

立法會
Legislative Council

LC Paper No. CB(2)1672/00-01
(These minutes have been seen
by the Administration)

Ref : CB2/PL/HA

LegCo Panel on Home Affairs

Minutes of meeting
held on Tuesday, 13 February 2001 at 2:30 pm
in the Chamber of the Legislative Council Building

- Members Present** : Hon Andrew CHENG Kar-foo (Chairman)
Hon CHOY So-yuk (Deputy Chairman)
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon Andrew WONG Wang-fat, JP
Hon LAU Wong-fat, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, SBS, JP
Dr Hon TANG Siu-tong, JP
Hon Henry WU King-cheong, BBS
Hon Albert CHAN Wai-yip
Hon IP Kwok-him, JP
- Member Attending** : Hon Audrey EU Yuet-mee, SC, JP
- Members Absent** : Prof Hon NG Ching-fai
Hon WONG Sing-chi

Public Officers : Item IV
Attending

Mr Leo KWAN
Deputy Secretary for Home Affairs (1)

Mr Charles CHAN
Principal Assistant Secretary for Home Affairs

Mr C M WONG
Assistant Secretary for Home Affairs

Mr Stephen PANG
Commissioner for Rehabilitation

Mr David WONG
Principal Assistant Secretary for Security

Mr Duncan PESCOD
Deputy Secretary for the Civil Service

Mr Gary YEUNG
Principal Assistant Secretary for Planning and Lands
(Lands)

Mr KWOK Leung-ming
Assistant Commissioner of Correctional Services
(Human Resources)

Mr TANG King-shing
Assistant Commissioner of Police (Personnel)

Mrs CHAN MAK Kit-ling
Assistant Commissioner for Labour

Mrs LAI NG Suet-mui
Chief Housing Manager (Applications)
Housing Department

Item V

Mr Leo KWAN
Deputy Secretary for Home Affairs (1)

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

Mr Alvin LI
Assistant Commissioner for Census and Statistics (Social)

Mr CHOW Tung-shan
Assistant Commissioner for Labour

Ms Susanna CHEUNG
Assistant Director of Education

**Attendance by
Invitation** : Item IV

Equal Opportunities Commission

Ms Anna WU Hung-yuk
Chairperson

Ms Alexandra PAPADOPOULOS
Legal Adviser

Item V

Equal Opportunities Commission

Ms Anna WU Hung-yuk
Chairperson

Ms Alexandra PAPADOPOULOS
Legal Advisor

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Hong Kong Against Race Discrimination

Ms Vandana RAJWANI
Spoke person

Mr Martin JACQUES
Member

The Indian Resources Group

Mr Ravi GIDUMAL
Director

Ms Shalini MAHTANI
Member

United Filipinos in Hong Kong

Ms Connie BRAGAS-REGALADO
Chairperson

Ms Rowena DELACRUX
Member

Friends of Thai in Hong Kong

Ms Bungon TAMASORN
Coordinator

Far East Overseas Nepalese Association

Mr Lekha Nath KOIRALA
Coordinator

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

Staff in Attendance : Mr Stanley MA
Senior Assistant Secretary (2)6

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I. Confirmation of minutes

[LC Paper No. CB(2)835/00-01]

The minutes of the meeting held on 12 December 2000 were confirmed.

II. Information paper issued since the last meeting

[Paper No. CB(2)812/00-01(01)]

2. Members noted the Administration's paper entitled "Creation of an Assistant Director Post in Home Affairs Department" issued on 6 February 2001.

III. Items for discussion at the next meeting

[Appendices I and II to LC Paper No. CB(2)830/00-01]

3. Members agreed to discuss the following items at the next regular meeting scheduled for 13 March 2001 at 2:30 pm -

- (a) Free entertainment programmes organised by the Leisure and Cultural Services Department; and
- (b) Policy on the construction of community facilities.

4. Members noted that as the staffing proposal on the creation of an Assistant Director Post in Home Affairs Department was scheduled to be considered by the Legislative Council (LegCo) Establishment Subcommittee on 21 February 2001 and some religious bodies had indicated interest to express views to the Panel on the subject matter of religious bodies, the Panel would hold a special meeting on 20 February 2001 to discuss -

- (a) Proposed creation of an Assistant Director Post in Home Affairs Department; and
- (b) Definition of religious bodies.

