

立法會
Legislative Council

LC Paper No. CB(2)1758/00-01
(These minutes have been seen
by the Administration)

Ref : CB2/PL/HA

LegCo Panel on Home Affairs

**Minutes of special meeting
held on Monday, 26 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
Dr Hon TANG Siu-tong, JP
Hon Henry WU King-cheong, BBS
Hon IP Kwok-him, JP

Members Attending : Hon CHAN Yuen-han
Hon Audrey EU Yuet-mee, SC, JP

Members Absent : Prof Hon NG Ching-fai
Hon Timothy FOK Tsun-ting, SBS, JP
Hon Albert CHAN Wai-yip
Hon WONG Sing-chi

**Public Officers
Attending** : Item I

Mr W K LAM, GBS, JP
Secretary for Home Affairs

Mrs Betty FUNG
Deputy Secretary for Home Affairs (2)

Mr James O'NEIL
Deputy Solicitor General (Constitutional)
Department of Justice

Mr Stephen WONG
Deputy Solicitor General (Advisory)
Department of Justice

Mr Bassanio SO
Principal Assistant Secretary for Constitutional Affairs (5)

Miss Monica CHEN, JP
Assistant Director of Home Affairs (1)

Item II

Mr W K LAM, GBS, JP
Secretary for Home Affairs

Mr Leo KWAN, JP
Deputy Secretary for Home Affairs

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

Mr R C ALLCOCK, BBS
Solicitor General
Department of Justice

Ms Roxana CHENG
Senior Assistant Solicitor General
Department of Justice

Miss Amy CHAN
Senior Government Counsel
Department of Justice

Miss Elaine CHUNG, JP
Deputy Secretary for Housing

Miss Diane WONG
Principal Assistant Secretary for Health & Welfare
(Welfare) 2

Mrs Brenda FUNG
Principal Assistant Secretary for Health & Welfare
(Welfare) 1

Ms Annette LEE
Principal Assistant Secretary for Health & Welfare (Elderly
Services) 1

Miss Eliza YAU
Principal Assistant Secretary for Security (E)

Miss Linda SO
Principal Assistant Secretary for Security (C)

Miss Erica NG
Principal Assistant Secretary for Education and
Manpower (4)

Mrs Jennie CHOR, JP
Assistant Commissioner for Labour

Mr K H TONG
Deputy Director of Education

**Attendance by
Invitation** : Item II

Equal Opportunities Commission

Ms Anna WU
Chairperson

Ms Alexandra PAPADOPOULOS
Legal Adviser

Mr Joseph LI
Chief Equal Opportunities Officer (Policy Support and
Research)

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Hong Kong Human Rights Commission

Mr HO Hei-wah
Chairman

Miss SEE Lai-shan
Community Organizer

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

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

Action

I. Rural elections
[Paper No. CB(2)928/00-01(01)]

At the invitation of the Chairman, Secretary for Home Affairs (SHA) briefed members on the Administration's paper.

Judgment of the Court of the Final Appeal (CFA)

2. Referring to Article 40 of the Basic Law (BL) which specified that "the lawful traditional rights and interests of the indigenous inhabitants of the "New Territories" shall be protected by the Hong Kong Special Administrative Region", Dr TANG Siu-tong requested the Administration to provide the Panel with a list of these rights and interests.

3. SHA responded that it was not disputed that these rights and interests of indigenous inhabitants included various property rights and interests such as

Action

entitlement to hillside burials, exemption from government rent and rates and benefits relating to land granted to male indigenous inhabitants under the small house policy. He pointed out that the main issue before CFA was whether BL40 protected any right of indigenous inhabitants to vote and to stand as a candidate in Village Representative (VR) elections to the exclusion of others. CFA took the view that there was no justification that indigenous inhabitants should have the political rights to vote and stand as candidates in VR elections to the exclusion of others, to ensure that the traditional rights and interests of indigenous inhabitants under BL40 were adequately protected.

4. Dr TANG Siu-tong asked whether the Administration could provide the Panel with the confidential document which was submitted to CFA for consideration under the cases of *Chan Wah vs Hang Hau Rural Committee* and *Tse Kwan Sang vs Pat Heung Rural Committee*. Mr LAU Wong-fat then asked why the confidential document was submitted to CFA without consulting the Heung Yee Kuk (HYK).

