

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1139/06-07

(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, 29 January 2007, at 4:30 pm  
in Chamber of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)  
Hon Abraham SHEK Lai-him, JP (Deputy Chairman)  
Hon LEE Cheuk-yan  
Hon Martin LEE Chu-ming, SC, JP  
Hon CHEUNG Man-kwong  
Hon CHAN Yuen-han, JP  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Howard YOUNG, SBS, JP  
Dr Hon YEUNG Sum  
Hon Emily LAU Wai-hing, JP  
Hon CHOY So-yuk, JP  
Hon LI Fung-ying, BBS, JP  
Hon Albert CHAN Wai-yip  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Jeffrey LAM Kin-fung, SBS, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon WONG Ting-kwong, BBS  
Hon Ronny TONG Ka-wah, SC  
Hon TAM Heung-man
- Members absent** : Dr Hon LUI Ming-wah, SBS, JP  
Hon James TO Kun-sun  
Hon Bernard CHAN, GBS, JP  
Hon Daniel LAM Wai-keung, SBS, JP  
Hon Alan LEONG Kah-kit, SC

- Public Officers attending** : Mr Donald TONG  
Deputy Secretary for Home Affairs(1)
- Mr Victor NG  
Principal Assistant Secretary for Home Affairs(4)
- Ms Roxana CHENG  
Senior Assistant Solicitor General
- Ms 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

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**I. Meeting with the Administration**

(LC Paper No. CB(2)963/06-07(01) - List of issues raised by members at the meeting on 16 January 2007

LC Paper No. CB(2)963/06-07(02) - Administration's paper entitled "Definition of 'race' "

LC Paper No. CB(2)963/06-07(03) - Administration's paper entitled "Compatibility of the Race Discrimination Bill with the Basic Law and international human rights treaties"

LC Paper No. LS32/06-07(revised) - Paper entitled "The meaning of 'race' in race discrimination legislation of certain relevant overseas jurisdictions" prepared by Legal Service Division of the Legislative Council Secretariat

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

Ref : HAB/CR/1/19/102 - Legislative Council Brief)

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

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2. The Administration was requested to provide the following responses and information –

- (a) how the eligibility of new immigrants for receiving social services/welfare was regulated in overseas countries, e.g. by imposition of residency requirement, and the Administration's justification for imposing the same or similar requirements on the new arrivals from the Mainland;
- (b) explanation on the areas of activity in which the Administration anticipated that numerous litigations would arise if new arrivals from the Mainland were included within the scope of the Bill;
- (c) information on the ethnic groups in the People's Republic of China and clarification on whether people belonging to these ethnic groups would be protected from discrimination on the ground of national origin under the Bill;
- (d) whether the Secretary for Home Affairs would withdraw the Bill, if clause 8(3)(c) was deleted from the Bill during the Committee Stage of the whole Council; and
- (e) the legal advice of the Department of Justice that the Bill was in conformity with the Basic Law (BL) and explanation on why clauses 8(2) and 8(3)(b), the combined effect of which was to exclude new arrivals from the Mainland from the protection afforded by the Bill, would not contravene BL 24 and 25.

Admin

3. At the Chairman's suggestion, the Bills Committee agreed to discuss issues relating to education at its next meeting. The Administration undertook to provide the relevant discussion papers for the next meeting by 1 February 2007.

## **II. Any other business**

### Proposed meeting schedule

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4. The Bills Committee agreed on a meeting schedule for the current session from February to July 2007.

*(Post-meeting note : the meeting schedule was issued vide LC Paper No. CB(2)977/06-07 on 30 January 2007.)*

Date of next meeting

5. Members noted that the next meeting would be held on Monday, 5 February 2007 at 8:30 am.
6. There being no other business, the meeting ended at 6:40 pm.

Council Business Division 2  
Legislative Council Secretariat  
23 February 2007

**Proceedings of the meeting of Bills Committee on  
Race Discrimination Bill  
on Monday, 29 January 2007, at 4:30 pm  
in Chamber of the Legislative Council Building**

