

立法會
Legislative Council

LC Paper No. CB(2)1452/07-08
(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, 21 January 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 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 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
Hon Mrs Anson CHAN, GBM, JP
- Members absent** : Dr Hon LUI Ming-wah, SBS, JP
Hon James TO Kun-sun
Hon Albert CHAN Wai-yip
Hon Daniel LAM Wai-keung, SBS, JP

Action

- 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
- 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

Action

I. Confirmation of minutes

[LC Paper No. CB(2)875/07-08]

The minutes of the meeting on 7 December 2007 were confirmed.

II. Way forward

LC Paper No. -- Letter dated 15 January 2008 from
CB(2)862/07-08(01) the Administration entitled
"Enquiry on the Race

Action

Discrimination Bill"

LC CB(2)862/07-08(02)	Paper	No. --	Letter dated 24 August 2007 from the United Nations (UN) Committee on the Elimination of Racial Discrimination to the Permanent Representative of the Permanent Mission of China to the United Nations at Geneva
LC CB(2)895/07-08(01) and (02)	Paper	Nos.	Letter dated 11 January 2008 from the Chairman to the Secretary for Constitutional and Mainland Affairs (SCMA) and SCMA's reply letter dated 18 January 2008

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

3. Members noted that, at members' request at the last meeting, the Administration had provided in its letter dated 15 January 2008 some information on the Central People's Government's response to the enquiry from the UN Committee on the Elimination of Racial Discrimination about the Bill [LC Paper No. CB(2)862/07-08(01)].

4. Members also noted the letter dated 11 January 2008 from the Chairman to SCMA [LC Paper No. CB(2)895/07-08(02)] and SCMA's reply letter dated 18 January 2008 [LC Paper No. CB(2)895/07-08(01)]. Members agreed to accept SCMA's invitation to attend an informal meeting with him for exchange of views on the Bill.

(Post-meeting note: with the concurrence of the Chairman, an informal meeting with SCMA was scheduled for Monday, on 28 January 2008, at 2:30 pm at the office of the Constitutional and Mainland Affairs Bureau.)

5. The Chairman and Ms Emily LAU considered that it was unacceptable for the Administration to propose relevant Committee Stage amendments (CSAs) referred to in the SCMA's letter after completion of the clause-by-clause examination of the Bill and the Administration should provide the Bills Committee with the wording of the amendments under consideration as soon as possible.

6. Regarding the various CSAs in respect of the four fundamental issues as prepared by the legal adviser to the Bills Committee in his paper [LC Paper No. LS14/07-08], Mr Jasper TSANG briefed the Bills Committee on the views of

Admin

Action

the Democratic Alliance for the Progress and Betterment of Hong Kong (DAB) as follows -

- (a) DAB wished to see the Administration's proposed amendments to Clause 3 to make it clear that the Bill, when enacted, would apply to the Government and to compare them with the draft amendments prepared by the legal adviser to the Bills Committee to assess whether they could also achieve the intended effect;
- (b) DAB wished to further discuss Clause 4 with the Administration because while DAB agreed that there was room for improvements to the definition of indirect discrimination, it was difficult to choose between the two options prepared by the legal adviser;
- (c) while DAB had all along held the view that new arrivals from the Mainland should not constitute a separate racial group under the definition of "race" in the Bill, it considered that Clauses 8(3)(b)(i) and 8(3)(c) should be deleted and the Administration should give an undertaking during the resumption of the Second Reading debate on the Bill to implement measures to protect these new arrivals from discrimination; and
- (d) issues relating to use of language and education for ethnic minorities were worthy of further studies. DAB would consider any proposed amendments to Clause 58, provided that the amendments sought to only narrow the scope of exemption and would not give rise to unnecessary potential litigations.