5. The Chairman reminded members that as agreed at the regular meeting in January 2001, the Panel would also hold a special meeting on 26 February 2001 to discuss -

- (a) Rural elections; and

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- (b) Report of the Hong Kong Special Administrative Region of the People's Republic of China in the light of the International Covenant on Economic, Social and Cultural Rights.

6. Deputy Chairman remarked that the Panel should wherever possible schedule discussion of issues under its purview at regular meetings to facilitate members' participation. She suggested that special meetings should only be convened for urgent issues. Mr IP Kwok-him and Ms Emily LAU expressed a similar view.

IV. The Equal Opportunities Commission's proposals to amend the Sex Discrimination Ordinance and Disability Discrimination Ordinance
[Paper Nos. CB(2)247/00-01(01) and CB(2)830/00-01(01)]

7. Members noted the Administration's views and comments on the Equal Opportunities Commission's (EOC's) proposals to amend the Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO) [Paper No. CB(2)247/00-01(01)] and the EOC's response to the Administration's views and comments [Paper No. CB(2)830/00-01(01)].

8. At the invitation of the Chairman, Legal Adviser of EOC briefed members on the significance and implications of EOC's proposals agreed to in principle by the Administration as set out in Annex B to Paper No. CB(2)830/00-01(01). She highlighted that EOC had proposed

- (a) to include "voluntary and binding undertakings" into SDO as an alternative means of settlement for the parties concerned without the need to go through a formal process such as court proceedings; and
- (b) to amend SDO and DDO to enable EOC to recover legal costs for acting as solicitor/counsel in providing legal assistance.

Although the Family Status Discrimination Ordinance (FSDO) was not included in the legislative review exercise, EOC urged Panel members to give their support to similar amendments to FSDO accordingly as well as early implementation of those proposals agreed to in principle by the Administration. She added that EOC would continue to discuss with the Administration on the other proposals which the Administration did not agree or had reservations.

Height and weight requirements in disciplinary forces

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9. Mr James TO queried why the Police Force maintained that height and weight requirements should be retained to meet their “unique operational needs”. Assistant Commissioner of Police (Personnel) (ACP(P)) responded that the Police supported the principles of equal opportunities and anti-discrimination legislation. He pointed out that the imposition of the minimum height and weight requirements was essential if the operational efficiency and effectiveness of the Police was to be maintained. ACP(P) explained that there was a requirement for an officer to have a stature and physique which would allow him to impose his authority on the many confrontational and explosive situations that he might be called upon to handle without having to resort to the use of force. He added that a police officer on patrol had to carry over 5 kg of equipment. He said that policing was unique in that it had multifarious functions which required police officers to have a broad interface with members of the public in the course of their duty. Examples of these duties included high visibility beat patrol duty to provide a sense of security to members of the public, to protect lives and property, to deal with insane/violent persons, suspects and convicted persons, to conduct crowd and traffic management duties, and to perform duty during typhoons and other emergencies. ACP(P) concluded that in order to perform these duties efficiently and effectively, police officers must have the adequate height and physique as well as the necessary strength, stamina and fitness.

10. Mr James TO said that as far as he understood, EOC advocated that there should be a more holistic approach to assessing physical fitness, instead of setting minimum requirements in weight and height. Legal Adviser of EOC said that EOC was against setting the minimum requirements in height and weight for staff recruitment and that men and women should be assessed on their abilities to meet the inherent requirements of the posts concerned. She pointed out that in response to EOC, the Fire Services Department had agreed to remove the height and weight requirements. However, the Police maintained that such requirements of personal physique should be retained to meet their "unique operational needs".

11. ACP(P) confirmed that the Police Force understood the EOC’s position when it came to the conclusion that height and weight requirements should be retained to meet their “unique operational needs”. The Chairman suggested that the Police Force and the Security Bureau should take members’ view into account when considering relevant EOC’s proposal.

