

立法會
Legislative Council

LC Paper No. CB(2)465/05-06
(These minutes have been
seen by the Administration)

Ref : CB2/PL/HA

Panel on Home Affairs

**Minutes of meeting
held on Friday, 8 July 2005 at 10:45 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 WONG Yung-kan, JP Hon LAU Wong-fat, GBM, GBS, JP Hon Emily LAU Wai-hing, JP Hon CHOY So-yuk, JP Hon Andrew CHENG Kar-foo 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 WONG Kwok-hing, MH Hon LEUNG Kwok-hung
Members absent	: Dr Hon Philip WONG Yu-hong, GBS Hon Timothy FOK Tsun-ting, GBS, JP

Public Officers : Item II
attending

Mr Stephen FISHER
Deputy Secretary for Home Affairs (1)

Mr John DEAN
Principal Assistant Secretary for Home Affairs (4)

Miss Amy YEUNG
Assistant Secretary for Home Affairs (4)

Item III

Mr Stephen FISHER
Deputy Secretary for Home Affairs (1)

Miss Joanna CHOI
Principal Assistant Secretary for Home Affairs (Special Duties) 2

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

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

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I. Information paper(s) issued since the last meeting

Members noted that no information papers had been issued since the last meeting.

II. Public consultation on legislating against racial discrimination

[LC Paper Nos. CB(2)2176/04-05(02), CB(2)1985/04-05(01), CB(2)2216/04-05(01) and (02), CB(2)2176/04-05(03) and Consultation Paper entitled “Legislating against Racial Discrimination”]

2. Members noted that apart from the Administration’s paper provided for discussion, the following papers/submissions had been issued –

(a) submission made by April Fifth Action [LC Paper No. CB(2)1985/04-05(01)];

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- (b) submission made by the Equal Opportunities Commission (EOC) Concern Group [LC Paper No. CB(2)2216/04-05(01)];
- (c) joint submission made by the Society for Community Organisation (SOCo), New Immigrants Mutual Aid Association and Concern Group on the Rights of New Immigrant Women [LC Paper No. CB(2)2216/04-05(02)]; and
- (d) background brief prepared by the Legislative Council (LegCo) Secretariat [LC Paper No. CB(2)2176/04-05(03)].

3. Deputy Secretary for Home Affairs (1) (DSHA(1)) briefed members on the salient points of the Administration's paper summarising the comments received in response to the Government Consultation Paper entitled "Legislating against Racial Discrimination". He pointed out that compared with the outcome of the previous public consultation exercise a few years ago, it was noted that the general public apparently had a better understanding of the subject than before. He said that most of the respondents were of the view that the proposed legislation would not have a significant impact on the economy and the business sector since the population size of the ethnic minorities in Hong Kong was relatively small. However, some respondents were concerned that the proposed legislation might give rise to frequent litigation and would adversely impact on the economy.

4. DSHA(1) pointed out that the question of whether the discrimination suffered by new arrivals from the Mainland was racial or social in nature had proven to be the most controversial issue in this consultation exercise. He said that some groups were of the view that even if the definition of racial discrimination provided in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) did not cover discrimination against new arrivals from the Mainland, the Race Discrimination Bill (the Bill) should be drafted in a way that it also covered such discrimination.

5. DSHA(1) further pointed out that the idea of indirect discrimination had also been much discussed in the consultation exercise and some respondents had suggested that the Bill should clearly spell out what a "justifiable requirement or condition" was in the case of indirect discrimination. Some respondents also suggested that the Administration should take reference from the guidelines in this respect issued by the European Union.

6. DSHA(1) said that the following comments and suggestions concerning other proposals in the Consultation Paper had been received –

- (a) the concept of harassment under the Bill should cover conduct or behaviour of persons motivated by racial prejudice or hatred which rendered the environment in which another person (member of an ethnic minority) worked or studied hostile or

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intimidating;

- (b) the suggestion of appointing EOC as the implementation body was supported by most respondents;
- (c) the definition of racial discrimination should include discrimination against new arrivals from the Mainland, discrimination suffered by residents who were not born in Hong Kong, and discrimination on the ground of religion, language or nationality. A few respondents were concerned that “descent” had been included in the definition;
- (d) on the proposal concerning exception for small employers, different views had been received on the definition of “small employers” and on the appropriate length of the transitional period to be proposed in the Bill;
- (e) some respondents had proposed that existing trade unions and organisations of employers should be “grandfathered” and given exemption in relation to their membership criteria; and
- (f) while some had suggested that the use of a particular language in an advertisement should not, per se, constitute a discriminatory act for the purposes of the Bill, respondents from ethnic minority groups had urged that job vacancies should be advertised in both Chinese and English if competency in reading and writing Chinese was not a job requirement.