7. Dr YEUNG Sum said that the Democratic Party (DP) had the following views -

- (a) Clause 3 should be amended to the effect that the Bill would bind the Government;
- (b) new arrivals from the Mainland should be included within the scope of the Bill in order to address the prevalent problem of discrimination encountered by them, and the definition of "race" should be revised for the purpose;
- (c) the scope of application of the exception under Clause 58 should be narrowed to facilitate access of the ethnic minorities to public services; and
- (d) the Administration should resolve the problem of lack of avenue provided to non-Chinese speaking (NCS) students to attain qualifications in Chinese for admission to universities.

Action

8. Mr Jeffrey LAM said that the Liberal Party (LP) had the following views -

- (a) the Administration's preparedness to consider amending Clause 3 to the effect that the Bill would apply to the Government was welcome;
- (b) the Administration should consider whether there was scope for Clause 4 to be refined to address concerns about the definition of indirect discrimination;
- (c) LP did not support that new arrivals from the Mainland should be included within the scope of the Bill; and
- (d) instead of moving amendments to Clause 58, the Administration should provide additional support measures to address the specific language needs of ethnic minorities to facilitate their access to public services.

9. The Chairman said that the Civic Party maintained its views that the relevant clauses relating to the four specific fundamental issues should be substantially amended in order to afford better protection to parties concerned.

10. The Deputy Chairman said that the Alliance agreed with the DAB's views on the four fundamental issues, and it also supported the DP's view that the Administration should strengthen measures to address the problem of lack of avenue provided to NCS students to attain qualifications in Chinese for admission to universities.

11. Ms Emily LAU said that she agreed to the views of DP and the Civic Party that Clause 58 should be amended to address the specific language needs of the ethnic minorities especially in the areas of education and medical services.

12. Ms LI Fung-ying expressed the following views -

- (a) Clause 3 should be amended to the effect that the Bill would apply to the Government;
- (b) the definition of indirect discrimination under Clause 4 should be amended and reference should be made to relevant provisions of the three anti-discrimination ordinances which provided a clearer definition of indirect discrimination;
- (c) consideration should be given to deleting Clauses 8(3)(b)(i) and 8(3)(c); and

Action

- (d) if the Administration would not amend Clause 58, it should give an undertaking that sufficient additional resources would be provided to strengthen interpretation services for ethnic minority trainees/users in the areas of vocational training/medical services.

13. Mrs Anson CHAN said that she would like to see the Administration's proposed amendments to Clauses 3 and 4, and she supported that Clause 58 should be suitably amended to address concerns about the exemption provided under the provision.

14. After discussion, members agreed to continue with the clause-by-clause examination of the Bill.

III. Clause-by-clause examination of the Bill

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

LC Paper No. CB(2)160/07-08(01) -- Views received from deputations/individuals on specific clauses of the Bill prepared by the Legislative Council Secretariat

LC Paper No. CB(2)1249/06-07(01) -- List of questions raised by Hon CHOY So-yuk

15. The Bills Committee continued with its discussion of Clause 14 and Schedule 2 and also considered Clauses 13 and 16 (index of proceedings attached at **Annex**).

Admin

16. The Administration was requested to provide a paper on -

- (a) the various situations of employment offered on local and overseas terms, particularly in respect of transnational companies in Hong Kong, and the impact of the relevant provisions of the Bill on employment matters in order to facilitate the examination of Schedule 2 and the operation among Clauses 13, 14 and 16; and
- (b) its response to address the concern raised by Mr Ronny TONG that an employer might be able to circumvent relevant provisions of the Bill by setting up different companies to employ employees of different races respectively to perform similar type

Action

of work, but differential employment terms were applied to those employees on the ground of race.

IV. Any other business

Date of next meeting

17. Members noted that the next meeting would be held on Wednesday, 13 February 2008, at 8:30 am to continue with clause-by-clause examination of the Bill.

