consultation should be conducted on the appropriate length of the proposed "sunset period" and the definition of "small companies and employers" under the proposed legislation.

30. Mr SO said that DAB regretted that protection for new arrivals from the Mainland was denied under the proposed legislation merely due to a technicality of whether the kind of discrimination that these people confronted with could be classified as "racial" in nature. DAB proposed that the Government should either broaden the scope of the proposed legislation to cover new arrivals from the Mainland or widely consult the public on whether a separate legislation should be introduced to protect the new arrivals. Mr SO added that DAB would provide a detailed submission to the Government at a later time.

31. Mr Mohamed I.S. Batcha said that members of EOC should include ethnic minority members and EOC should ensure that members of ethnic minorities would not encounter any language problem when they lodged complaints to EOC. Mr Batcha also urged the Government to allocate more resources to promote racial harmony and ensure that the ethnic minorities would not be excluded from access to any public services due to any language problem. Mr Batcha further drew members' attention to a Government's advertisement being broadcast on the television which seemed to suggest that members of ethnic minorities were excluded from eligibility for the Hong Kong Special Administrative Region Passport

32. The Chairman invited the representatives of the deputations to provide written submissions to the Panel for members' reference if they had not yet done so.

The Administration's response

33. At the Chairman's invitation, Deputy Secretary for Home Affairs (1) (DSHA(1)) made the following points in response to the views expressed by the representatives of the deputations –

Action

- (a) The proposed racial discrimination bill would not specify any particular race or ethnicity to be protected under the proposed legislation. Rather, the Administration would define in the bill that racial discrimination was discrimination based on “race, colour, descent, or national or ethnic origin” in accordance with the same definition provided in Article 1 of ICERD.
- (b) If an express provision specifying that “new arrivals from the Mainland were protected” were to be made under the bill, such a provision would not only pose implementation difficulties but would, by itself, also constitute racial discrimination as it would be queried why only new arrivals from the Mainland, in particular, should be given additional protection.
- (c) It would not be appropriate to define that racial discrimination was discrimination based on “language, nationality, religion, belief, or culture”. However, if an employer was proved to have imposed language requirement as a job requirement solely for the purpose of excluding any members of the ethnic minorities from being eligible for the jobs concerned, the employer should be regarded as committing indirect discrimination under the proposed legislation.
- (d) The Administration did not deny that discrimination against new arrivals from the Mainland by local Chinese existed in Hong Kong. It was only of the view that such discrimination fell outside the scope of racial discrimination legislation, and that education and publicity were the more effective means to deal with the problem. If a separate legislation to prohibit discrimination against new arrivals from the Mainland was proposed to be introduced, further public consultation would be necessary.
- (e) Discrimination against new arrivals from the Mainland could not be regarded as discrimination on the grounds of race, descent, or national or ethnic origin.
- (f) The public consultation exercise on the proposed legislation had been extended to 8 February 2005 to allow more time for discussion and expression of views.
- (g) The Administration had published the full Consultation Paper in Chinese and English, and a summary version of the Consultation Paper in eight other languages of the ethnic minorities in Hong Kong. The Administration had also sponsored the launching of

Action

two new radio programs targeted at the ethnic minorities, namely new programmes conducted in Nepali and in Urdu. News about the Consultation Paper was also covered in two other languages of ethnic minorities programs. In addition, during all the consultation forums, interpretation service had been provided to meet the needs of the ethnic minorities. The Administration had advertised in the newspapers of the ethnic minorities to promote awareness of the content of the Consultation Paper. The Administration considered that these were more cost-effective ways to collect views than spending money on translating the full Consultation Paper, which was highly complicated and contained many legal jargons, into languages of the ethnic minorities

Discussion

Proposal on exception for small companies and employers

34. Referring to the submission of Employers' Federation of Hong Kong, Ms Emily LAU expressed concern that the Federation was proposing to define "small companies and employers" in the bill as those employing less than 50 people. In response, Mr Duncan Abate explained that this had been suggested by a number of the members of the Federation and it therefore considered it necessary to reflect this view to the Administration.

35. In response to Ms Emily LAU, Mr Duncan Abate clarified that the Federation had no doubt about the social benefits brought about by the proposed legislation and the three anti-discrimination ordinances to the community as a whole. He said that the implementation of these ordinances, however, certainly incurred additional costs to private companies, since the employers were obliged to take all practicable steps to fulfil requirements imposed on them under these ordinances.