5. In response, SHA said that the Senior Counsel to the Government might have submitted the confidential document on the basis of his professional judgment that the submission would be to the Government's advantage. He pointed out that the Home Affairs Bureau (HAB) had not been consulted in advance of the submission and was therefore not in a position to give an explanation for its submission. SHA informed members that the confidential document was prepared for internal reference on matters related to VR elections well before the judicial reviews. However, he considered that it would not serve any useful purpose in addressing the existing problem if discussion about the confidential document was dragged on. SHA supplemented that the Administration had already offered to provide a copy of the document to the executive committee of HYK which could then brief other HYK members as appropriate. The Administration however considered it inappropriate to make the document open because it might give rise to unnecessary misunderstanding.

6. Mr LAU Wong-fat queried whether submission of the confidential document to CFA without consulting HYK was consistent with the spirit of BL40. He also sought clarifications as to whether HYK would be held responsible for any subsequent leakage if it was provided with the confidential document and briefed its members on the content.

7. SHA responded that whether the submission of the confidential document to CFA was consistent with the spirit of BL 40 would have to be determined by the court. Whether HYK should be held responsible for leakage of confidential information should also be considered by the court in the light of the circumstances of each case. It would not be appropriate for him as a representative of the executive authority to give a definite answer. However, the fact that the Administration offered to provide the confidential

Action

document to HYK clearly demonstrated that it had nothing to hide in the matter. In fact, some members of HYK had already read the document in the course of the judicial review.

8. Ms Audrey EU remarked that it seemed unfair that the Administration had disclaimed all responsibility for submitting the confidential document to CFA and passed it to the Senior Counsel concerned instead. She pointed out that the Administration must have provided the document to the Senior Counsel who was under an obligation to present all documents relevant to the case to the court for consideration.

Adm 9. Mr Andrew WONG was of the view that the Administration should disclose the confidential document for public's perusal because the CFA judgment involved issues of constitutional significance. At Mr IP Kwok-him's suggestion, the Chairman asked and SHA agreed that the Administration would provide copy of the confidential document to the Panel under confidential cover.

Legislative intent of the Heung Yee Kuk Ordinance (HYKO)

10. Mr Andrew WONG was of the view that in reviewing the VR elections, it was necessary to consider the legislative intent of HYKO which was enacted in 1959. Mr WONG pointed out that allowing non-indigenous inhabitants to vote in VR election might conflict with the original intent of HYKO, which was proposed to redefine the role and powers of the previous HYK. He explained that although the statutory objects of the HYK as provided in HYKO related to people in the New Territories, it was clear that people in the New Territories at that time meant indigenous inhabitants. The Administration should have revised the wording to dispel any uncertainty after the New Territories had gone through a demographic change. Miss CHOY So-yuk shared Mr WONG's view that it was important to give regard to the legislative intent of HYKO in devising the new VR election system.

11. SHA responded that there might be difficulty to ascertain the legislative intent of HYKO since it was enacted in 1959. Although it was not disputed that a great majority of residents in New Territories except Tsuen Wan in 1959 were indigenous inhabitants, non-indigenous inhabitants now made up a substantial part of the population of the New Territories. Deputy Secretary for Home Affairs (2) (DS/HA(2)) supplemented that given the fact that the statutory objects of HYK as provided in HYKO related to the people in the New Territories, CFA considered that the literal meaning of the term "people of the New Territories" should include non-indigenous inhabitants in the New Territories.

Action

Review of VR election

12. Mr LAU Wong-fat expressed concern that given the prevailing sentiment of indigenous inhabitants, it would be very difficult to work out a mutually acceptable solution in devising a new VR election system which was compatible with the CFA judgment. Mr LAU asked whether the Administration had a preliminary proposal on a new VR election system. SHA responded that it would be more appropriate to disclose the details of a proposed new system after reaching a preliminary consensus with HYK.

13. Miss CHOY So-yuk asked about the Administration's remedial measures if it could not reach consensus with HYK on a new system of VR election before the next round of VR elections in late 2002. SHA said that HAB was working closely with HYK with a view to devising new electoral arrangements as soon as possible. However, in view of the complexity and difficulties involved, it might not be possible to complete of the legislative process before the next round of VR elections.

14. Ms Emily LAU asked whether the Administration accepted the CFA judgment and how it was going to address the aspiration of non-indigenous inhabitants in the two villages concerned, namely, Po Toi O Village and Shek Wu Tong Village to participate in VR elections. Ms LAU also sought confirmation from the Administration that the new VR election system would be devised on a one-person-one-vote basis.