New arrivals from the Mainland

7. Mr WONG Kwok-hing said that the Hong Kong Federation of Trade Unions considered that the Bill should cover discrimination against new arrivals from the Mainland. He also reminded the Administration that the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) had reiterated, in its recent concluding observations on the second report of Hong Kong under the International Covenant on Economic, Social and Cultural Rights (ICESCR), its concern about the fact that the present anti-discrimination legislation in Hong Kong did not cover discrimination on the basis of race, sexual orientation and age.

8. DSHA(1) responded that when the chairperson and a member of UNCESCR visited Hong Kong in February 2005, the Administration had briefed them on the Consultation Paper and what the Administration had considered on this matter, and the UNCESCR chairperson and member had not raised any opposing views. DSHA(1) said that during their stay in Hong Kong, the UNCESCR chairperson and member had also met with ethnic minority groups as well as the new arrivals from the Mainland. DSHA(1) further said

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that at the hearing of HKSAR's second report under ICESCR, the Hong Kong team had only been asked by UNCESCR about the legislative timetable of the proposed legislation. DSHA(1) said that the Administration was a little surprised to find that UNCESCR had all of a sudden made such a point in its concluding observations that it strongly urged the Hong Kong Government to extend the protection afforded by the proposed legislation to new arrivals from the Mainland, and to put a stop to the widespread discriminatory practices against them on the basis of their origin. DSHA(1) added that the Administration was going to seek clarifications on this point with UNCESCR.

9. DSHA(1) explained that should the Government eventually decide that the proposed legislation should not cover discrimination against new arrivals from the Mainland, this would not constitute a breach of ICESCR. He pointed out that one of the reasons for the Government to introduce the Bill was to fulfill Hong Kong's obligations under ICERD. The currently proposed definition of racial discrimination was also based on that set out in Article 1 of ICERD.

10. DSHA(1) said that the Bill would not specifically exclude any persons from its scope of coverage. The Administration would define in the Bill that racial discrimination was discrimination based on "race, colour, descent, or national or ethnic origin" as set out in Article 1 of ICERD. DSHA(1) explained that the Administration's understanding, however, was that by such a definition, discrimination against new arrivals from the Mainland by local Chinese could not be regarded a form of racial discrimination. He added that if someone considered that such a definition also covered discrimination against new arrivals from the Mainland after the proposed legislation was enacted, the person could challenge the Government's interpretation in court.

11. DSHA(1) further said that if the Administration disregarded the definition provided in ICERD and drafted the Bill in such a way that it also covered discrimination against new arrivals from the Mainland, the Bill so drafted would violate the original legislative intent of prohibiting racial discrimination in Hong Kong, as it would be queried why new arrivals from the Mainland, in particular, should be given additional protection.

12. DSHA(1) pointed out that as to the suggestion that the Administration should introduce a separate piece of legislation to prohibit discrimination against new arrivals from the Mainland, the Administration had yet come to a view and it welcomed further public discussion on such a proposal.

13. Mr WONG Kwok-hing expressed dissatisfaction with the Administration's response. He considered that the Administration, in maintaining its view that the Bill should not cover discrimination against new arrivals from the Mainland, was ignoring the general and unanimous view of the new arrivals that discrimination against them should be prohibited by legislation. He urged the Administration to review its position.

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14. DSHA(1) informed members that the Administration had held quite a long meeting with representatives of SOCo, New Immigrants Mutual Aid Association and Concern Group on the Rights of New Immigrant Women on the previous day. He said that the overseas case law and international practices cited by the representatives, however, had not succeeded in convincing the Administration that discrimination against new arrivals from the Mainland by local Chinese could be regarded as racial discrimination. He further said that the Administration was also not aware of any jurisdictions which had anti-racial discrimination laws in place had regarded that such discrimination, i.e. people moving from one part of a country to the country's another part and suffered from discrimination by local people, was racial discrimination. He pointed out that in fact, a large majority of Hong Kong residents were not indigenous residents of Hong Kong. The Administration was, therefore, initially of the view that the concept of discrimination on the basis of a person's origin was not suitable to be applied in Hong Kong.

15. Ms Emily LAU considered that it was clearly the majority view of LegCo Members that the Administration should tackle the problem of discrimination against new arrivals from the Mainland and she urged the Administration to take expeditious measures in this regard.

