

立法會
Legislative Council

LC Paper No. CB(2)1033/00-01
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by the Administration)

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**Legislative Council
Panel on Constitutional Affairs**

**Minutes of meeting
held on Monday, 15 January 2001 at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon James TIEN Pei-chun, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung
Hon SZETO Wah
Hon Audrey EU Yuet-mee, SC, JP

Members Attending : Hon Cyd HO Sau-lan
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing
Hon IP Kwok-him, JP

Public Officers Attending : Item IV

Mr Andrew WONG, JP
Director of Administration

Mrs Lilian WONG
Director of Protocol

Item V

Mr Clement MAK
Acting Secretary for Constitutional Affairs

Mr Robin IP
Deputy Secretary for Constitutional Affairs (2)

Mrs Betty FUNG
Deputy Secretary for Home Affairs (2)

Mr LEE Kam-chung
Assistant Director for Home Affairs (3)

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr Jimmy MA
Legal Adviser

Mrs Eleanor CHOW
Senior Assistant Secretary (2)7

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2) 538/00-01)

The minutes of the meeting on 20 November 2000 were confirmed.

II. Items for discussion at the next meeting on 19 February 2001
(LC Paper Nos. CB(2) 651/00-01(01) and (02))

2. Members agreed that the item on "Review on electoral system for LegCo election" should be discussed at the next meeting.

3. On the question of "important bill" under BL 50, the Chairman said that the issue was complex and there was no compatible system in other countries from which LegCo could draw reference. Members agreed that given that the issue was not urgent, the Panel should discuss the matter when the Research and Library Services Division had completed its research study.

4. Members agreed that the Administration should be asked to report progress on the draft guidelines on the adjustment of salaries/benefits of employees taking up public offices.

5. On Dr YEUNG Sum's question on rural elections, the Chairman advised that the Panel on Home Affairs would discuss the issue at its special meeting on 26 February 2001. The Panel on Home Affairs would be requested to invite members of this Panel to attend the meeting.

III. System of accountability for principal officials

(LC Paper Nos. CB(2) 498/00-01(04), 651/00-01(03) and (04))

Public consultation

6. Members endorsed the revised list of issues for public consultation which had incorporated the suggestions made by Ms Emily LAU and Dr YEUNG Sum. Noting that special meetings of the Finance Committee and the National Committee of the Chinese People's Political Consultative Conference would be held in March 2001, members agreed to schedule three meetings on Saturdays, 17 February 2001, 24 February 2001 and 3 March 2001 at 9:00 am to receive views from the public on the system of accountability for principal officials.

Proposed overseas duty visit

7. Members noted that the estimated budget of the visit was \$321,000 and that in line with the decision of The Legislative Council Commission, four Members would be fully sponsored for the visit. Members agreed that the Chairman, Mr HUI Cheung-ching, Dr YEUNG Sum and Mr YEUNG Yiu-chung, the Members who had indicated interest to join the visit, should form the delegation. As regards the request of Mr FUNG-kin-kee, a non-Panel member, to join the visit, members agreed that priority should be given to Panel members. Members also agreed that the delegation should visit London, Edinburgh, Paris and Berlin.

8. Having regard to Ms Emily LAU's advice that it was likely that the UK would hold a general election in May 2001, members agreed that the 10-day visit to Europe should commence on 6 June 2001 or 8 June 2001. Members agreed that the permission of the House Committee should be sought for the Panel to conduct the overseas duty visit. A paper would be presented to the House Committee on 19 January 2001.

IV. HKSAR Precedence Table

(LC Paper No. CB(2) 651/00-01(05))

9. Director of Administration (D of Adm) said that in response to the request of members, the Administration had prepared a paper providing

information on the order of precedence in the US, British and French systems. Members noted that the HKSAR Precedence Table and the Pre-1997 HK Precedence Table up to the category of LegCo Members were at Annex I. Extracts of the Precedence Tables of the three overseas countries were at Annexes 2 - 4.