“Small House Policy”

12. Ms Emily LAU noted with concern that the Government had yet to make a decision on the “Small House Policy” given the review was commenced in

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September 1997 and expected to have been completed at the end of 1998. She enquired about the progress of the review. Ms LAU also sought EOC's views as to whether the "Small House Policy" should be considered as "the lawful traditional rights and interests of the indigenous inhabitants of the New Territories" under Article 40 of the Basic Law.

13. The Chairperson of EOC said that EOC had all along held the view that relevant exceptions in SDO or DDO were contrary to the principle of equal opportunities and would defeat the spirit of anti-discrimination legislation. EOC considered that the "Small House Policy" which had been introduced more than 20 years ago to improve the housing situation in the New Territories was of no relevance to the "lawful traditional rights and interests" as protected under the Basic Law.

14. In response to Ms Emily LAU's enquiry about the progress of the review, Principal Assistant Secretary for Planning and Lands (Lands) (PAS/PL(L)) said that the Administration was still reviewing the policy and had not yet come to a decision on the proposal to repeal the exception in Schedule 5 to SDO for the "Small House Policy". He explained that the "Small House Policy" involved complicated issues and had wide implications on areas including the planning and use of scarce land resources which should be thoroughly examined.

15. Mr Andrew WONG considered that the Administration had delayed its policy decision on the outcome of the review of "Small House Policy" for a long time. He urged the Administration to disclose the results of the review, and expedite legislation to protect the rights and benefits of female indigenous inhabitants in respect of the "Small House Policy".

16. Members noted that the "Small House Policy" fell under the purview of the Panel on Planning, Lands and Works. At the Chairman's suggestion, Mr TANG Siu-tong, the Chairman of the Panel on Planning, Lands and Works, undertook to follow up the matter with the Administration at a future meeting of the Panel. The Chairman further suggested that the Panel on Planning, Lands and Works might wish to invite members of the Panel on Home Affairs to the meeting when the matter was discussed or a joint meeting of the two Panels could be held.

Discrimination on the basis of marital status

17. Mr Albert HO expressed concern that giving priority to nuclear families over singleton applicants under the Home Ownership Scheme (HOS) and Private Sector Participation Scheme (PSPS) would constitute discrimination on the ground of marital status.

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18. Chief Housing Manager (Applications) responded that the Administration had revised related public housing policies in response to EOC's recommendations, save the priority consideration given to nuclear families under HOS and PSPS. The Government considered that nuclear families had a more pressing need in improving living conditions and that retaining the exceptions would facilitate efficient allocation of scarce public housing resources.

Sexual harassment and sexually hostile environment

19. Mr Albert HO noted that if a person, alone or together with other persons, engaged in conduct of a sexual nature which created a sexually hostile or intimidating work environment for a woman, that person might have committed the offence of sexual harassment under section 2(5)(b) of SDO. He pointed out that sexually hostile environment might exist in government departments, institutions and different social sectors such as health care services. Mr HO therefore asked about the definition and scope of application of sexual harassment and sexually hostile environment in section 2(5).

20. The Chairperson of EOC clarified that the definition of sexual harassment in section 2(5) of the SDO contained two limbs. The first limb was found in section 2(5)(a) and referred to unwelcome conduct or behavior by one person against another. The second limb was found in section 2(5)(b) which referred to hostile environment harassment. Although the first limb applied to all fields covered by SDO, the second limb currently applied only to the field of employment. EOC believed that section 2(5)(b) should also apply to the field of education since educational establishments were responsible for the psychological well-being of their students and for the prevention of the creation of a sexually hostile or intimidating learning environment. She stressed that the first limb of sexual harassment applied to all other fields, save the exceptions stipulated under Schedule 5 of SDO.

Vicarious liability and aiding under SDO and DDO

21. Mr WU King-cheong expressed concern about the vicarious liabilities of employers, i.e., employers were liable for acts of sexual harassment, and harassment and vilification committed by their employees and agents under sections 46 and 47 of SDO, and sections 48 and 49 of the DDO respectively. He noted that those who knowingly aided such acts were also vicariously liable. Mr WU asked how the offences would be constituted under the relevant sections.

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22. Legal Adviser of EOC responded that the proposed amendments to section 76(1) of SDO and section 72(1) of the DDO aimed to make it clear that such vicarious liability existed and to ensure that there was no confusion. She also cited a few examples to explain the vicarious liabilities of employers arising from sex harassment and sexually hostile environment in the workplaces and schools.