16. DSHA(1) said that if the Government now changed its position and included discrimination against new arrivals from the Mainland within the scope of coverage of the Bill, it would be necessary for it to consult the Executive Council again and conduct public consultation on this new proposal. Ms Emily LAU considered that the Administration should conduct such consultation as soon as possible so that the issue could hopefully be expeditiously dealt with. DSHA(1) pointed out that such a proposal would have great implications on various social and housing policies and it was also anticipated that the business sector, employers' groups and policy bureaux would have strong views on it.

17. Dr Fernando CHEUNG pointed out that the definition of racial discrimination in ICERD had only provided a minimum standard of requirement for State Parties to comply with. He said that there was no legal basis for the Administration to argue that it could not afford better protection to the new arrivals from the Mainland by including them as well within the coverage of the Bill. He queried whether the Administration had already made up its mind on this matter and was not going to listen to the view expressed by many people that the Bill should cover discrimination against new arrivals from the Mainland.

18. In response, DSHA(1) said that the Administration had not heard any legal basis which could convince the Administration that its interpretation as explained above was wrong. He further said that the Government was obliged to consider how to take forward the recommendations of UNCESCR. He

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added that however, as UNCESCR agreed, it depended on whether the actual circumstances of the State Party and the region concerned were right for the implementation of the relevant recommendations of UNCESCR.

19. Dr Fernando CHEUNG requested the Administration to provide a timetable for tackling the problem of discrimination against new arrivals from the Mainland. DSHA(1) said that the Administration could undertake that it would deal with the problem as soon as possible but it could not provide a timetable. In response to the Deputy Chairman, DSHA(1) said that apart from launching public education to eliminate discrimination against new arrivals from the Mainland, the Administration had from time to time reviewed its policies in different areas to help resolve the practical problems encountered by new arrivals from the Mainland living in Hong Kong.

20. Referring to the case of “Irish Travellers” cited in paragraph 12 of the background brief [LC Paper No. CB(2)2176/04-05(03)], Mr LEUNG Kwok-hung pointed out that the circumstances of the new arrivals from the Mainland were similar to those of the Irish Travellers in that, even though the new arrivals were also of Chinese race, there were marked cultural differences between them and local people. Mr LEUNG further pointed out that the imposition of the seven years’ residence requirement as one of the criteria for eligibility to social security benefits had also created further difficulties to the living of the new arrivals from the Mainland. Mr LEUNG urged the Administration to draw up a new proposal to include discrimination against new arrivals from the Mainland within the coverage of the Bill, on the basis of the case of the Irish Travellers, for public consultation as soon as possible. Mr LEUNG further said that even though this proposal might meet strong opposition from the business sector and policy bureaux, the Administration should proceed to do so and provide a quantified assessment of the views received in the consultation exercise.

21. In response, DSHA(1) pointed out that in another court case in the United Kingdom (UK), i.e. the case of Mandla v Lee, the relevant judgment had spelt out several criteria defining whether a group constituted an ethnic minority group. DSHA(1) further briefed members on those criteria and pointed out that, based on the criteria, the Administration considered that the new arrivals of the Mainland could not be regarded as an ethnic minority group. He added that anyone who did not agree could challenge the Government’s interpretation in court in the future.

22. Miss CHOY So-yuk asked whether the Administration had explored any short-term measures which could be introduced expeditiously to help eliminate discrimination against new arrivals from the Mainland. DSHA(1) responded that the Administration had strengthened public education and publicity through the mass media on messages such as communal harmony.

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23. Mr WONG Ting-kwong said that he also wished that the proposed legislation could be enacted as soon as possible. He considered that if the Administration had a detailed plan of action for dealing with the problem of discrimination against new arrivals from the Mainland, this would be conducive to smooth communication between LegCo and the Administration over the proposed legislation.

24. In response to the Chairman's question about whether the Administration was planning to review the need for introducing legislation to prohibit discrimination against new arrivals from the Mainland, DSHA(1) said that the Home Affairs Bureau (HAB) would have to conduct internal discussions on this first.

25. Mr Albert CHAN considered that it was most unacceptable that the new arrivals from the Mainland, being the largest community group in Hong Kong as well as people of Chinese race, were to be excluded from the protection of the Bill due to the proposed legal definition of "racial discrimination". He further said that even if the Bill was not going to address this issue, the Administration should still provide a timetable for tackling the issue in early next legislative session. In response, DSHA(1) reiterated that HAB would deal with the problem as soon as possible.

Further information to be provided by the Administration

26. Ms Emily LAU asked why the Administration's paper did not set out details of the proposals to be included in the Bill but only the diverse views received in the consultation exercise. She considered that the Administration should have provided details of its proposals to seek members' support before introducing the Bill into LegCo. Miss CHOY So-yuk also considered that it was advisable for the Administration to make clear its position on various issues and seek members' comments, and take into account such comments in drafting the Bill.