10. D of Adm said that in preparing the HKSAR Precedence Table, the Administration had not made reference to overseas countries. The HKSAR Precedence Table was drawn up with reference to the constitutional framework and practical situation in Hong Kong. He stressed that the HKSAR Precedence Table was mainly used as a reference for official functions to facilitate arrangement for seating and receiving guests. The order of precedence was subject to changes depending on the nature of the event, the party hosting the event and the guests attending the event.

11. Mr Howard YOUNG questioned why non-permanent judges of the Court of Final Appeal (CFA) were also included in the HKSAR Precedence Table, as there were no similar arrangements in the US or France. Noting that the Chief Justice of the CFA ranked ahead of the President of LegCo in the HKSAR Precedence Table, he pointed out that in the US, the Speaker of the Representatives ranked before the Chief Justice of the Supreme Court.

12. D of Adm explained that it would not serve any meaningful purpose to make a direct comparison on the order of precedence between the HKSAR and other countries, given that the political structure and historical development of each place were different. He pointed out that in the US, Associate Justices of the Supreme Court, retired Chief Justices and retired Associate Justices (ranked 8th in Annex 2) were also on the precedence list. Similarly in France, the judicial authority represented by the first President of the Final Court of Appeal and the public prosecutor of that court (ranked 13th in Annex 4) were also included in the precedence list.

13. Referring to paragraph 2 of the paper, Miss Margaret NG said that she was not convinced that principal officials and Directors of Bureaux should be accorded higher precedence than LegCo Members in the HKSAR Precedence Table on the ground that their status was recognized by the Basic Law. She queried why references to principal officials in the Basic Law should have a bearing on the order of precedence. She pointed out that the Basic Law also recognized the status of LegCo.

14. The Chairman pointed out that prior to 1997, all judges except the Chief Justice, and Government officials except the Chief Secretary, the Financial Secretary, the Attorney General ranked lower than LegCo Members on the precedence list. It was obvious that the Administration had introduced a fundamental change to the order of precedence after 1997.

15. D of Adm emphasized that the order of precedence was not used to determine the status of a person. The HKSAR Precedence Table was basically used as a guideline in organizing government and official functions. He explained that in drawing up the order of precedence, one of the factors taken into consideration was the changes in constitutional structure. Despite the fact that there had been changes in the political structure of Hong Kong in the years leading to July 1997, corresponding changes had not been made to the Pre-1997 HK Precedence Table. For instance, the Chief Secretary, the Financial Secretary and the Attorney General were no longer ex-officio Members of LegCo since 1995-96, and the creation of a new category of judges following the establishment of CFA in 1997. The Administration took the opportunity to review and revise the order of precedence taking into account the latest political development.

16. Mr James TIEN said that based on the rationale given by the Administration, there should be no question of ExCo Members ranking ahead of LegCo Members, given that the Basic Law did not make reference to individual ExCo Members. He added that the fact that LegCo Members ranked after ExCo Members would not be conducive to improving the relationship between the two councils. To rank LegCo Members after principal officials would also give an impression to overseas countries that LegCo Members had a lower status and were less important in the political structure of Hong Kong.

17. D of Adm disagreed with the views of Mr TIEN. He said that the relationship of ExCo and LegCo could not be determined by the order of precedence, nor would overseas countries use the HKSAR Precedence Table to determine the status of the legislature. He reiterated that the HKSAR Precedence Table served only as a reference for official functions. He pointed out that the Basic Law mentioned about ExCo, although not individual ExCo Members.

18. Ms Emily LAU held the view that the Administration had deliberately downgraded the status of LegCo Members in the HKSAR Precedence Table. While she agreed that it served no meaningful purpose to compare the order of precedence of Hong Kong with that of overseas systems, she was of the view that a comparison could be made with the Pre-1997 HK Precedence Table. She pointed out that the President of LegCo used to rank ahead of ExCo Members who were followed immediately by LegCo Members on the Pre-1997 HK Precedence Table. However, in the HKSAR Precedence Table, the President of LegCo ranked immediately after the Convenor of ExCo, and there were several categories of persons including ExCo Members, principal officials and judges, etc. between the President of LegCo and LegCo Members. She opined that LegCo should be given a higher standing as its Members had the mandate of the people. The present arrangement merely reflected that the

executive authorities paid no respect to LegCo.

