

立法會
Legislative Council

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(These minutes have been
seen by the Administration)

Ref : CB2/PL/HA

LegCo Panel on Home Affairs

**Minutes of special meeting
held on Thursday, 16 July 2001 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon Andrew CHENG Kar-foo (Chairman)
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon Andrew WONG Wang-fat, JP
Hon Emily LAU Wai-hing, JP
Dr Hon TANG Siu-tong, JP
Hon Henry WU King-cheong, BBS
Hon IP Kwok-him, JP

Members Attending : Hon Eric LI Ka-cheung, JP
Hon NG Leung-sing, JP
Hon Tommy CHEUNG Yu-yan, JP

Members Absent : Hon CHOY So-yuk (Deputy Chairman)
Hon LAU Wong-fat, GBS, JP
Hon Timothy FOK Tsun-ting, SBS, JP
Hon Albert CHAN Wai-yip
Hon WONG Sing-chi

Public Officers Attending : For Item I

Mr W K LAM, JP
Secretary for Home Affairs

Mrs Betty FUNG
Deputy Secretary for Home Affairs (2)

Ms Shelly LEE, JP
Director of Home Affairs

Mr Robin IP
Deputy Secretary for Constitutional Affairs (2)

For Item II

Mr W K LAM, JP
Secretary for Home Affairs

Mr Leo KWAN, JP
Deputy Secretary for Home Affairs (1)

Mr R C ALLCOCK
Solicitor General
Department of Justice

Mr John DEAN
Principal Assistant Secretary for Home Affairs (7)

Miss Amy CHAN
Senior Government Counsel
Department of Justice

Miss Mary TSANG
Principal Assistant Secretary for Health
and Welfare (Women)

Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2)2

Staff in Attendance : Miss Yvonne YU
Senior Assistant Secretary (2)7

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I. Review of the roles and functions of District Councils

[Legislative Council Brief (File Ref: S/F(6) in HAB/CR 3/21/7 Pt.5) issued by the Home Affairs Bureau and LC Papers No. CB(2)2063/00-01(01) to (06)]

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. 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

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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.

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

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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 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

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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 delegation of powers now.

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

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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 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

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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 practice was feasible, the Administration should replace DMCs with DCs

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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.

II. Concluding Observations made by the United Nations Committee on Economic, Social and Cultural Rights on the Report of the Hong Kong Special Administrative Region under the International Covenant on Economic, Social and Cultural Rights

[Paper No. CB(2)2064/00-01(03)]

34. At the invitation of the Chairman, Secretary for Home Affairs (SHA) informed members that the United Nations Committee on Economic, Social and Cultural Rights (the Committee) had held its hearing on the report of the Hong Kong Special Administrative Region (HKSAR) in the light of the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 27 and 30 April 2001. The Committee subsequently issued its concluding observations [Annex to Paper No. CB(2)2064/00-01(03)] on 11 May 2001.

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35. SHA drew members' attention to the fact that the concluding observations included several positive comments, commending HKSAR's performance in a number of important areas such as the establishment of the Women's Commission and the programme for training unskilled and unemployed workers. SHA pointed out that the Committee had also expressed several concerns and made recommendations in the concluding observations. He stressed that the HKSAR Government would consider these concerns and recommendations with an open mind and they would be referred to relevant policy Bureaux for serious consideration.

Legal obligations arising from ICESCR

36. Ms Emily LAU said that while she agreed that the effort of the HKSAR Government in preparing a very comprehensive report for submission to the Committee was commendable, the Committee's advice to the HKSAR Government about the binding effect of the provisions of ICESCR warranted serious concern. With reference to paragraph 27 of the concluding observations, Ms LAU pointed out that the Committee had urged HKSAR not to argue in court proceedings that the Covenant was only "promotional" or "aspirational" in nature. However, the Secretary for Justice had recently argued that the Covenant was not legally binding and the purpose of the concluding observations was only to arouse discussions in the society. Ms LAU asked whether the HKSAR Government was going to maintain its position which was ran counter to the Committee's advice.