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27. DSHA(1) responded that the Administration could provide a paper setting out details of proposals to be included in the Bill for consideration by the Panel around September 2005.

III. Review of advisory and statutory bodies
[LC Paper Nos. CB(2)2176/04-05(04) and (05)]

28. DSHA(1) briefed members on the salient points of the Administration's paper recommending that the 106 district-based committees, namely, the 70 Area Committees (ACs), the 18 District Fight Crime Committees (DFCCs) and 18 the District Fire Safety Committee (DFSCs) be removed from the list of public sector advisory and statutory bodies (ASBs) so as to streamline and rationalise the existing classification system for these bodies.

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29. In response to the Deputy Chairman, DSHA(1) said that under the proposed new classification system, the number of public sector ASBs would be reduced to 403. In future, the Administration might make separate statistical reports in respect of the 403 public sector ASBs and of the 106 district-based committees to LegCo. He said that the current proposal did not entail any institutional changes to the three above-named district-based committees.

30. Dr Fernando CHEUNG opposed the proposal. He considered that the district-based committees in question should not be removed from the list of public sector ASBs so that the six-year and the six-board rules, guidelines for declaration of interests by non-official members of ASBs and for enhancing transparency of work, etc. would still be applicable to them. He considered that the Administration's real intention of putting forward the proposal was to have the number of cases of non-compliance with the six-year and six-board rules statistically reduced.

31. DSHA(1) clarified that under the proposed new classification system, the district-based committees in question would still be required to comply with the six-year and the six board rules, and the Home Affairs Department (HAD) had also undertaken that it would observe the rules as far as possible in making appointments to these committees. DSHA(1) explained that however, HAD would have to replace existing members of these district-based committees who had served in the same posts for over six years on a gradual basis, because the number of such members was quite large and it was necessary to have some "kaifongs" who were familiar with local issues to serve on these committees. In response to Dr CHEUNG, DSHA(1) agreed that many of those ASBs which could not comply with the six-year rule were ACs and DFCCs. DSHA(1) explained that the AC members who had served in the same posts for over six years were often those who had been elected by residents to be the chairmen of mutual aid committees (MACs) of their buildings for a number of terms. He pointed out that if the Administration rigidly enforced the six-year rule in making appointments to committees like ACs, this would mean that even some chairmen of MACs who had the popular support of local residents could not serve on their ACs.

32. DSHA(1) further explained that the Administration considered that these district-based committees, often focusing on specific local issues and handling mainly activity-oriented work, were quite different in nature from the other organisations being classified as public sector ASBs and, therefore, some of the very stringent guidelines being applied to the latter might not be applicable to the former. DSHA(1) said that, for example, these district-based committees lacked resources to implement initiatives, such as launching their own websites and uploading all their open documents onto their websites, as what the other public sector ASBs were required to do for the purpose of enhancing transparency of work.

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33. Ms Emily LAU said that she only accepted that in future, when the Administration presented statistical information concerning ASBs, it could provide separate statistical reports in respect of the public sector ASBs and the district-based committees. She stressed that however, it should be maintained that these district-based committees would still have to comply with all existing guidelines which applied to the public sector ASBs, including the six-year and six-board rules and guidelines for declaration of interests. DSHA(1) responded that the Administration would uphold that, under the proposed new classification system, all existing guidelines which applied to the public sector ASBs also applied to the district-based committees.

34. Referring to the Secretary for Home Affairs' reply to her question raised on the various district-based advisory committees at the Council Meeting on 11 May 2005, Ms Emily LAU pointed out that a majority of existing members of such committees were members of the Democratic Alliance for the Betterment and Progress of Hong Kong. She queried whether the Administration's policy was still to ensure, as it had claimed, broad representation in existing ASBs. The Chairman suggested that, in order to address Ms LAU's concern, the Administration should provide a paper setting out the reasons for those members of district-based advisory committees having served in the same posts for over six years and why there were difficulties in removing them from the committees. DSHA(1) agreed to provide the information later.

35. Mr Albert CHAN pointed out that some members of ACs and DFCCs had already served in the same posts for 10 to 20 years and, as a result, this had blocked entry of new talents to participate in the work of the committees concerned. Mr CHAN suggested that for elected District Council (DC) members who were appointed to be members of an AC, they should be made the ex-officio members of the AC, and only the appointment of the ex-officio members of an AC could be exempted from compliance with the six-year rule. Mr CHAN said that however, the appointment of other members of an AC should all be subject to the six-year rule. Mr CHAN further said that if the chairman of an MAC had been appointed to serve on an AC for six years already, HAD should then appoint the deputy chairman of the same MAC so as to add new blood to the AC concerned.