Legislative timetable including FSDO

23. Miss Cyd HO asked about the legislative timetable for the proposed amendments agreed to in principle by the Administration.

24. Deputy Secretary for Home Affairs (1) (DS/HA(1)) responded that the Administration would continue to work with EOC on legislative amendments to SDO and DDO in respect of the proposals agreed to in principle by the Administration. He added that the Administration would need to further discuss with EOC on details of the proposals and the newly proposed amendments to FSDO which were new proposals. DS/HA(1) said that he was unable to give a concrete timetable at the present stage because the Home Affairs Bureau had to bid for a slot to introduce the legislative proposal into LegCo.

25. The Chairperson of EOC pointed out that SDO and DDO were enacted on 14 July 1995 and 3 August 1995 respectively. Pursuant to the provisions in SDO and DDO, EOC was charged with the duty to keep under review the working of both Ordinances and to advise the Government accordingly. The current proposals for amendment of SDO and DDO were the culmination of a legislative review undertaken by EOC 12 months after the commencement of the two Ordinances. Since FSDO was passed on 24 June 1997 and came into operation on 21 November 1997, it was not included in the review. However, to enable EOC to resolve matters involving FSDO, EOC considered it necessary to streamline relevant provisions in FSDO, SDO and DDO in providing legal assistance. She stressed that similar amendments to FSDO would enable EOC to resolve matters where the undertakings were related to unlawful acts involving the three anti-discrimination ordinances, or any one of them.

26. The Chairman was of the view that similar amendments to FSDO as highlighted by the Legal Adviser of EOC in paragraph 8 above should be proceeded in parallel. At his request, DS/HA(1) agreed that the Administration would take note of members' views and brief members on progress of legislative work in three months' time.

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V. Sample Survey of the Characteristics of the Ethnic Minorities in Hong Kong

[LC Paper No. CB(2)590/00-01]

27. The Chairman welcomed representatives of the deputations to the meeting. Members noted that the Hong Kong Council of Social Service had made a written submission [Paper No. CB(2)830/00-01(01)].

Meeting with deputations

Equal Opportunities Commission

[Paper No. CB(2)830/00-01(02)]

28. At the invitation of the Chairman, the Chairperson of EOC briefed members on the EOC's submission. The Chairperson of EOC expressed disappointment at the main findings of the sample survey of the characteristics of the ethnic minorities in Hong Kong (the sample survey). She held the view that the Government should conduct a more comprehensive survey on ethnic minorities in Hong Kong, which should include a comparative analysis of their special needs and difficulties in their daily life. She pointed out that ethnic minorities, particularly Indians, had made substantial contribution to Hong Kong's economic growth and developments. Although racial discrimination was not within its purview, EOC had received complaints about racial discrimination from time to time. In particular, the number of complaints received in 2000 doubled the total for the preceding three years, despite the fact that most people in Hong Kong were aware that EOC had no power in law to deal with complaints related to racial discrimination. She stressed that according to Articles 1, 22 and 23 of the Bill of Rights, all persons were equal before the law and were entitled without any discrimination to the equal protection of the law. Persons belonging to ethnic, religious or linguistic minorities should not be denied the right to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Hong Kong Human Rights Monitor (HKHRM)

29. Director of HKHRM said that while he appreciated the effort of the Administration in conducting the sample survey, the results of which had failed to reflect the actual discriminatory circumstances experienced by the ethnic minorities in Hong Kong. He explained that the findings on the difficulties faced by the ethnic minorities were too general and as a consequence, they could not provide any constructive data to address their needs. The survey also ignored possible differences between ethnic groups i.e. Caucasians versus ethnic

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groups with darker skin colour by including those of “Caucasian” origin with African and Sri Lankan etc. in the category of “Others”.

30. Director of HKHRM pointed out that the Administration in the past had adopted the approach to seek the view of the majority on the issue of racial discrimination and ignored the need to seek the view of the minority who was the subject of discrimination. HKHRM therefore had conducted a pilot survey on the extent of racial discrimination targeted at ethnic minorities. The results indicated that around two-thirds of the respondents said that they had been discriminated and around three-fourths of them considered it necessary to legislate against racial discrimination. He suggested that the Administration should either incorporate further survey on the extent of racial discrimination in the 2001 Population Census or conduct another specific survey to ascertain the extent of racial discrimination. Director of HKHRM stressed that without legislation against discrimination on ground of race, ethnic minorities simply did not have access to any forms of remedy for the protection of their basic human rights.