15. SHA responded that the Administration was bound to be guided by the CFA judgment in devising the new VR election system. CFA had indicated in its judgment that the judgment was only concerned with the electoral arrangements for the position of VR in the two villages concerned. Nonetheless, the Administration would need to consider how the VR elections should be reformed to ensure that the arrangements to be used in the next round of elections would be compatible with the CFA judgment. He added that in support of the Government's policy of encouraging fair and open elections, HYK had promulgated a set of guidelines for the conduct of VR elections in August 1994, which provided for, among other things, one-person-one-vote (for qualified voters), equal voting rights for men and women and fixed four-year terms for the elected representatives. SHA supplemented that the crux of the argument was only about the qualification of voters and candidates in VR elections. He did not anticipate that these principles would be abandoned in the new system for election of VRs.

16. Ms Emily LAU and Miss CHOY So-yuk queried why the Administration would need at least 18 months to complete the legislative and related processes. SHA explained that the Administration would have to consult HYK and relevant parties on the review of VR elections. He anticipated that the consultation would be a complicated and time-consuming

Action

exercise. The Administration had to work out a formulation which would on the one hand comply with the CFA judgment and on the other protect the lawful traditional rights and interests of indigenous inhabitants. Furthermore, it was very likely that there would be heated debate over the provisions of the relevant Bill within the LegCo.

17. Mr Albert HO suggested that the Administration should conduct an overall impact assessment of the CFA's judgement on future elections of VR and constitution of HYK, as well as on the lawful traditional rights and interests of the indigenous inhabitants under BL40. He also pointed out that following the CFA judgement, non-indigenous inhabitants of a village might apply to the court for an injunction of VR election to take place if they were not eligible to vote. Mr HO considered that a period of 18 months would be too long to wait unless the Administration had other interim measures. He asked whether the Administration intended to delay its decision given the fact that HYK had earlier indicated the wish to seek an interpretation of BL40 by the Standing Committee of the National People's Congress in relation to the CFA's judgment.

18. SHA responded that the Administration had already made its stance clear that conduct of VR elections is an internal affair and there was no need to seek interpretation from the National People's Congress. The Administration would follow CFA's judgement in designing the new system for VR elections. He agreed that to facilitate on-going discussion with HYK, the impact of the CFA judgment on VR and HYK elections should be analysed and assessed. He assured members that HAB would endeavour to complete the legislative and related processes as soon as practicable, despite the complexity and difficulties involved in the processes. However, the Administration would have to be cautious in the consultation since the new system of election would affect the interests of some 600 villages and several hundred thousands of indigenous inhabitants. SHA supplemented that insofar as new electors were concerned, VR elections were internal elections within the rural community and these elections were conducted by the villagers themselves in accordance with the established rural traditions.

19. Dr TANG Siu-tong suggested that the Panel should consider inviting HYK to brief members on the history of HYK and the legislative intent of HYKO. Ms Emily LAU suggested that the Panel could also invite views on the VR election system from concerned organisations. Mr Andrew WONG had reservation on Ms LAU's suggestion, saying that it might not be appropriate when the Administration and HYK had yet to reach agreement on a preliminary proposal. He added that the briefing might well be arranged at an informal meeting. Miss CHOY So-yuk shared his view. In the light of different views expressed, the Chairman suggested and members agreed that the Panel would decide the way forward at a future meeting when the preliminary proposal about the new VR election system was available.

Action

II. Report on the Hong Kong Special Administrative Region (HKSAR) under the International Covenant on Economic, Social and Cultural Rights (ICESCR)

[Report on HKSAR of the People's Republic of China in the light of ICESCR issued vide LC Paper No. CB(2)2246/98-99 on 9 June 1999.]

Meeting with deputations

20. The Chairman welcomed representatives of the deputations to the meeting. At the invitation of the Chairman, representatives of the deputations briefed members on their submissions as summarised below -

Equal Opportunities Commission (EOC)

[Paper No. CB(2)928/00-01(02)]

21. The Chairperson of EOC introduced EOC's submission on the subject. She highlighted that EOC recorded an increase of 37.9% in complaints caseload and an increase of 75% in legal assistance applications in year 2000. Specifically, the number of complaints received under the Disability Discrimination Ordinance (DDO) and the Sex Discrimination Ordinance (SDO) in 1999 and 2000 had increased from 192 to 339 (+76.6%) and from 213 to 323 (+51.6%) respectively. She then briefed members on EOC's observations in respect of Articles 2, 6, 7, 9 and 13 of ICESCR as detailed in the EOC's submission.

