

**Extract of minutes of meeting on Home Affairs Panel
held on 16 July 2001**

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I. Review of the roles and functions of District Councils

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The Chairman welcomed the Administration's representatives to the meeting. Members noted the Legislative Council (LegCo) Brief and the relevant report of the Working Group on Review of the Roles and Functions of the District Councils (the Report) provided by the Home Affairs Bureau (HAB).

Consultative procedure for the Review of the Roles and Functions of the District Councils

2. Mr Andrew WONG considered that the Administration should consult LegCo in advance when dealing with significant issues such as the review of the roles and functions of the District Councils (the Review) in order to improve the relationship between the executive and the legislature. He pointed out that LegCo Members were elected representatives to monitor the government on behalf of the public, and the roles and functions of District Councils (DCs) were significant issues raised by Members. Moreover, the Administration had undertaken to consider enhancing the roles and functions of DCs during the Third Reading of the Provision of Municipal Services (Reorganization) Bill. Hence he considered it very inappropriate for the Administration to have released the Report for consultation before reporting the matter to LegCo. In this connection, he expressed his grave dissatisfaction.

3. Mr Andrew WONG pointed out that while the LegCo Panel on Home Affairs (HA Panel) was the corresponding panel to the Home Affairs Bureau, the LegCo Panel on Constitutional Affairs (CA Panel) had already expressed concern over the relevant issue to the Constitutional Affairs Bureau (CAB) and had included it as an agenda item for a number of CA Panel meetings. Since no progress had been made during the many discussions with CAB, the CA Panel had decided to hold an internal discussion on the issue, which had been deferred a number of times pending the availability of the Report. The Administration, however, had all along delayed submitting the Report to LegCo until the recess was imminent. Such approach was indeed disrespectful to LegCo.

4. Secretary for Home Affairs (SHA) responded that the Administration had followed the usual practice in handling the consultation on the Review.

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He agreed that the ideal approach was to consult LegCo in advance. However, as the LegCo session was drawing to an end, and in order to meet the date of the Panel meeting, the matter was reported to LegCo a few days late. Yet he undertook that the Administration not only would set aside sufficient time to listen to the views of LegCo Members and the public, but would also be more discreet in handling relevant arrangements in the future.

5. Mr Andrew WONG maintained the view that the Review was very controversial, and therefore once the Administration had finalised the proposals, it should at least make its stance known in advance at a Council meeting, even if the Report was not yet published.

6. The Chairman pointed out that while he recognised that the timing in handling this matter had left much to be desired on the part of the Administration, he was obliged to accept the arrangement since after all it was up to HAB to decide when the Report should be released. However, he shared Mr Andrew Wong's view. The Chairman pointed out that in the same manner as the Report, the Gambling Review - A Consultation Paper had been made public before LegCo was consulted. Such practice would inevitably give the impression that the Administration attached more importance to consultation with DC chairmen and announcement to the public than to consultation with relevant LegCo Panels. The Chairman urged SHA to look into the matter and make improvements so as to avoid damaging the relationship between the executive and the legislature.

7. Ms Emily LAU was of the view that before releasing an important consultation paper to the public, the Administration should make its best effort to announce the paper at a Council meeting in order to show its respect to LegCo. Ms LAU also pointed out that CAB should have understood the concern of CA Panel over the issue. She asked whether CAB had reflected the concern of CA Panel members in the review process.

8. In response, Deputy Secretary for Constitutional Affairs (2) (DS(CA)2) confirmed that CAB was involved in the Review and he was a member of the Working Group of the Review. The Administration well understood that apart from HA Panel, CA Panel had grave concern over the Review too.

9. Ms Emily LAU queried whether it was appropriate for HAB to head the relevant Working Group since the Review involved the subject of constitutional framework. SHA responded that the Review focused on DCs and did not involve the role of DCs in the entire constitutional framework. Therefore, the Administration considered it appropriate for HAB to take the lead in the Review. Ms Emily LAU disagreed with the SHA's explanation. She considered it necessary for the Administration to define the role of DCs in the entire constitutional framework before reviewing other aspects of DCs, such as their functions and responsibilities.