Extending the scope of the bill to cover discrimination against new arrivals from the Mainland

36. Ms Emily LAU said that what DSHA(1) had said seemed to imply that the Administration had already precluded the possibility of extending the scope of the bill to cover discrimination against new arrivals from the Mainland. Ms LAU urged the Administration to widely consult the public on any feasible alternative options as soon as possible. Ms LAU said that in the end if the Administration came to a final view that the scope of the bill would not cover discrimination against new arrivals from the Mainland, the Administration would have to provide detailed justifications.

37. DSHA(1) said that the Administration was open-minded about the issue but he was obliged to explain its present position and respond to any new

Action

viewpoints raised. He further said that the Administration welcomed any different views from the public and would listen to more views before coming to a final view. He added that the Administration would also look at the feasibility of extending the scope of the bill to cover discrimination of a non-racial nature.

38. Ms Audrey EU said that the motion moved by her at the Council meeting on 12 March 2003 urging the Government to expeditiously legislate against racial discrimination to protect new arrivals from the Mainland and ethnic minorities in Hong Kong was almost unanimously passed by the Council, with 21 out of the 22 Members who spoke on the motion expressing support. Ms EU requested the Administration to explain what technical or implementation problems were anticipated to arise, if the bill was made to comprise two parts, namely, racial discrimination and discrimination against new arrivals from the Mainland. Dr Fernando CHEUNG considered that public opinions were clearly in support of extending the scope of the bill to cover discrimination against new arrivals from the Mainland, and that the bill could simply be renamed as the bill of racial discrimination and discrimination on the ground of culture, or the racial and related discrimination bill, for the purpose. Mr WONG Kwok-hing considered that excluding discrimination against new arrivals from the Mainland from the scope of the bill was no different from legalising such discrimination.

39. DSHA(1) responded that about two years ago, the Administration had been of the view that the definition of racial discrimination might be able to cover discrimination against new arrivals from the Mainland having regard to the case of the Irish Travellers of UK. DSHA(1) said that however, when the Administration re-visited the issue about a year ago, it considered that, from the legal point of view, discrimination against new arrivals from the Mainland by local Chinese should not be regarded a form of racial discrimination. Furthermore, in the past public consultation exercises, some people had queried whether there was really an urgent need to legislate against discrimination encountered by new arrivals from the Mainland. DSHA(1) further said the overall impact of introducing such legislation on the Hong Kong society as a whole had to be carefully considered.

40. DSHA(1) pointed out that there would be implementation problems in enforcing the proposed legislation, if it was made to comprise the two parts as proposed by Ms EU for the reason explained by him in paragraph 33(b). DSHA(1) further said that the present discussion should actually focus on whether or not the proposed racial discrimination legislation should also cover discrimination on the grounds of non-racial elements, or whether a separate legislation should be introduced to prohibit discrimination against new arrivals from the Mainland.

Action

41. Ms Audrey EU asked whether the Administration acknowledged the need to tackle discrimination against new arrivals from the Mainland by legislation, and what negative impact of introducing such legislation was expected to have.

42. DSHA(1) responded that with the economic development on the Mainland and increasing Mainland tourists visiting Hong Kong, the problem of discrimination against new arrivals from the Mainland had become less serious than before. DSHA(1) said that it was debatable as to whether or not there was really an urgent need to legislate to prohibit such discrimination. DSHA(1) further said that some people had also raised that prohibiting discrimination against new arrivals from the Mainland by legislation might affect their integration into the Hong Kong society. DSHA(1) pointed out that there were hundreds of thousands of people from the Mainland who had stayed in Hong Kong for less than seven years, and the Administration had to carefully assess the social and economic impact of introducing such a legislation on Hong Kong.

43. Mr Albert HO requested the Administration to further explain its stance on the issue of prohibiting discrimination against new arrivals from the Mainland by legislation. He also asked whether it was only due to the technical problem relating to the definition of “racial discrimination” that the Administration had proposed not to extend the scope of the bill to cover such discrimination.

44. DSHA(1) reiterated that the Administration’s current proposal was that it would define in the bill that racial discrimination was discrimination based on “race, colour, descent, or national or ethnic origin”, and the court would be the final authority to judge whether the definition covered discrimination against new arrivals from the Mainland. DSHA(1) explained that in the future after the proposed legislation was enacted, supposedly someone considered that such a definition also covered discrimination against new arrivals from the Mainland and took the case to the court, and if the court ruled in favour of him, the definition as presently proposed would suffice. DSHA(1) said that the Administration at the present stage was, however, obliged to clearly point out that, as far as it understood, discrimination against new arrivals from the Mainland could not be regarded a form of racial discrimination according to the definition provided in ICERD. Nevertheless, it was willing to listen to any further views on this matter.