18. There being no other business, the meeting ended at 10:33 am.

Council Business Division 2
Legislative Council Secretariat
27 March 2008

**Proceedings of the meeting of Bills Committee on
Race Discrimination Bill
on Monday, 21 January 2008, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000057	Chairman	Confirmation of minutes of meeting	
000058 - 001815	Chairman Admin Ms Emily LAU Dr YEUNG Sum Ms Audrey EU Mrs Anson CHAN	Way forward [LC Paper Nos. CB(2)862/07-08(01) and (02), CB(2) 895/07-08(01) and (02)] - discussion on the Administration's letter dated 15 January 2008 entitled "Enquiry on the Race Discrimination Bill" - discussion on letter dated 18 January 2008 from Secretary for Constitutional and Mainland Affairs	
001816 - 002120	Mr Jasper TSANG	Views of the Democratic Alliance for the Progress and Betterment of Hong Kong on the four fundamental issues identified by the Bills Committee	
002121 - 002321	Dr YEUNG Sum	Views of the Democratic Party	
002322 - 002512	Mr Jeffrey LAM	Views of the Liberal Party	
002513 - 002539	Chairman	Views of the Civic Party	
002540 - 002601	Mr Abraham SHEK	Views of the Alliance	
002602 - 002804	Ms LI Fung-ying Chairman	Ms LI's views	
002805 - 003217	Mrs Anson CHAN Chairman	Mrs CHAN's views	
003218 - 003515	Ms Emily LAU Chairman Admin	Ms LAU's views	
003516 - 004101	Chairman ALA6	Clause-by-clause examination of the Bill <u>Clause 14 and Schedule 2 to the Bill</u>	

Time marker	Speaker	Subject	Action required
		<p>ALA6's advice that an employee in an existing employment on overseas terms could remain on those terms after enactment of the Bill and such arrangements for the employee would not be affected by extension, renewal or re-engagement after termination, etc. A consequence would be that a position occupied by an existing employee on overseas terms could be replaced by another existing employee on overseas terms within the employer's group of companies.</p>	
004102 - 010022	Mr CHEUNG Man-kwong ALA6 Admin Chairman	<p>Mr CHEUNG's question of whether the Bill would permit employers in Hong Kong (e.g. transnational corporations) to continue to offer different terms to employees recruited from overseas.</p> <p>The Administration's reply in the affirmative and its explanation of the legal effect of Clauses 14(1)(a) and (b) which would apply to an employee in existing employment. The Administration's further explanation of the legal effect of the exception under Clause 13 which applied whether an employee was recruited before, or after, the Bill was passed into law. Under Clause 13, employers with attracting talents with special skills, knowledge or experience not readily available in Hong Kong as justifications could continue to offer different terms to employees recruited from overseas after the Bill was passed into law.</p> <p>Mr CHEUNG's concern about whether the Bill would affect normal staff transfer from overseas offices by transnational corporations to work in their Hong Kong branch offices to meet operational needs.</p> <p>The Administration's explanation on the exception provided for existing employment on local and overseas terms of employment under Clause 14.</p> <p>ALA6's advice that the Bill (in particular, Clause 4(1)(b)(ii)) did not restrict the offer of more favourable overseas terms of employment as long as the offer was justified by reasons not related to race.</p>	

Time marker	Speaker	Subject	Action required
010023 - 011400	Dr Fernando CHEUNG Chairman Admin ALA6	<p>Dr CHEUNG's concern about whether Clauses 13 and 14 would permit an employer to treat an oversea employee more favourably than a local one even though they worked in the same position and both met the work requirements equally.</p> <p>The Administration's response that an employer who offered differential treatment had to meet specified conditions before he could invoke the exception under Clause 13(1)(a), (b) and (c), which provided an exception to cover the case of offering overseas terms to a person with special skills, knowledge or experience not readily available who was recruited or transferred from a place outside Hong Kong, and the exception was limited to differential treatment that was reasonable having regard to prevailing market conditions and any other relevant factors (other than race).</p>	
011401 - 011502	Dr Fernando CHEUNG Chairman Admin ALA6	<p>Dr CHEUNG's further enquiry about the application of Clause 16 and how the Bill would apply to employment by airlines or shipping companies.</p> <p>The Administration's response that the matter concerned the geographical limitation under Clause 16 on the application of Clause 10. The Administration's confirmation that Clause 16 was consistent with relevant provisions under the existing anti-discrimination ordinances.</p> <p>The Administration was requested to provide a paper setting out the various situations of existing employment offered on local and overseas terms, particularly in respect of transnational companies in Hong Kong, and the impact of the relevant provisions of the Bill on employment matters.</p>	<p>Admin to provide a paper on clauses of the Bill relating to employment (para. 16 of minutes)</p>
011503 - 012109	Mr Howard YOUNG Admin Chairman	<p>Mr YOUNG's concern that staff transfer made merely for the purpose of enrichment of work experience for staff training could not be covered under the exceptions provided for in Clause 13.</p> <p>The Administration's response that the situation could be covered by Clause 12.</p>	