Time marker	Speaker	<u>Subject</u>	Action required
000000 - 000549	Chairman Dr YEUNG Sum Mr Howard YOUNG	<u>Meeting schedule of the Bills Committee</u>	Clerk to issue meeting schedule
000550 - 001845	Chairman Admin ALA6	<p>Introduction of the Administration's papers by Deputy Secretary for Home Affairs (1) [LC Paper Nos. CB(2)963/06-07(02)&amp;(03)]</p> <p>Introduction of the paper on "The meaning of 'race' in race discrimination legislation of certain relevant overseas jurisdictions" by the legal adviser to the Bills Committee [LC Paper No. LS32/06-07]</p> <p>Chinese translation of the terms "national origin" and "ethnic origin" in the Bill</p> <p>The Chairman's enquiry about the basis of translating "national origin" to be "民族" in the Bill.</p> <p>The Administration's reply that it was based on the same term used in the definition of "racial discrimination" in the Chinese text of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).</p> <p>The Chairman's enquiry about the basis of translating "ethnic origin" to be "族群本源" in the paper prepared by the legal adviser to the Bills Committee.</p> <p>The legal adviser's view that "人種" used in the Bill as the translation of "ethnic origin" was too narrow in meaning whereas "族群本源" was a better translation having regard to Lord Fraser's criteria expressed in the case of <i>Mandla</i>.</p>	

Time marker	Speaker	Subject	Action required
001846 - 002515	Chairman Mr Ronny TONG Admin	<p>Mr Ronny TONG's view that, as "descent" within the definition of race in the Bill already covered non-local populace "非本地人士", new arrivals from the Mainland could be covered by the Bill if there were no clause 8.</p> <p>The Administration's response that the Bill applied to all Hong Kong residents, including new arrivals, in the activities within the defined scope of the Bill. The Bill only did not cover discrimination against a person on the ground of his length of residence in Hong Kong.</p>	
002516 - 003145	Chairman Dr YEUNG Sum Admin	<p>Dr YEUNG Sum's expression of concurrence with the view of the legal adviser that the meaning of "ethnic origin" should be construed in a wider sense.</p> <p>The Administration's reiteration of its view that the definition of "race" in the Bill, which was identical to the definition adopted in ICERD, could <i>not</i> be interpreted in such a way that new arrivals from the Mainland would be covered.</p> <p>The Administration's advice that it had already taken into account Lord Fraser's criteria in considering that these new arrivals did not constitute a separate racial group.</p>	
003146 - 004237	Chairman Miss TAM Heung-man Admin ALA6	<p>Miss TAM Heung-man's request for clarification of the scope of coverage of the definition of "race" in the Bill, i.e. whether new arrivals from the Mainland were covered by the definition.</p> <p>The Administration's view that new arrivals from the Mainland did not constitute a "distinct community" based on Lord Fraser's criteria.</p>	
004238 - 004829	Chairman Mr Martin LEE Admin	<p>Mr Martin LEE's concern about the serious problem of discrimination encountered by new arrivals from the Mainland and the exclusion of these arrivals from the protection of the Bill.</p> <p>The Administration's advice that ICERD had already specified that "The Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens."</p>	

Time marker	Speaker	Subject	Action required
004830 - 005353	Chairman Dr Fernando CHEUNG Admin	<p>The Administration's confirmation that there was no legal problem if the Administration adopted a definition of racial discrimination which covered a wider scope.</p> <p>The Administration's explanation that each State Party was allowed to take into consideration its actual economic and social circumstances in deciding on the coverage of its racial discrimination legislation, e.g. UK did not include "descent" as a ground of race in their racial discrimination legislation.</p>	
005354 - 010232	Chairman Mr LEE Cheuk-yan Admin ALA6	<p>Mr LEE Cheuk-yan's query of the Administration's decision to tackle the problem of discrimination encountered by new arrivals from the Mainland only by public education and non-legislative measures, but to protect ethnic minorities from racial discrimination by legislation.</p> <p>Mr LEE's concern that the Bill, after enactment, would be subject to legal challenge as it was arguable that the new arrivals from the Mainland could constitute a separate ethnic group on the basis of Lord Fraser's criteria.</p>	
010233 - 010910	Chairman Ms Emily LAU Admin	<p>Ms Emily LAU's view that the legal interpretation of the definition of race in the Bill and Lord Fraser's criteria both pointed to the fact that the new arrivals from the Mainland could be covered within the scope of the Bill.</p> <p>The Administration's response that, according to its understanding, the status of new arrivals from the Mainland did not come within the definition of "race" under ICERD. Inclusion of new arrivals in the scope of the definition would have adverse implications on established policies and practices which were based on the seven-year residency requirement and could, in consequence, give rise to significant resource implications.</p>	