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10. Mr Andrew WONG pointed out that it was inappropriate for HA Panel to follow up the Review alone. He considered that the review on the roles and functions of DCs should be discussed at a joint meeting of HA and CA Panels, or at a House Committee meeting.

11. Mr James TO said that Members could propose urgent agenda item to the House Committee Chairman if they wished to discuss an important subject at a House Committee meeting. He, however, also considered that the Administration should not have consulted LegCo and set the deadline of the consultation at 10 September 2001 when the current LegCo session was drawing to an end. Mr TO pointed out that with this deadline, it would not be possible for Members to move a motion debate even if they wished to do so. Given the strong views expressed by Members, Mr Tommy CHEUNG suggested that the Administration should consider deferring the deadline of the consultation for a month or two so that Members would have adequate time to hold discussions on the subject when the new session began.

12. Mr IP Kwok-him said that he had reservations about deferring the consultation deadline because part of the measures proposed by the Working Group should be implemented as soon as possible. He had always held that the Administration should announce the result of the Review Report as soon as practicable. He did not believe that it was the Administration's deliberate act to make the Report public just before the end of the current LegCo session. After the Review Report had been released, the Administration could still listen to the opinions of LegCo members, DC members and the public. He had no strong view regarding whether the issue should be taken up by HA Panel or CA Panel. However, since HA Panel had invited members of CA Panel and all other Members to participate in the discussion on the present occasion, he considered that it was in order to discuss the Review at this meeting. If the discussion could not be completed during the meeting, CA Panel could discuss it again later.

13. The Chairman requested SHA to respond to Members' proposals of holding a joint Panel meeting and deferment of the consultation deadline. SHA said that the Administration was willing to participate in the joint Panel meeting to be held later. He pointed out that as LegCo was one of the Government's essential targets in soliciting views, it would not pose any problem to the Administration, if Members considered it necessary to wait until October 2001 to express their views even though the deadline for public consultation was set at 10 September 2001.

Discussion on specific contents of the Review

14. Ms Emily LAU remarked that she had learnt from the Working Group's Report that the Administration had only recommended that chairmanship of

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certain district committees be taken up by DC chairmen/members and DC chairmen/members be invited to take part in more working groups at district level. The Report also recommended that suitable DC members be appointed in their personal capacity to advisory and statutory boards. She opined that selective appointments of this nature failed to serve the overall purpose of enhancing the role of each DC member in monitoring the planning and implementation of district-based services and facilities. She asked why the Administration could not delegate concrete powers to DC members within the framework of the Basic Law with a view to enhancing their accountability.

15. SHA explained that the purpose of the entire review exercise was to promote greater participation of DCs and their members in district affairs. Various measures proposed by the Working Group would further enhance the management of district services jointly implemented by DC members and district officials. It was true that the Administration had not proposed to adopt the operational modes of the former Municipal Councils (MCs) and to delegate district administrative powers to DCs. The Administration was concerned that adopting the operational mode of MCs would have adverse effects on the administrative framework of various departments, the utilisation of public resources, and might even cause confusion in the administration of the 18 DCs in the future. In the light of the above concern, the Administration had opted for a progressive approach and decided against taking the precipitate course of delegating district administrative powers.

16. Ms Emily LAU said that the Administration had only proposed to invite the chairmen and vice-chairmen of DC committees to attend District Management Committee (DMC) meetings. She asked whether the Administration could allow more DC members to participate in the work of DMCs.

17. Director of Home Affairs (D of HA) responded that the Administration was concerned that the large number of participants might have adverse effects on efficiency should all DC members be invited to the meetings of DMCs. Hence the Working Group proposed to invite the chairmen of the relevant DC committees to DMC meetings only when items related to the DC committees concerned were discussed. She further pointed out that as DC chairmen and vice-chairmen would report to their respective DCs on a regular basis, she did not consider it necessary to transform the role of DCs into that of DMCs. She reiterated that DCs were still advisory bodies at present.