Hong Kong Against Racial Discrimination (HARD)

[Paper No.CB(2)830/00-01(03)]

31. Ms Vandana RAJWANI of HARD briefed members on the joint submission of HARD and the Indian Resources Group (IRG) which was tabled at the meeting. She supplemented that the results of the survey could often be determined by the design of the questionnaire. It was clear that the Administration had no intention to ascertain the extent of racial discrimination by shying away from asking expressly “Do you feel there is racial discrimination or not?”. She stressed that the results of the survey should not be used as a policy formulating database as it did not provide an accurate reflection of the situation.

32. Mr Martin JACQUES of HARD supplemented that racial discrimination in Hong Kong was serious. He pointed out that ethnic minorities in the United Kingdom comprised less than 5% of the population, but the Government was concerned about their difficulties in their daily life. He added that some ethnic minorities in Hong Kong had experienced more severe racial discrimination than they had encountered in the United Kingdom.

Indian Resources Group

[Paper No. CB(2)830/00-01(03)]

33. Mr Ravi GIDUMAL of IRG said that the Administration had conducted the sample survey in response to the comment made by the United Nations

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Committee on the Elimination of Racial Discrimination. However, the design of the survey did not address the concerns of the United Nations Committee i.e. to determine the difficulties that might be faced by minority groups and whether and how any such difficulties might be due to discrimination. He requested that the Administration should respond to the seven questions as set out in the joint submission of HARD and IRG. He held the view that in addition to conducting the survey, the Administration should have consulted interest groups representing members of the diverse population of minorities in order to get a better picture on their general profile.

United Filipinos in Hong Kong (UFHK)

34. The Chairperson of UFHK expressed disappointment at the findings of the sample survey, saying that it had not addressed the special needs of some 151 000 Filipino domestic helpers in Hong Kong and their difficulties. She stressed that despite continuous discussion with the relevant departments, the unjust "two-week rule" still imposed on foreign domestic helpers upon expiration of their contracts. She urged the Government to review the "two-week rule" and conduct an in-depth survey on the difficulties encountered by some 260 000 domestic helpers in Hong Kong.

Friends of Thai in Hong Kong (FTHK)

35. The Co-ordinator of the FTHK said that FTHK shared the view of UFHK, HARD and IRG expressed at the meeting.

Far East Overseas Nepalese Association (FEONA)

36. The Co-ordinator of FEONA said that FEONA agreed to the views expressed by HARD, IRG and UFHK at the meeting.

Meeting with the Administration

[Paper No.CB(2)590/00-01(01)]

37. Mr CHAN Wai-yip said that he was disappointed that the sample survey had failed to reflect the actual situation of the ethnic minorities in Hong Kong. He also queried the accuracy of some findings. For instance, he believed that the unemployment rate among the ethnic minorities should be much higher than 2.2%. Mr CHAN said that such a low-quality survey was regrettable. He urged the Administration to consider conducting a more comprehensive survey on the special needs and characteristics of ethnic minorities and the difficulties they experienced.

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38. DS/HA(1) responded that the sample survey was an attempt to determine the demographic profile of ethnic minorities in Hong Kong and it was not a survey about racial discrimination. He added that the Administration had never said that there was no racial discrimination in Hong Kong. DS/HA(1) explained that although a greater sampling fraction was assigned to districts with relatively high minority populations, the risk of under-sampling inherent in any attempt to enumerate very small populations through the random sampling of a total population (non-Chinese comprised just 4% of Hong Kong's population) did exist. In fact, the findings exposed some of the limitations of the random sampling technique in exercises of this nature. Nevertheless, the findings had provided some useful insights into the socio-economic characteristics of the ethnic minorities and the exercise would provide useful experience for the 2001 Population Census to be conducted in March 2001.