37. In response, Solicitor General (SG) said that the Administration fully accepted the first sentence of paragraph 27 of the concluding observations i.e. "the provisions of the Covenant constitute a legal obligation on the part of the States Parties". As regards the second sentence i.e. "the Committee urges the HKSAR not to argue in court proceedings that the Covenant is only "promotional" or "aspirational" in nature", the Committee might have a slight misunderstanding about the position of the HKSAR. He explained that there was no doubt that the HKSAR Government had an obligation to implement the provisions of ICESCR. The question should be what was the obligation imposed upon the HKSAR Government. Article 2 of ICESCR stated that the States Parties should achieve progressively the full realisation of the rights recognised by the Covenant. In that context, the way to implement the Covenant was by progressive realisation of the obligations on an ongoing basis.

38. As regards the arguments that the HKSAR Government might raise in court in respect of the nature of the provisions of ICESCR, SG said that the Secretary for Justice had already explained the position at a Legislative Council meeting on 20 June 2001. Given the fact that the Covenant might come up in court proceedings under different circumstances in the future, he opined that it was not appropriate for the HKSAR Government to tie its hands as to what was

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or what was not an appropriate argument in any particular case. In the public interest, all proper arguments should be put to the court. Counsel for both parties should put their cases as strongly as possible in order to assist the court to make the correct judgment.

39. Ms Emily LAU said that she was disappointed that the Administration had rejected the recommendation of the Committee. She asked whether the Administration would at least draw to the attention of the court such recommendation if relevant points was raised in future court proceedings. SG responded that the Code of Conduct of the Bar of HKSAR required a counsel to fully inform the court of all relevant matters. He expected that whenever such issue was put before the court, the other side would inform the court of the concluding observations of the Committee. Ms LAU further asked whether the Department of Justice would undertake that, if the point arose in a case involving the HKSAR Government in court, the Government counsel would draw to the attention of the court the relevant Committee's recommendation. SG undertook to give a written response.

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40. Ms Emily LAU pointed out that although States Parties only had obligations under ICESCR to achieve progressive realisation of the rights recognised by the Covenant, the HKSAR Government should at least set a timeframe for the full compliance with the obligations under the Covenant. In response to Ms LAU's enquiry, SG reiterated that Article 2 of ICESCR stated that the States Parties should achieve progressively the full realisation of the rights recognised by the Covenant. He said that the Committee had explained that even if the full realisation of the rights could not be implemented immediately, State Parties should take steps as soon as reasonably possible. The implementation timeframe depended very much on the particular provisions of ICESCR. He pointed out that the progressive implementation could be an on-going process within a reasonable period because continuous improvement was expected.

41. Mr James TO said that there seemed to be an implied criticism of the judges in paragraph 27 of the concluding observations about their interpretation of the provisions of international treaties. He asked whether the Judiciary would proactively facilitate discussions among judges e.g. conducting seminars about the issue or whether the Department of Justice (D of J) would consider drawing the Committee's recommendation to the Judiciary. SG responded that it would not be appropriate for D of J to make any suggestion to the Judiciary because of the judicial independence. However, he would ensure that a copy of the concluding observations would be sent to the Judiciary. SG stressed that it was very much a matter for the Judiciary to decide whether it wished to take any follow-up actions afterwards.

42. Mr James TO was of the view that although it might not be the best approach for the sake of protecting judicial independence, the Administration

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could consider inviting judges to seminars or workshops about implementation of obligations under various international human rights treaties. SHA responded that judges had been invited to informal gatherings for an exchange of views when United Nations human rights ambassadors visited HKSAR. However, he would need to consult the Judiciary to find out whether there was a systematic way to keep judges informed of the latest development of human rights.

Establishment of a human rights institution

43. Ms Emily LAU said that the Committee had expressed regret in paragraph 32 of its concluding observations that HKSAR had not yet implemented its recommendation to establish a human rights institution. She asked about the circumstances under which the Administration would reconsider its stance.

44. SHA responded that the HKSAR Government did not see any obvious need to set up another institution i.e. a human rights institution, because human rights in HKSAR had been firmly founded on the basis of the rule of law and an independent judiciary. The Government continued to operate in full view of a free and active media as well as local and international non-governmental organisations. He stressed that the HKSAR Government understood that the development of human rights would always proceed forward. It would review the need to establish a new institution if a major fault had been identified in the existing framework for the protection of human rights. However, he did not see the need at the present time.

45. Ms Emily LAU queried the meaning of "a major fault in the existing framework" in the Administration's response. She asked whether the Administration would only consider establishment of a human rights institution when the judiciary in HKSAR was no longer independent and the media became mute. SHA pointed out that the HKSAR Government understood that the Committee held the opinion that the HKSAR's failure to prohibit race discrimination in the private sector constituted a breach of its obligations under Article 2 of ICESCR. The Committee did not mention that HKSAR had breached any other provision.