18. Mr James TO shared Ms Emily LAU's view, Mr TO opined that apart from the chairmen and vice-chairmen of DCs, more DC members should be allowed to attend DMC meetings so that different political parties and groups could have sufficient opportunities to express their views. He queried why the Administration had taken prompt actions to centralise the powers after the dissolution of MCs, while adopting a completely different attitude towards

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delegation of powers now.

19. The Chairman supported the views of Ms Emily LAU and Mr James TO. He pointed out that when MCs were dissolved, the Administration had undertaken to increase the powers of DCs when the overall review was conducted. Contrary to this commitment, the Administration now had adopted a progressive approach in the delegation of powers. As there were already a number of committees under the existing framework of DCs, he asked why the Administration considered it necessary to set up district consultative committees in the 18 districts instead of directly authorising the relevant committees under DCs to handle district affairs. The Chairman was of the view that the recommendations proposed was in effect a duplication of effort and structure.

20. Referring to the Official Record of Proceedings of the Council meeting on 2 December 1999, DS(CA)2 said that that the Secretary for Constitutional Affairs (SCA) had made the following remarks when speaking during the Third Reading of the Provision of the 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 organisations, and consider ways to enhance the role of District Councils in district affairs and to strengthen their functions.”

DS(CA)2 was of the opinion that the current recommendations proposed by the Administration were in line with the undertaking given by the SCA at that time.

21. Mr James TO asked whether the role referred to by the Administration included the aspect of management. In response, D of HA stressed that the Administration was currently adopting a progressive approach in conducting the review with a view to increasing the involvement of DCs in district affairs. She further remarked that DCs played a unique advisory role. As the existing operational mode of DCs was already well-established, the recommendations proposed in the Review would be able to further enhance the roles and functions of DCs.

22. DS(CA)2 further said that Article 97 of the Basic Law (BL 97) provided that “District organisations which are not organs of political power may be established in the Hong Kong Administrative Region, to be consulted by the government of the Region on district administration and other affairs,...”. It was clear that DCs could be consulted on district administration and other

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affairs as advisory bodies, but they were not organs of political power.

23. Mr James TO reminded the Administration that it had also been stipulated in the latter part of BL 97 that the relevant district organisations were “responsible for providing services in such fields as culture, recreation and environmental sanitation”. DS(CA)2 explained that as stated in paragraph 2.7 of the Report, given the small size of Hong Kong, delegating specific executive functions to 18 DCs would run the risk of fragmenting responsibilities and diminishing efficiency. Taking this into account, the Administration had not proposed any delegation of specific executive functions to the 18 DCs.

24. Mr Andrew WONG remarked that this was the first time the Administration had openly admitted that DCs were only playing an advisory role. To ensure a clear understanding of the meaning of BL 97, he requested the Administration to provide legal advice on the authoritative interpretation of the Article. Otherwise, the Administration should seek an interpretation from the Standing Committee of the National People’s Congress. Moreover, he opined that if the Administration arranged the public to select through elections a group of members who could only offer views but would not be responsible for their work, the Administration was only promoting a political culture of irresponsibility. In fact, the measures proposed by the Administration would perpetuate such culture. While admitting that setting up 18 DCs with executive functions might run the risk of fragmenting responsibilities and leading to confusion, he pointed out that the number of DCs could be reduced according to circumstances.

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25. DS(CA)2 responded that regarding the provision of legal advice on BL 97, the Administration would submit a written reply to the Panel in due course. Mr Andrew WONG also requested the Administration to provide the original text of legal advice given by the Department of Justice. If it was unable to do so, the Administration should specify in its written reply whether the view stated was legal advice or the position of the Administration based on legal advice. DS(CA)2 replied that he had a clear understanding of Mr WONG’s request. However, as he had yet to discuss the matter with the Department of Justice, he could not accede to the request of Mr WONG at the moment. However, he undertook to provide relevant information to members as far as practicable.