22. The Chairperson of EOC expressed EOC's concern about the low employment rate of people with disability; the exclusion of domestic helpers from the Mandatory Provident Fund Scheme; and the lack of retirement protection for homemakers, the old and the disabled. Gender and disability perspectives should be mainstreamed in the process of government policy formulation. The number of complaints and inquiries received in respect of discriminatory act outside EOC's specific remit had been increasing in the past four years. In the absence of legislative means, public education alone could hardly address the discrimination on the grounds of race, ethnicity, national/social origin, age or sexual orientation.

Hong Kong Human Rights Monitor (HKHRM)

[Paper No. CB(2)948/00-01(01)]

23. Director of HKHRM briefed members on the main concerns of HKHRM in respect of the implementation of ICESCR in HKSAR as detailed in its submission. He highlighted that it was unclear whether the declarations and reservations registered by the Government of the United Kingdom remained valid for HKSAR. Director of HKHRM also added that the Administration had a misconception that the State Parties to the Covenant could take incremental measures to achieve full realisation of all rights

Action

recognised under the Covenant. He explained that each State Party was obliged under Article 2 of ICESCR to take immediate steps to achieve the full realisation of the rights recognised in the Covenant even though full realisation of all the rights might only be achieved progressively. Director of HKHRM requested that the Panel should discuss with the Administration its actions to address the HKHRM's concerns, to follow up the Concluding Observations previously issued and to be issued by the Committee on Economic, Social and Cultural Rights (the Committee) and to withdraw relevant reservations as early as possible.

Hong Kong Human Rights Commission (HKHRC)

24. The Chairman of HKHRC expressed dissatisfaction at the lack of progress on the part of the Government in implementing the recommendations of the Committee. He pointed out that contrary to the position of the United Nations Human Rights Committee, the Administration had maintained these recommendations issued by relevant United Nations Committees were not binding. He said that the Administration must clarify its stance in this respect. The Chairman of HKHRC added that the Administration must establish an assessment mechanism in the policy making process to ensure that all the government policies were compatible with the provisions of ICESCR and were in compliance with the Committee's recommendations. He was of the view that the Administration should set up a Human Rights Commission to oversee the implementation of human rights policies.

25. The Chairman of HKHRC highlighted that HKHRC was very much concerned about the polarisation of the rich and the poor. It urged the Administration to set a poverty line for the planning and provision of services to the people in need. HKHRC was also concerned about the lack of legislation against discrimination on age, race and sexual orientation, inadequate provision of welfare services to the mentally handicapped, growing number of split families etc. He suggested that as ICESCR covered numerous policy areas, LegCo Panels should follow up the HKSAR's report under their respective purview.

26. Members expressed support for the suggestion of the Director of HKHRC. They agreed that relevant LegCo Panels should be invited to discuss the HKSAR's report in the light of ICESCR which would be considered by the Committee at its 25th session to be held on 27 April and 30 April 2001.

Meeting with the Administration

27. At the Chairman's invitation, SHA made an overall response to the deputations' views as follows -

Action

- (a) The pace of democratic development had already been stipulated in the Basic Law. The issue had aroused heated debate in the community and the debate would continue on an on-going basis;
- (b) The Government had explained in detail the reason for seeking a re-interpretation of Article 24(2)(3) of the Basic Law by the Standing Committee of the National People's Congress in accordance with Article 158 of the Basic Law. The Administration had also given an assurance that it would not seek re-interpretation of the Basic Law except in highly exceptional circumstances;
- (c) The Administration did not see any obvious advantage to set up another institution i.e. a Human Rights Commission because Hong Kong 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. Human rights in Hong Kong had been firmly founded on the basis of the rule of law and an independent judiciary. The Hong Kong Bill of Rights Ordinance and a comprehensive legal aid system had also provided remedies against infringement of human rights. Moreover, the Government continued to operate in full view of a free and active media as well as local and international non-governmental organisations (NGOs); and
- (d) The Administration was mindful of the Committee's recommendations and would review each of them with relevant policy bureaux carefully. The Administration had consulted the public and reported to LegCo as appropriate on a regular basis. As the recommendations invariably involved complex issues with different interests at stake, the Administration had to be cautious in deciding the way forward. However, the Administration definitely would not shy away from these issues. For example, although it was the Administration's position that there was no need for the time being to legislate on racial discrimination, it had kept an open mind and undertaken to carry out more in-depth work on the matter. The Administration had also proactively followed up complaints about racial discrimination lodged with EOC. It was therefore inappropriate to understate the Administration's effort in protecting the rights recognised in the Covenant simply on the basis of isolated incidents.