46. Ms Emily LAU said that she did not agree with the Administration that it was not necessary to establish a human rights institution simply because the Committee had not regarded its failure to do so a breach of the Covenant. She pointed out that the Committee had regretted in its concluding observations that HKSAR had not implemented a number of its previous recommendations. The Committee had also reiterated its concerns in various areas such as the failure of HKSAR to extend the prohibition of race discrimination into the private sector and to prohibit discrimination on the basis of sexual orientation and age.

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47. SHA responded that HKSAR already had a very good framework, which compared favourably with many territories in the Asia-Pacific region, for the protection and development of human rights. He referred to an assessment published in 1999 by an English newspaper, The Observer, which indicated that the human rights situation in HKSAR was considered better than many developed countries. Ms Emily LAU said that if its human rights record was so good, the HKSAR Government should not be afraid of establishing a human rights institution. SHA stressed that the HKSAR Government had nothing to be afraid of. It had all along kept an open mind in working for the protection and development of human rights.

48. Mr James TO cautioned that the HKSAR Government would face severe criticisms in the future if it repeatedly refused to establish a human rights institution. In response to Mr. TO's enquiry about the disadvantages to establish such an institution, SHA explained that the Government had to prioritise the use of public resources in a responsible manner to meet the needs of the society. As the HKSAR's human rights record remained good, he did not see any justification for the Government to change its stance at the present stage. He believed that there would be nothing to be ashamed of about the HKSAR's human rights record when the Administration had to face the Committee in the future.

49. Mr James TO said that he could not accept the SHA's explanation. He pointed out that the Committee was the treaty monitoring body of ICESCR and the HKSAR Government had an obligation to achieve the realisation of the rights recognised by the Covenant. The concluding observations were issued after detailed consideration of the HKSAR's report. As the Committee had repeatedly urged HKSAR to establish a human rights institution, it clearly demonstrated the need and the urgency for HKSAR to do so.

50. SHA responded that the HKSAR Government had clearly explained its stance and the situation of HKSAR during its meeting with the Committee. The Committee had not made any negative comment on the HKSAR's human rights record. While the HKSAR Government would always respect the recommendations made by the Committee after its consideration of the HKSAR's report, the HKSAR Government had to decide its priority of work having regard to the prevailing circumstances and resources available. Mr TO remarked that the Committee had set out various concerns in paragraph 15 of its concluding observations. It was clear that in the opinion of the Committee the human rights condition in HKSAR left much to be desired.

Prohibition of discrimination on the basis of sexual orientation and age

51. Ms Emily LAU said that the Committee had urged HKSAR in paragraph 31 of the concluding observations to prohibit discrimination on the

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basis of sexual orientation and age. The Committee had also stressed that HKSAR should not make its decision on the basis of majority views. She asked whether the Administration acknowledged the existence of such discrimination in Hong Kong.

52. SHA said that it was impossible that there was absolutely no discrimination in HKSAR which was populated with 6.8 million people. Although he recognised that some people did discriminate against others, the situation of HKSAR was good when compared with other countries. SHA further said that he had previously answered a similar oral question at a Legislative Council meeting on 13 June 2001. As regards whether there was a need to enact legislation against age discrimination, the Education and Manpower Bureau would conduct a consultation to obtain public views later. Regarding the discrimination on the basis of sexual orientation, SHA explained that although Hong Kong was an open and harmonious society, it was inevitably necessary to consider the public views when issues in question involved moral values. It was the Administration's considered view that a combination of administrative measures and public education offered the best way forward to address the issue. Legislation in a hasty manner might bring about adverse impacts and the Administration must map the way forward with great care.

53. Ms Cyd HO said that at a meeting of the Subcommittee to study discrimination on the ground of sexual orientation, Dr W M KO of the Hospital Authority had clearly indicated that it was the Administration's position that homosexuality was not a medical disorder which required medical treatment. Dr KO had also pointed out that homosexuality was an orientation that could not be changed with treatment. She queried why SHA considered that moral values were at stake in issues relating to sexual orientation.