26. Mr IP Kwok-him pointed out that MCs and DCs were already in operation before the enactment of BL 97. According to his understanding, the duties of DCs were described in the first part of BL 97, whereby district organisations were “to be consulted by the government of the Region on district administration and other affairs”. The duties of the then MCs were described in the latter part of the Article, whereby district organisations were “to be responsible for providing services in such fields as culture, recreation and environmental sanitation”. Since it was stated in paragraph 2.4 of the report that “the 18 DCs are district organisations covered by BL 97”, he opined that

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DCs had already been defined as the district organisations referred to in BL 97. In this connection, apart from preserving its advisory role as stated in the first part of BL 97, DCs should also be made responsible for providing services in such areas as culture, recreation and environmental sanitation as stated in the latter part of the Article. However, the Report demonstrated that the Administration had no intention to delegate such powers to DCs.

27. SHA responded that since CAB had undertaken to seek legal advice on BL 97, he opined that discussion relating to the interpretation of the Article should be deferred until the legal advice was available. However, he drew members' attention to the fact that measures proposed by the Working Group aimed at enhancing DCs' participation in the management of those services. There was a marked difference between participation in the management and provision of services. Therefore, reference to the operational modes of the previous MCs would be necessary if DCs were made responsible for the provision of the services. However, the Administration did not consider it opportune to do so at the present stage.

28. Miss Cyd HO queried why the Administration considered that 18 DMCs would not bring about administrative confusion while 18 DCs would result in chaos. She admitted that different rules adopted by the respective MCs in the past had inevitably caused administrative confusion. As the respective rules of the 18 DCs had been brought in line with one another, she believed that setting up 18 DCs with administrative powers would not cause any confusion. She further asked whether the Administration would truly agree to delegate the powers of DMCs to DCs, 75% of which were elected members so that DCs would have a real role to play in the management of district affairs.

29. SHA remarked that in practice, the execution of all councils, regardless of whether they took up actual executive functions or participated only in management, was not implemented by the respective council members. In the event of the Government delegating the administrative powers to DCs, they should be given the decision-making powers including those on financial matters. In view of the small size and dense population of Hong Kong, discrepancies in the provision of services in respect of culture, recreation, municipal and environmental sanitation among the 18 different districts would inevitably bring about inconvenience and complaints. The past experience of MCs showed that inconvenience and complaints had actually been caused. Based on this observation, the Administration considered it inappropriate to delegate administrative powers to the 18 DCs at the present stage. Enhancing the involvement of DCs and DC members in the implementation of district administrative work would be a better approach for the time being.

30. Disagreeing with the explanation of the Administration, Miss Cyd HO pointed out that the 18 DMCs should already have a mechanism to avoid confusion caused by different practices in different districts. If the current

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practice was feasible, the Administration should replace DMCs with DCs which comprised largely elected members, instead of allowing only the chairmen and vice-chairmen of DCs to attend DMC meetings.

31. Mr Andrew WONG opined that the Report of the Review had not enhanced the roles and functions of DCs. On the contrary, the proposal of setting up consultative committees with DC members appointed as members in each of the 18 districts had in fact undermined the roles and functions of DCs. While admitting that setting up 18 DCs with district administrative powers might, to a certain extent, cause administrative confusion, he remarked that the Administration could allow different DCs to establish different practices with a view to developing the most appropriate operational mode.

32. In response, SHA disagreed that the recommendations of the report had undermined the roles and functions of the DCs. He cited an example in which the Administration had proposed that DC chairmen/members be appointed as the chairmen of the two Steering Committees on Rural Public Works and Urban Minor Works Programmes as well as the 18 District Working Groups in order to increase DCs' involvement in the implementation of local minor works projects. He pointed out that the above recommendation had rendered DCs a direct influence on these works. By setting up district consultative committees, the Administration aimed at increasing DC members' participation in the management of local municipal facilities. If members considered this recommendation a duplication of effort and structure, the Administration was willing to reconsider the proposed arrangement.

33. Due to time constraint, the Chairman suggested that members should continue to discuss the item at the joint meeting of HA and CA Panels to be scheduled when the new LegCo session began in October 2001. He also requested HAB to defer the consultation period to the end of October, thus allowing LegCo Members sufficient time to discuss the subject.

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