19. The Chairman said that members were not convinced that the change in the order of precedence was justified. He pointed out that there was no reason for the Convenor of ExCo, who had no substantive duties and functions, to be accorded higher precedence than the President of LegCo. He urged that the Chief Executive, who made the final decision on the HKSAR Precedence Table, should reconsider the matter.

20. Miss Margaret NG expressed concern about the existing power structure which gave the executive authorities a higher standing than the legislature and the judiciary, as reflected in the HKSAR Precedence Table. She said that if the Administration ignored the concern of members, it was not a matter of LegCo losing face, but a reflection of the improper handling on the part of the Administration. Dr YEUNG Sum reminded the Administration that the executive was accountable to the legislature. Under no circumstances should ExCo Members be accorded a higher precedence than LegCo Members. The Administration should reconsider the points raised by members seriously.

Adm 21. D of Adm said that he had already explained why the order of precedence had been revised. He noted that some members did not accept his explanations, and he had nothing further to add at this stage. In response to members' request, he undertook to convey members' views to the Chief Executive.

22. Mr HUI Cheung-ching asked whether the rank of the French ministers (ranked 6th in Annex 4) was equivalent to the policy secretaries of the HKSAR. D of Adm reiterated that the order of precedence in the HKSAR had not followed the practice of other countries. Ministers of France and the policy secretaries of Hong Kong were both responsible for making policies for their respective portfolios. They could be regarded as counterparts as far as their responsibilities were concerned.

V. **Enhancing the role and functions of the District Councils**

(LC Paper Nos. CB(2)207/00-01(04), 270/00-01(03), 535/00-01(03) and 651/00-01(06))

23. Acting Secretary for Constitutional Affairs (SCA(Ag)) said that during the resumption of the Second Reading debate on the Provision of Municipal Services (Reorganization) Bill, the Administration advised Members that after the new District Councils (DCs) had commenced operation, it would consider how to enhance the role of the DCs in district affairs and strengthen their functions. Since the establishment of the DCs on 1 January 2000, progressive steps had been taken by the Administration towards that direction. On 14 November 2000, the Home Affairs Bureau (HAB) briefed the Panel on

Home Affairs about the measures that had been taken to enhance the role and functions of the DCs and the support provided to DC members. A District Administration Seminar was organized on 18 November 2000 to solicit views of DC members on the operation of the DCs and areas for improvement. Members had also expressed views by way of a motion debate on "Increasing the support to DC members" held at the Council meeting on 22 November 2000.

24. Deputy Secretary for Home Affairs (DS/HA) supplemented that since the DCs had operated for more than a year, it was the right time to conduct a review. An inter-departmental working group, headed by the HAB and comprised representatives of the relevant bureaux and departments including the Constitutional Affairs Bureau, had been formed to review how to further enhance the role and functions of the DCs and strengthen the support for DC members. The Administration had previously provided a paper (LC Paper No. CB(2)207/00-01(04)) setting out the measures that had been taken so far. The Administration welcomed views from members of the Panel.

Revamp of the DC structure

25. Dr YEUNG Sum said that he had read from a news report that there were plans to re-delineate the boundaries of the 18 DCs into five or six DCs. He asked the Administration whether the review was working in that direction and if so, he suggested that the matter should be considered from a macroscopic and constitutional perspective. He opined that giving the DCs more powers and responsibilities would attract more people to participate in the work of the DCs.

26. Deputy Secretary for Constitutional Affairs (DS/CA) said that prior to the drafting of the District Councils Bill in 1999, the Administration had conducted public consultation in 1998 to gather views on, among others, the functions and structure of the municipal councils and the District Boards. The majority of the responses received was that the number and structure of the District Boards should be retained. Since the DCs had been in operation for just more than a year, it was considered inopportune to make any fundamental and major changes to the structure of the DCs at this stage. A more pragmatic approach was to review the role and functions of the DCs on the basis of the existing structure.

27. In response to the Chairman, DS/HA clarified that the delineation of the DC boundaries was outside the scope of the current review. So far, no DC had suggested that it would like to be amalgamated with another DC.