54. SHA stressed that the HKSAR Government and himself clearly understood that homosexuality was not a medical disorder which required medical treatment. However, the fact that some people in the society did have strong views on the issue of sexual orientation could not be ignored. As such, he still considered that the best method at this stage was to educate the public instead of adopting a legislative approach.

III. Any other business

Follow-up discussion on the nomination procedure and criteria in drawing up the Honours List

55. The Chairman reminded members that when the Panel discussed the nomination procedure and criteria under the present honours and awards system of the Hong Kong Special Administrative Region at its meeting on

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10 July 2001, Ms Emily LAU had proposed that the Panel should seek to exercise the powers conferred under the Legislative Council (Powers and Privileges) Ordinance to order the Administration to produce documents of the 2001 Honours Committee in order to ascertain whether the nomination of Mr YEUNG Kwong was vetted by the Committee. The Panel agreed that a decision should be deferred to the Panel meeting scheduled for 16 July 2001 to allow adequate time for members to consider the proposal.

56. Ms Emily LAU moved the following motion at the meeting -

"That this Panel urges the Council to authorise the Panel to exercise its powers under the Legislative Council (Powers and Privileges) Ordinance to order the Administration to produce documents in relation to recent meetings of the 2001 Honours Committee to ascertain whether the name of Mr YEUNG Kwong was vetted by the Committee".

57. Ms Emily LAU said that she put forward the proposal because despite members' requests, the Administration had refused to confirm whether or not the nomination of Mr YEUNG Kwong was vetted by the 2001 Honours Committee. The Administration was only willing to confirm that the Chief Executive had added names to the Honours List recommended by the Honours Committee since the reunification; and that this was similar to the practice before 1 July 1997. She considered that given the Administration's position, it was necessary for the Panel to exercise the powers conferred under the Legislative Council (Powers and Privileges) Ordinance in order to ascertain whether the nomination of Mr YEUNG Kwong was vetted by the Honours Committee. Ms LAU stressed that she had no intention to probe into the privacy of people but she wished to know whether the Chief Executive had accorded the award to Mr YEUNG Kwong in accordance with the established mechanism of nominating and approving honours and awards.

58. Mr James TO asked whether the Administration had confirmed that it would not disclose relevant documents in relation to the Honours Committee. The Chairman informed members that the Panel had invited representatives of the Honours Committee to the meeting held on 10 July 2001 but the Administration replied that as members of the Honours Committee were appointed on an ad personam basis and as deliberations of the Honours Committee must remain confidential, it was not appropriate for members of the Honours Committee to meet with the Panel. The Administration re-confirmed its position at the meeting on 10 July. Mr TO considered that Ms Emily LAU's proposal was appropriate because it aimed only to ascertain whether as a matter of procedure the 2001 Honours Committee had vetted the nomination of Mr YEUNG Kwong. The proposal did not aim to request detailed information about the nominations, including personal data of the nominees.

Action

59. Ms Cyd HO shared Mr James TO's view. She pointed out that the issue had aroused great controversy within the community. Not only some Members but also many members of the public wished to find out whether the Chief Executive had bypassed the normal procedure in according the award.

60. Mr IP Kwok-him said that the Democratic Alliance for Betterment of Hong Kong objected to the motion. He pointed out that the powers conferred under the Legislative Council (Powers and Privileges) Ordinance should only be exercised when issues of significant public interest were involved. It should not be invoked for satisfying the curiosity of some people. Mr IP added that although there was a high chance that the motion would be passed at the meeting, he did not believe that it represented a mainstream opinion.

61. Ms Emily LAU said that she did not agree with the view of Mr IP Kwok-him. She stressed that it was in the public interest to find out whether CE had bypassed the normal procedure in according the award. Ms LAU considered that to say moving the motion was to satisfy the curiosity of some people was disrespectful to the Members and the public who wished to find out the truth.

62. The Chairman ordered a vote to be taken on Ms Emily LAU's motion by a show of hands. Ms Emily LAU, Ms Cyd HO, Mr Albert HO and Mr James TO voted in favour of the motion, and Mr IP Kwok-him, Mr Henry WU and Dr TANG Siu-tong voted against the motion. Members agreed that the Panel would report its decision to move the motion to the House Committee and the Chairman of the Panel would move relevant motion on behalf of the Panel at a Council meeting in the new session.

63. There being no other business, the meeting ended at 6:50 pm.

Legislative Council Secretariat
16 October 2001