45. DSHA(1) further said that there was now a suggestion that the Administration should disregard the definition provided in ICERD and draft the bill in such a way that it could also cover discrimination against new arrivals from the Mainland. DSHA(1) explained that the Administration’s view was that while the Administration would be able to draft such a bill, the bill so drafted, however, would violate the original legislative intent of prohibiting racial discrimination in Hong Kong.

Action

46. Mr James TO asked whether it was because the United Nations (UN) had not imposed an obligation on the Hong Kong Special Administrative Region Government to legislate against discrimination encountered by new arrivals from the Mainland that the Administration had proposed excluding such discrimination from the scope of the bill. Mr TO considered that the Administration, in so doing, had adopted a minimal approach for the proposed legislation. Mr TO queried why the saying that prohibiting discrimination against new arrivals from the Mainland by legislation might adversely affect their integration into the Hong Kong society did not apply in legislating against racial discrimination in respect of ethnic minorities.

47. DSHA(1) clarified that the Administration was still in the course of collecting views and it had yet come to a final view on the matter. DSHA(1) explained that people who opposed enacting legislation to prohibit discrimination against new arrivals from the Mainland were of the view that since these new arrivals were ethnic Chinese and Chinese-speaking, in time they would be able to adapt to the Hong Kong society and assimilate. These people also considered that introducing legislation to provide special protection to the new arrivals would only affect their assimilation into the Hong Kong society. They also pointed out that for those new arrivals who came from nearby Mainland provinces, such as Guangzhou, it might only take a few months for them to assimilate into the Hong Kong society. DSHA(1) said that these people had pointed out that however, the kind of discrimination encountered by the ethnic minorities was different because such discrimination originated from their attributes which they could not do anything to change, such as their skin colour and the fact that they were born to be of a different race. Therefore, legislation was considered necessary to protect the ethnic minorities.

Appropriateness of EOC to be appointed as the implementation body

48. Ms Emily LAU and Ms Audrey EU both considered that following the controversies surrounding EOC over the past year, there still seemed to be many voices in the community questioning the credibility of EOC. They urged the Administration to keep an open-mind in listening to the deputations' expectations of the future implementation body before deciding whether or not EOC should be appointed as the implementation body. Ms EU considered that the Administration should help restore EOC's credibility and enhance transparency of the process of appointment of the EOC Chairperson.

49. DSHA(1) responded that there were actually two options set out in the Consultation Paper on the future implementation body. DSHA(1) pointed out that, however, the appointment of EOC seemed to be the preferred option having regard to the implementation experience of other common law jurisdictions and from the resources' point of view. Moreover, EOC had the advantage that it could make use of its past experience gained from

Action

implementing the three anti-discrimination ordinances.

50. In response to concern about the drop in the caseload of EOC in the past year, Mrs Patricia CHU said that the number of people who had filed complaints for investigation and conciliation up to November 2004 was 406, which was comparable to 2002's annual figure of 430, and 497 for 2003, the year with the outbreak of SARS. She further said that EOC had been able to achieve a higher conciliation rate of over 60% as opposed to 53% in 2003. Legal assistance had been granted in 28 cases by the end of November 2004, as opposed to 23 in 2003 and 12 in 2002. Mrs CHU pointed out that the granting of legal assistance was decided on the basis of the merits of each case. Mrs CHU added that as to the number of cases taken to the court, nine writs had been issued this year, three were issued in 2003 and six in 2002.

51. Mrs Patricia CHU further said that EOC had collaborated with organisations concerned and the Government in organising public education initiatives on equal opportunity, and had acceded to increasing requests for training and consultancy work from both private and public organisations.

52. In response to the comments made by Employers' Federation of Hong Kong in its submission about EOC being biased against employers, Mrs Patricia CHU said that EOC staff were neutral and had been acting impartially in dealing with complainants and respondents in all complaint cases. Moreover, EOC had a duty under the law to investigate once a complaint was received, but EOC did not assume an adjudicating role under the law in handling complaints.