28. In response to Ms Emily LAU's concern about the financial strength of EOC to perform its statutory functions under DDO and SDO, SHA said that HAB was well aware of EOC's financial situation and was working with EOC with a view to addressing its problem of financial constraints.

Action

(As the Chairman had to attend another important meeting, the Deputy Chairman took over the chair at this junction.)

Publicity for the Committee's Concluding Observations and provision of supplementary information

29. Miss Cyd HO said that LegCo Members and representatives of NGOs had been given very little time to read the Administration's further submission to the United Nations Human Rights Committee in respect of the HKSAR's report under the International Covenant on Civil and Political Rights. She requested the Administration to make available any further submission to the Committee well before the scheduled hearing. Miss HO added that the Administration should widely publicise the Committee's Concluding Observations to be issued after the hearing. She considered that the Administration should publicise the Concluding Observations as much as it did for the reform proposals for the education system which included publishing various promotional publications and leaflets to facilitate understanding by different sectors of the community especially young persons. She also asked whether the Administration would allocate additional resources for such purpose.

30. Principal Assistant Secretary for Home Affairs (7) (PAS/HA(7)) responded that the Administration did not propose to make an updating report. There was no such obligation in the ICESCR or in the United Nations Manual on Human Rights Reporting. In any cases, the Committee had not asked for an update. Instead, it had sent the Government a list of issues to be taken up in connection with the HKSAR's report to the Administration. The Administration would make available its written replies to LegCo Members, NGO and the public as soon as they were submitted to the Committee. He informed members that the Administration had reached an agreement with the Chairperson of the Committee that submitting these written replies would suffice for the Committee's purposes.

31. Ms Cyd HO said that it was undesirable that the Administration would not make an updating report because representatives of NGOs attending the hearing would surely make reference to recent issues and the Administration should address these issues beforehand.

32. In response to Ms Cyd HO's question about the publicity work to introduce the Committee's Concluding Observations to the public, PAS/HA(7) said that the Administration had no obligation to explain the Concluding Observations. These would be issued by the Committee itself and it would be an impertinence for the Government to arrogate to itself the role of explication of the Committee's intentions. In accordance with the established practice, copies of the Concluding Observations would be sent to all judges and judicial

Action

officers as well as to legislators, NGOs and other interested parties. In addition, the Concluding Observations would be released to the press and made available on the Homepage of the HAB for public access. The Administration considered that the current practice was adequate for publicity purpose. The Administration had yet to be convinced that there was a need for additional allocation of resources for this purpose unless the Committee requested otherwise. PAS/HA(7) repeated that the Committee Chair had made it very clear that the Government's replies to its written questions ("list of issues") would suffice by way of formal updating. The delegation to the hearing would, as a matter of standard practice, be ready to brief the Committee on current developments and to answer its questions fully and frankly on the spot.

33. Ms Cyd HO and Ms Emily LAU expressed dissatisfaction with the Administration's response. Ms HO said that the Administration had a duty to convince LegCo Members as to whether their efforts in publicising the Concluding Observations were adequate or not. Ms LAU remarked that the Committee would surely be pleased to see HKSAR Government putting in more effort in publicising the Covenant, relevant reports and its Concluding Observations. She urged that while the HKSAR's report was more comprehensive than those previously submitted to the Committee, the Administration should adopt a more modest attitude to further improve its work in the submission of human rights reports to the United Nations Committee. Deputy Secretary for Home Affairs (1) (DS/HA(1)) assured members that HAB would supply hard copies of the Concluding Observations for distribution whenever necessary.

Discrimination on race and sexual orientation

34. Ms Emily LAU referred to the submission of the Hong Kong Council of Social Service [Paper No. CB(2)928/00-01(03)] and asked whether the Administration would determine legislation against discrimination on race or sexual orientation based on majority views, that was, on the basis of public opinion surveys.

35. SHA responded that the need to legislate against discrimination on the ground of race or sexual orientation would not be determined simply by the result of opinion surveys. However, according to the comprehensive studies and consultation conducted in June 1996 and June 1997, over 80% of respondents were opposed to anti-discrimination legislation and there was unanimous support for the use of educational means to address the issues. In fact, the Administration had put in a lot of efforts and resources for publicity programmes in these respects.

36. Ms Emily LAU expressed doubt about the effect of education and publicity in respect of eliminating discrimination on the ground of race or sexual orientation. She suggested that the Administration should consult the

Action

affected minorities by asking whether they had experienced discrimination in their daily lives.