Motions passed by DCs

28. In the light of his experience as a DC member, Mr James TIEN said that the DCs passed a lot of motions. He asked about the procedure in handling motions passed by the DCs and the level of government officials responsible for following up the motions. He had the feeling that only officials at junior level would handle such motions. Mr TIEN also commented that although the DCs were consulted on proposals relating to district affairs beforehand, the views of DC members were often ignored and inadequately reflected in papers submitted to LegCo. The Chairman said that it would appear that while the Administration was prepared to listen to the views of DC members, no regard was paid to their views in formulation of policies.

29. Assistant Director for Home Affairs (AD/HA), who was a former District Officer of the Eastern District, advised members that after a motion was carried at a DC meeting, the DC secretariat would convey the motion to the relevant policy bureau or department in writing. Any reply received would be passed on to the DC. If members of the DC were dissatisfied with the reply, they could pursue the matter further with the Administration. As regards consultation with the DCs, AD/HA said that views of a DC on a particular issue would be reflected in the relevant paper submitted to the relevant committee/council.

30. As regards the level of officials responsible for handling motions passed by the DCs, AD/HA said that the referral of the DC secretariat would be addressed to the relevant policy secretary or head of department. While he did not have any information in hand as to the level of officials who would be handling DC motions in respective policy bureaux and departments, he pointed out that the reply given to the DC secretariat was signed on behalf of the relevant policy secretary/head of department. Mr TIEN asked whether the officer signing off the letter was the one responsible for handling the motion. AD/HA replied that this was not necessarily the case as the motion might have been dealt with or considered by other officers at more senior level.

31. DS/HA supplemented that the level of officials assigned to follow up on DC motions would depend on the nature of the motions and their implications. She said that she had recently handled a motion passed by the Eastern DC. The motion proposed that the DCs should be consulted on policies affecting the livelihood of the people such as increase in government fees and charges. Given the implications of the motion, she had personally taken up the matter with the Finance Bureau.

Scope of the review

32. Mr IP Kwok-him said that some DC members were not satisfied with

the advisory role of the DCs. They considered that some of the functions of the former municipal councils should be handed over to the DCs. They also wanted to have an enhanced role in district affairs management and policy formulation. Mr IP asked the Administration whether the review being conducted was working towards that direction.

33. DS/HA said that the review was meant to see how the role and functions of the DCs could be enhanced. In this regard, the Administration welcomed concrete suggestions from Members, the DCs and the public on what powers or functions should be devolved to the DCs. In response to Ms Emily LAU's question on timing, DS/HA said that the Administration had undertaken to complete the review within 2001.

34. Ms Emily LAU said that the morale of some DC members was low because they felt that their views were not respected by the Administration and they were not provided with adequate resources to discharge their duties. If the Administration was prepared to give substantive powers to the DCs, it should make clear its intention so that the public and DC members would be more ready to give concrete proposals in this respect for the consideration of the Administration.

35. Miss Margaret NG said that the Administration must have some preliminary views on how further powers could be devolved to the DCs when it proposed to abolish the municipal councils in 1998. Given that the DCs had already operated for a year and to facilitate discussion by all interested parties, the Administration should make known its preliminary views or proposals on the issue.

36. SCA(Ag) said that the Secretary for Constitutional Affairs (SCA) had made the following comments when speaking during the Third Reading of the Provision of Municipal Services (Reorganization) Bill -

"...During the Second Reading debate, some Members expressed support for the streamlining of the three-tier system of representative government into a two-tier structure. At the same time, they hope that the Government can strengthen the functions and representativeness of District Councils. After the commencement of the first term of District Councils of the Hong Kong Special Administrative Region next year, we will work in this direction to promote the development of district organizations, and consider ways to enhance the role of District Councils in district affairs and to strengthen their functions."

SCA(Ag) added that the Administration had now followed up the matter by conducting a comprehensive review of the functions of the DCs. He reiterated that the Administration was open-minded about the review. In

response to Ms Emily LAU, DS/CA reiterated that the review would be conducted on the basis that the existing structure of the DCs would remain unchanged.