Language of the Consultation Paper

53. Mr Albert HO and Dr Fernando CHEUNG considered it necessary to translate the full Consultation Paper into the languages of the ethnic minorities in Hong Kong to facilitate their discussion of the subject. Dr CHEUNG queried whether the non-provision of the full Consultation Paper in languages of the ethnic minorities was, by itself, a discriminatory act against the ethnic minorities.

54. DSHA(1) responded that if any ethnic minority groups were able to find people capable of satisfactorily translating the full Consultation Paper into their own languages, the Administration could provide funds for publishing the translated version, or even pay for the translation fees involved. DSHA(1) pointed out that the wording of the Consultation Paper was legalistic and the ICERD had been published by the UN in five languages only and none of which were the languages of the ethnic minorities in Hong Kong.

55. DSHA(1) further said that in preparing the summary version of the Consultation Paper, the Administration had appointed professional translation

Action

companies, which had already hired qualified native speakers to do the translation of those summaries. The translations had further been provided to the relevant consulates for verification of accuracy. DSHA(1) said that despite these efforts, the Administration had still received many complaints about the quality of the translation of those summaries after they were published.

56. DSHA(1) further said that if the full Consultation Paper were to be translated into the different languages of the ethnic minorities, the Government was obliged to ensure accuracy of the translation by adopting the same work procedures as those taken in preparing the summaries. However, in that case it would be very time-consuming and the Administration also believed that no consulates could afford the time to do the verification. DSHA(1) stressed that given the resources constraint, it was necessary for the Administration to make the best use of resources and ensure that the most cost-effective ways were used in collecting views on the Consultation Paper.

57. Responding to the Chairman, Mr M A Hashmi, Mr Asim Naeem and Mr P K Tamang considered it advisable to have the full Consultation Paper translated into the respective languages of the ethnic minorities in Hong Kong, as some of them did not know English very well. They said that if the Government provided them with funding support, they would be able to find competent translation workers to do the translation. Mr Mohamed I.S. Batcha, however, considered that it was the Government's responsibility to do the translation of the Consultation Paper, and the Government had abundant translation officers who were competent for the job. Mr Batcha added that if the ethnic minority groups were asked to find translation workers to do the translation, they could not guarantee that their translation was faithful to the original text.

Need for strengthening support services for ethnic minorities and the problem of language barrier

58. Ms Emily LAU urged the Administration to take measures to address the problems of discrimination and language barrier as pointed out by the representatives of the deputations. Miss TAM Heung-man expressed concern about the need to strengthen support measures for the ethnic minorities and step up public education to eliminate racial discrimination. She also enquired about the existing mechanism for handling complaints on racial discrimination

59. DSHA(1) responded that the Administration had set up the Ethnic Minorities Forum to strengthen ties with the ethnic minorities and the Committee on the Promotion of Racial Harmony to advise the Home Affairs Bureau (HAB) on activities for the promotion of racial harmony. In addition, the Race Relations Unit under HAB was responsible for maintaining a hotline for complaints and enquiries about racial discrimination. He further said that in the absence of any racial discrimination legislation, the Race Relations Unit

Action

could only deal with complaints about private persons or organisations by giving advice or through mediation. DSHA(1) added that HAB would continue to provide funding support to education and publicity activities for the promotion of racial harmony.

60. Dr Fernando CHEUNG said that it was disappointing that the Consultation Paper had made no reference to the provision of interpretation services by the Government and public authorities to members of ethnic minorities to ensure that they enjoyed equal opportunities in gaining access to all public services. DSHA(1) responded that, under the proposed legislation, the Government or a public authority might be regarded as committing indirect discrimination if it had denied without reasonable justification a member of the ethnic minorities access to any public service due to its refusal to provide the necessary interpretation service. However, the circumstances of each case would have to be looked at in the future.

Further discussion

Admin

61. The Chairman said that as the Administration had extended the consultation period to 8 February 2005, the Administration might have to defer reporting the outcome of the public consultation exercise to the regular meeting of the Panel in March. Mr WONG Kwok-hing requested the Administration to provide statistical information on organisations which supported or opposed extending the scope of the bill to cover discrimination against new arrivals from the Mainland in the report on the outcome of public consultation. Ms Emily LAU suggested that the Panel should consider inviting the deputations again to give views on the Administration's report.

62. The Chairman thanked the representatives of the deputations and the Administration for attending the meeting.

63. There being no other business, the meeting ended at 12:30 pm.

Council Business Division 2
Legislative Council Secretariat
8 March 2005