36. Mr LEUNG Kwok-hung considered that it was already a consensus that the six-year and six-board rules should be strictly complied with and, in any case, they should not be allowed to be breached. Mr LEUNG said that it was unacceptable for a member of an ASB to be re-appointed, after he had served in the same post for six years, in the excuse that he was returned by election. Mr LEUNG further said that in some cases, the Administration had kept re-appointing the same persons to the district-based committees merely because these persons had good relationship with some Government officials. Mr LEUNG pointed out that if the Administration did not cease such practices, voices of the grass-roots sector would not be able to be reflected to the

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Administration through the district-based committees.

37. Mr Albert HO pointed out that if the Administration really intended to nurture more political talents as recently mentioned by the Chief Executive, the Administration should revamp ASBs in such a way that their members should not be all appointed by the Government. Mr HO suggested that at least a certain proportion of the membership of ASBs should be open to nominations made by professional bodies, stakeholders and political parties, in order to bring in talents of the relevant fields and nurture more political talents.

38. DSHA(1) responded that HAB had been using such an approach. He said that for example, the Human Rights Forum, the Ethnic Minorities Forum and the Sex Minorities Forum under HAB were all made up of members nominated by related non-governmental organisations and concern groups. He said that for some statutory bodies, it was already stipulated in the relevant ordinances that a certain number of their members had to be nominees from certain sectors or professional bodies. He added that however, this had also led to a problem that for some statutory bodies, it had always been the same person nominated by the relevant sectors/professional bodies.

39. Mr Albert HO suggested that the Administration should first sort out each existing ASB was under the purview of which LegCo Panel. Then the Administration should work out recommendations on how the existing method of appointment for each ASB should be changed so that it could best tap the talents in the relevant field. The Administration should then arrange for each Panel to discuss the recommendations for the ASBs under its purview. Mr HO requested the Administration to take this suggestion on board and report to this Panel on how it would take this matter forward about six months later.

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40. DSHA(1) responded that HAB would provide a paper on what initiatives were being introduced by the Bureau for the purpose of bringing in more talents from different backgrounds to the ASBs under the purview of HAB by October 2005.

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41. Mr WONG Yung-kan and the Chairman also considered that each policy bureau should review the criteria of appointment of members of the ASBs under its purview. They expressed concern that the membership of some ASBs, such as the Advisory Council on Food and Environmental Hygiene, had failed to include representatives from the relevant sectors, such as the catering industry and the agriculture and fisheries sector, to be its members. Mr WONG Yung-kan further said that the membership of the Advisory Council on the Environment seemed to be predominantly environmentalists. Mr WONG also pointed out that the Administration had kept appointing the same person to an AC because the person had been re-elected again and again to be the chairman of an owners' corporation (OC) of a building. Mr WONG suggested that in such a case, the Administration could consider appointing the OC chairman of another building within the area.

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42. In response, DSHA(1) said that HAB could identify two to three ASBs under the purview of each policy bureau and request the bureau concerned to explain the criteria of appointment of members of these ASBs. In this connection, DSHA(1) suggested that members could provide HAB with names of the ASBs in respect of which members would like bureaux concerned to explain about the criteria of appointment.

43. Ms Emily LAU said that the major problems with existing ASBs laid with the fundamental principles that the Administration had to observe in making appointments to ASBs and what initiatives should be introduced to enhance the transparency of the appointment mechanism. She considered that the Panel should further discuss the subject and work out principles which were fair and impartial, and that the Administration would have to observe such principles whenever it made appointments to ASBs. She added that reference could be made to overseas experience, such as UK where a committee responsible for monitoring the Government in making such appointments had been put in place.

44. DSHA(1) said that some fundamental principles, such as the six-year and six-board rules, gender balance in ASBs, diversity in appointments to ASBs, etc. had been discussed by the Panel previously. He also noted that the Panel had discussed the relevant UK mechanism before and the Administration had made clear during the discussion that it disagreed to introducing the UK mechanism in Hong Kong. Ms Emily LAU, however, considered that the Panel should further discuss the fundamental principles of appointments to ASBs, as this had been the major concern shared by many members. DSHA(1) said that based on the feedback from the policy bureaux, the Administration could provide a paper which would set out the criteria of appointment and the principles being used by bureaux in making appointments to ASBs for consideration by the Panel. The Chairman said that the Panel would further consider this issue after receipt of the supplementary information that the Administration undertook to provide at this meeting.

45. The meeting ended at 12:50 pm.

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Council Business Division 2
Legislative Council Secretariat
23 November 2005