Time marker	Speaker	Subject	Action required
		<p>Ms LAU's request for information on eligibility requirements (e.g. residency requirement) imposed on new immigrants for receiving social /welfare services in overseas countries, and the Administration's justification for imposing the same or similar requirements on the new arrivals from the Mainland.</p>	<p><b>Admin to provide information</b> (para. 2(a) of minutes)</p>
010911 - 011606	<p>Chairman Miss CHOY So-yuk Admin</p>	<p>Miss CHOY So-yuk's enquiry about whether the protection provisions of the Bill applied to, e.g. discrimination by local Chinese against a Fukinese on the ground of the latter's accent.</p> <p>The Administration's reply in the negative and explanation that a person's accent could be changed in time.</p>	
011607 - 012229	<p>Chairman Mr Jasper TSANG Admin</p>	<p>Mr Jasper TSANG's query whether it was merely based on policy considerations to exclude new arrivals from the Mainland from the scope of the Bill and whether it was true that inclusion or exclusion of new arrivals outside or within the scope of the Bill would not constitute a breach of law.</p> <p>The Administration's confirmation that the decision was mainly based on the policy consideration to follow the ICERD definition of "race". Inclusion of new arrivals would also have adverse implications on established government policies which were based on the seven-year residency requirement and could give rise to significant resource implications. It might also lead to large number of litigation cases.</p>	
012230 - 012442	<p>Chairman Mr WONG Ting-kwong Admin</p>	<p>Mr WONG Ting-kwong's view that discrimination experienced by some new arrivals from the Mainland was not a form of racial discrimination but was, rather, linked to their social class.</p> <p>The Administration's expression of agreement with Mr WONG and considered that such discrimination should better be tackled by public education and publicity.</p>	



Time marker	Speaker	Subject	Action required
012443 - 013109	Chairman Miss CHAN Yuen-han Admin	Miss CHAN Yuen-han's concern that exclusion of new arrivals from the Mainland from the scope of the Bill might give rise to judicial review.  The Administration's response that the decision was mainly based on policy considerations.	
013110 - 013420	Chairman Ms LI Fung-ying Admin	Ms LI Fung-ying's request for the Administration's explanation as to why numerous litigations would be expected and significant resources would be incurred if new arrivals from the Mainland were covered within the scope of the Bill.	<b>Admin to provide information</b> (para. 2(b) of minutes)
013421 - 014138	Chairman Mr Ronny TONG Admin	Mr Ronny TONG's view that, by applying Lord Fraser's criteria to examine local Chinese and new arrivals from the Mainland, it was obvious that these new arrivals were covered by the definition of "race" in the Bill, and his suggestion of deleting clause 8(3).  The Administration's reiteration of its considerations as to why it would be inappropriate to address discrimination against new arrivals from the Mainland through legislation on racial discrimination.  The Administration's confirmation that the combined legal effect of clauses 8(2) and 8(3)(b)(i) was that the Bill did not make it unlawful to treat a new arrival from the Mainland differently solely on the ground of the latter not being a Hong Kong permanent resident.	
014139 - 014736	Chairman Mr LEE Cheuk-yan Admin	Mr LEE Cheuk-yan's concern about the unclear scope of coverage of the Bill and request for information on which ethnic groups of the People's Republic China would be covered by the protection provisions of the Bill.	<b>Admin to provide information</b> (para. 2(c) of minutes)

<b>Time marker</b>	<b>Speaker</b>	<b>Subject</b>	<b>Action required</b>
014737 - 015054	Chairman Mr Jeffrey LAM Admin	Mr Jeffrey LAM's view that the business sector hoped that the scope of coverage of the Bill should be made very clear to facilitate compliance with the relevant provisions in the future.	
015055 - 015625	Chairman Dr YEUNG Sum Admin	Dr YEUNG Sum's view that it was unreasonable to exclude those new arrivals from the Mainland who had settled in Hong Kong for fewer than seven years from the protection of the Bill.  The Administration's undertaking to provide a written reply to Dr YEUNG's question as to whether the Secretary for Home Affairs would withdraw the Bill, if clause 8(3)(c) was deleted from the Bill during the Committee Stage of the whole Council.	<b>Admin to provide written reply</b> (para. 2(d) of minutes)
015626 - 020046	Chairman Mr Martin LEE Admin	Mr Martin LEE's request for details of the legal advice that the Bill was in conformity with the Basic Law (BL) and explanation on why clauses 8(2) and 8(3)(b), the combined effect of which was to exclude new arrivals from the Mainland from the protection afforded by the Bill, would not contravene BL 24 and 25.	<b>Admin to provide information</b> (para. 2(e) of minutes)
020047 - 020948	Chairman Admin Ms Emily LAU Clerk Dr YEUNG Sum Miss CHAN Yuen-han Mr Howard YOUNG	Date of next meeting	