37. SHA responded that the Administration had proactively approached ethnic minorities and people with a different sexual orientation for a better understanding of their experiences. It would keep in view the climate of public opinion and decide the appropriate measures in the light of prevailing social conditions and culture. He pointed out that legislation with wide-ranging social implications should require the support of the community. This was particularly the case for anti-discrimination legislation which intimately impinged on the daily lives of ordinary people. He stressed that the Administration had all along kept an open mind and would continue to listen to different views. Pending any significant change of circumstances, the Administration would focus its efforts to raise public consciousness of the discrimination issues. He added that it was not realistic to expect a large city such as Hong Kong to be absolutely clear of discrimination.

Age Discrimination

38. Miss CHAN Yuen-han and Mr James TO considered that given the significant increase in number of relevant complaints received by EOC, the Administration should proactively consider legislation to eliminate discrimination on ground of age. Miss CHAN pointed out that the Administration should not only consider employers' views on the matter.

39. Principal Assistant Secretary for Education and Manpower (4) said that legislation might not be the most effective way to eliminate age discrimination. She said that there would be practical difficulties to prove whether a middle or old-aged person was considered not suitable for a job because of his lower productivity or he was rejected purely on grounds of his age. She added that the Education and Manpower Bureau (EMB) had conducted an opinion survey in 1999 on age discrimination and found that the community held divergent views on whether legislation on age discrimination should be introduced. The Government had since then stepped up publicity and public education in the area. EMB would undertake a review towards the end of 2001 to ascertain the effectiveness of the publicity efforts. Mr James TO remarked that given the fact that there was legislation against discrimination on the ground of sex and family status, the Administration had a job to explain why it would be more difficult to prove age discrimination than discrimination on the ground of sex and family status. He suggested that the Administration should make reference to overseas experience.

40. Deputy Chairman suggested that as the LegCo Panel on Manpower would discuss the HKSAR's report under its purview at the meeting on 15 March 2001, members could follow up the discussion on the matter at the meeting.

Action

Protection of children and young persons groups

41. Mr Albert HO referred to Article 10(3) of ICESCR which stated that “special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions” and said that the Committee had previously expressed concern over “an absence of a holistic child policy for the protection of children from all forms of abuse” in Hong Kong. He then cited a number of cases in which the rights and interests of children were not protected. Mr HO was of the view that given the fact that the Administration had set up the Elderly Commission, Youth Commission and Women's Commission to oversee the formulation of relevant comprehensive policy, he failed to see why the Administration did not establish an independent mechanism specifically to monitor the implementation of government policy in relation to the rights of the child.

42. Mr Albert HO further said that the Committee had repeatedly pointed out that State Parties should adopt measures and legislation to protect the rights and interests of those who were being discriminated as soon as practicable, rather than on an incremental basis. He considered that legislation against discrimination should not be determined by majority views and that legislation with appropriate flexibility in implementation was the best way to educate people to refrain from practising discriminatory acts and behaviours. He urged the Administration to protect the rights and interests of different minority groups through appropriate legislation.

43. SHA took note of Mr Albert HO's views. He pointed out that the Administration was well aware of the Committee's concerns and would consider its recommendations in the light of the community's changing needs and values. He pointed out that Hong Kong was a mature society and there was sufficient legislation to protect the rights and interests of minority groups. He expressed reservation on the need to legislate for protecting the rights and benefits of different social groups including children and young persons. He reiterated that legislation with wide-ranging social implications should require the support of the community. SHA added that conducting opinion surveys was an essential but not the only way to ascertain the support of the community and the need to legislate. He stressed that in considering the need for anti-discrimination legislation, the Administration needed to balance different interests in a community. Taking incremental steps seemed to be a practical approach.

Declarations and reservations

44. Mr James TO enquired about the Administration's plan for withdrawing the four declarations and reservations registered by the Government of United

Action

Kingdom in respect of the application of ICESCR when she ratified the Covenant in 1976. DS/HA(1) responded that the Administration was liaising with the Central Government on the matter and some of these reservations would be withdrawn at an appropriate time, say at the time of ratification of the Covenant by the Central Government. Mr TO urged that if a decision had been made, the reservations should be withdrawn as early as possible and there was no need to wait until the Central Government ratified the Covenant.

III. Any other business

45. There being no further business, the meeting ended at 5:05 pm.

Legislative Council Secretariat
11 June 2001