Time marker	Speaker	Subject	Action required
		<p>Mr YOUNG's further question of whether the staff concerned could remain on overseas terms if he, after receiving training in Hong Kong, was requested to work in Hong Kong office.</p> <p>The Administration's response that the situation could be covered under Clause 13 if the conditions specified there were met or if the arrangements were shown to be justifiable under Clause 4.</p>	
012110 - 014107	<p>Mr Ronny TONG Admin Chairman ALA6 Mr Howard YOUNG</p>	<p>Mr TONG's view that his interpretation of Clause 16 was that, in the situation that an employee who was recruited by a company registered outside Hong Kong to work in Hong Kong on employment terms which were discriminatory against the employee on racial grounds, the Administration could take action under the proposed legislation, if enacted, against the company.</p> <p>His enquiry of whether this was the policy intent, given that Clause 16 did not provide that the provision applied on the condition that the employer concerned had to be a company registered in Hong Kong.</p> <p>The Administration's reference to Clause 8(5) and its explanation that racial discrimination occurred in the hypothetical case only if the treatment of the employee concerned was considered less favourable when compared with his counterpart of a different race employed by the same employer to do similar work in Hong Kong, and a comparison had to be made between two cases where the circumstances were the same or not materially different.</p> <p>ALA6's advice that Clause 4 required evidence for a comparator.</p>	
014108 - 014455	<p>Miss CHAN Yuen-han Admin Chairman</p>	<p>Miss CHAN's question that, in the situation that an employee was offered less favourable employment terms compared with his predecessor of a different race, whether the employee would have a claim under the Bill.</p> <p>The Administration's response that</p>	

Time marker	Speaker	Subject	Action required
		<p>Clause 8(5) provided that a comparison made under Clause 4(1)(a) or (b) of the case had to be such that the relevant circumstances in the one case were the same, or not materially different, in the other. Thus, if the employee concerned made a claim under the proposed legislation, the Court would consider whether the circumstances pertinent to the offer made to the predecessor were the same, or materially different, from the circumstances pertinent to the offer made to the claimant.</p>	
014456 - 015335	<p>Mr Ronny TONG Admin Chairman Dr YEUNG Sum ALA6</p>	<p>Mr TONG's expression of concern as to whether there might be a loophole in the relevant provisions given that an employer could set up different companies to employ employees of different races to do similar type of work but on different employment terms.</p> <p>The Administration was requested to give a response to address the concern.</p>	<p>Admin to give response to address the concern raised by Mr Ronny TONG (para. 16 of minutes)</p>
015336 - 015924	<p>Miss CHAN Yuen-han Chairman Mr Ronny TONG ALA6 Mr Howard YOUNG</p>	<p>Miss CHAN's concern about the length of the grace period provided under Clause 10(8) and her view that the Administration should amend it.</p> <p>The Chairman's view that the Bills Committee might revisit the issue when the Administration's relevant response was available.</p>	
015925 - 020245	<p>Chairman Miss CHAN Yuen-han Ms Emily LAU</p>	<p>Date of next meeting</p>	