39. Assistant Commissioner for Census and Statistics (Social) (AC/C&S(S)) supplemented that ethnic minorities constituted about 4% to 5% of the total population and that a larger sample size was required for more accurate results. The survey, which was carried out by a private consultant firm between October 1999 and January 2000, had successfully enumerated around 9 500 households selected at random from the Frame of Quarters maintained by the Census and Statistics Department. In addition, a greater fraction of survey subjects was assigned to districts such as Central and Western, Wan Chai, Eastern, Kwun Tong, Kowloon City, Yau Tsim Mong and Yuen Long where the percentage of minority populations was relatively higher. He explained that survey subjects who spoke neither English or Cantonese would be interviewed by an appropriate translator, if required, and the low unemployment rate of ethnic minorities could be attributed to the fact that most Filipinos, Indonesians, and Thais had entered Hong Kong on specific contracts of employment as domestic helpers. AC/C&S(S) clarified that the 2001 Population Census would cover ethnic minorities and provide general information on their population sizes and characteristics. It would not cover specific areas of concerns such as their special needs and difficulties.

40. Ms Emily LAU asked whether the Administration would conduct a comprehensive survey on racial discrimination in Hong Kong since the 2001 Population Census would not address specific concerns about the special needs and difficulties of ethnic minorities in Hong Kong.

41. DS/HA(1) responded that the finding of the sample survey was not the only source of information on ethnic minority and racial discrimination available to the Government. The Administration had conducted a comprehensive study and public consultation exercise on racial discrimination in 1997. In addition, the Administration had all along maintained close contacts

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with minority groups to understand their needs and difficulties, and provide assistance wherever possible.

42. Ms Emily LAU expressed dissatisfaction with the Administration's response. She said that the Administration failed to explain why no reference was made to the special needs of the ethnic minorities in the sample survey despite the fact that one of the specific objectives was to identify the special needs of the ethnic minorities and the difficulties faced by them. Ms LAU held a strong view that the Administration should conduct a comprehensive survey to ascertain the difficulties and special needs of the ethnic minorities as well as the extent of racial discrimination under the prevailing circumstances.

43. In response to Ms Emily LAU's question about the cost of the sample survey, AC/C&S(S) informed members that the consultant, ACNielsen, was appointed to conduct the Omnibus Household Survey (OHS) during October 1999 and January 2000 to collect information on four topics, including the one on ethnic minorities at a total cost of \$1.5 million. The cost for the topic on ethnic minorities was about \$350,000.

44. Mr James TO said that it was clear that the Administration had no intention to mention racial discrimination in the sample survey as the respondents had not even been asked whether they had encountered any discrimination in Hong Kong.

45. Principal Assistant Secretary for Home Affairs (7) reiterated that the sample survey was conducted in response to the United Nations Committee's Concluding Observations which commented that Hong Kong had not included questions in the 1991 Population Census which would help determine the ethnic and racial compositions of the population. He pointed out that the sample survey followed the methodologies employed by the Governments of Australia, Canada and the United Kingdom for collecting information on the composition of their ethnic minorities.

46. Miss Cyd HO pointed out that the sample survey had not addressed the concern of the United Nations Committee about the absence of specific legislation against racial discrimination in Hong Kong. She enquired whether the Administration would consider legislation to eliminate racial discrimination.

47. DS/HA(1) responded that Article 22 of the Hong Kong Bill of Rights prohibited the Government and all public authorities from engaging in practices that entailed racial discrimination. The Administration did not see the need for the time being to regulate by legislation discriminatory acts on the ground of race occurring in the private sector or between individuals. It would continue to

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strengthen publicity and education work with a view to eliminating misunderstandings and prejudices on the ground of races, and promoting public awareness of the issue.

48. In the light of the criticisms about the sample survey, the Chairman asked how the Administration would follow up on the findings. DS/HA(1) responded that the findings would be submitted to the United Nations Committee and released to the public. Government departments would make reference to the findings wherever appropriate. Ms Emily LAU requested that criticisms made by the deputations on the survey should also be forwarded to the United Nations Committee.

49. In concluding the discussion, the Chairman requested the Administration to take note of the views and suggestions of members and the deputations.

VI. Any other business

50. There being no other business, the meeting ended at 4:50 pm.

Legislative Council Secretariat

1 June 2001