37. DS/HA said that the Administration was working in partnership with the DCs on the review. The Administration would consider the views of the DCs and consult them on the proposals made before implementation. However, the Administration was not in a position to put forward any preliminary views on the issue at this stage. As the District Administration Seminar and the motion debate of the Council were only held in November 2000, the Administration would need some time to study the views expressed and to discuss the feasibility of certain proposals with the relevant departments before it could come up with any preliminary views.

38. The Chairman asked whether the proposal to give more decision-making powers to the DCs would be considered in the review.

39. DS/HA said that under section 61 of the District Councils Ordinance, the DCs were advisory bodies. One of the objectives of the review was to study how the functions of the DCs could be enhanced so that they could play a part in promoting culture, recreation and environmental affairs and in providing such services, which were areas of responsibility of the former municipal councils.

40. DS/CA supplemented that the DCs were advisory bodies by virtue of Article 97 of the Basic Law which stated that "District organizations which are not organs of political power may be established in the Hong Kong Special Administrative Region, to be consulted by the government of the Region on district administration and other affairs, or to be responsible for providing services in such fields as culture, recreation and environmental sanitation". Hence, the scope of the review should follow the principles laid down in Article 97.

41. Ms Emily LAU said that an advisory body did not have any substantive powers. In the circumstances, she could not see how the role and functions of the DCs could be enhanced after the review. Miss Margaret NG asked whether it was the intention of the Administration to review whether the "advisory" role and functions of the DCs could be enhanced.

42. Mr SZETO Wah pointed out that the term "district organizations" stipulated in Article 97 referred to both the municipal councils and DCs. Following the abolition of the two councils, their functions should be transferred to the remaining district organizations, the DCs. He held the view that failure to do so would contravene Article 97.

43. Mr CHEUNG Man-kwong held the view that given that district organizations were empowered under Article 97 to provide services in such fields as culture, recreation and environmental sanitation, they should also have the powers to decide on the policies and budget, etc for providing such services.

44. Dr YEUNG Sum said that the DCs should be given decision-making powers on local and district affairs. He was dissatisfied that the Administration was equivocal about the issue.

45. Miss Cyd HO recalled that at a meeting of the Panel on Home Affairs, members had raised the question of whether the role of DCs could go beyond the scope of an advisory body. Mr LAM Woon-kwong, the Secretary for Home Affairs had said that all issues could be discussed in the review, including any amendments to the Districts Council Ordinance. It would appear that the Administration had adopted two different positions on the matter.

46. Miss Margaret NG advised members that on a previous occasion, Members had raised the question as to whether the abolition of the municipal councils amounted to reducing the powers of the district organizations. The Administration's response was that under Article 97, district organizations could be established for two purposes, i.e. either to be consulted on district administration or to be responsible for providing services in such fields as culture, recreation and environmental sanitation, and that given the DCs were consultative bodies on district administration, there was no question of their powers being reduced.

47. The Chairman said that the Administration had on one hand advised the Panel that it would listen to the views of the DCs and Members before finalizing the review, but on the other hand had already held a position on certain issues. He asked the Administration to provide a paper to the Panel to clarify the scope and direction of the review and how the Administration proposed to proceed with the review. In particular, he would like the Administration to clarify whether proposals such as empowering the DCs to become a decision-making body with financial autonomy in district affairs could be covered in the review.

48. DS/HA said that the Administration was not in a position to advise members of any concrete proposals at this stage as the review had just commenced. On the scope of the review, the Administration was of the view that it should not exceed the parameter of Article 97. The Administration believed that the term "district organizations" in Article 97 referred to the former municipal councils and District Boards. While the functions of the municipal councils could be transferred to the DCs in principle, the

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Administration would need to study what functions in respect of district affairs should be transferred, and if so, how. These issues would be addressed in the review. SCA(Ag) reiterated that the Administration would carry out the review in a liberal and open-minded manner.

49. Miss Margaret NG suggested that members should discuss among themselves how the matter should be taken forward, and that LegCo should consider exchanging views with the DCs on this issue. Members agreed that an internal discussion on the subject should be held at the next meeting.

VI. Legislation on the election of the Chief Executive

50. As the meeting was overrun, members agreed to defer the item to the next meeting.

51. The meeting ended at 4:30 pm.

Legislative Council Secretariat
9 March 2001