

立法會
Legislative Council

LC Paper No. CB(2) 1557/00-01

(These minutes have been seen
by the Administration)

Ref : CB2/PL/SE/1

LegCo Panel on Security

**Minutes of special meeting
held on Tuesday, 12 December 2000 at 9:00 am
in the Chamber of the Legislative Council Building**

Members present : Hon LAU Kong-wah (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon Margaret NG
Hon Ambrose LAU Hon-chuen, JP
Hon WONG Sing-chi

Member attending : Hon Emily LAU Wai-hing, JP

Members absent : Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, JP
Hon Mrs Selina CHOW LIANG Shuk-yee, JP
Hon CHEUNG Man-kwong
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, JP
Hon IP Kwok-him, JP

Public Officers attending : Mrs Regina IP, JP
Secretary for Security

Mr Raymond WONG, JP
Deputy Secretary for Security 1

Miss Eliza YAU
Principal Assistant Secretary for Security E

Mr LEE Ming-kwai
Director of Operations
Hong Kong Police Force

Mr Benedict LAI
Deputy Law Officer (Civil Law)
Department of Justice

Ms Roxana CHENG
Senior Assistant Solicitor General
Department of Justice

**Attendance by : Movement Against Discrimination
invitation**

Mr MAK Hoi-wah

Mr Mark LI

Hong Kong Clerical Grades Civil Servants General Union

Mr CHAN Wai-keung
1st Vice President

Ms CHAN Suet-king
2nd Vice President

New World First Bus Company Staff Union

Mr CHUNG Chung-fai
Chairman

Personal Care Workers and Home Helpers Association

Mr MAK Tat-ching
Executive Officer

CSX World Terminals Employees Union

Mr TAM Chun-yin
Chief Executive
Personal Services Workers General Union

Miss CHAN Yim-may
Chief Executive

New Territories Association of Societies

Ms CHAU Chuen-heung

Mr TUNG Wai-ming

Hong Kong Federation of Students

Mr CHENG Chun-wai

Miss YUEN Hoi-yan

The Chinese University of Hong Kong Student Union

Mr FUNG Ka-keung
Vice President

Lingnan University Students Union

Mr LO Wai-ming
President

Hong Kong University of Science and Technology Students' Union

Mr SIU Yu-kwan

Mr AU Yee-chun

Hong Kong University Students' Union

Miss CHANG Wan-ki
President

Mr LEUNG Hin-wah

Asian Human Rights Commission

Mr Bruce VAN VOORIS

Mr WONG Kai-shing

New Territories Commercial and Industrial General Association

Mr SUNG Wai-ching

Vice-Chairman

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai

Director

Individuals

Mr SZE Man-hung, Stephen

General Education Centre

The Hong Kong Polytechnic University

Miss WONG Yuk

Ms TSE Woon-sung

Miss Grace LING

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Mr Raymond LAM
Senior Assistant Secretary (2)5

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I. Views of organizations/individuals on the regulation of public meetings and public processions and review of the Public Order Ordinance

Meeting with representatives of Movement Against Discrimination

Mr MAK Hoi-wah presented the views as detailed in the submission of Movement Against Discrimination, which was tabled at meeting, and concluded that POO should be amended.

(*Post-meeting note* : The submission tabled at the meeting was issued to members vide LC Paper No. CB(2) 483/00-01(01) on 13 December 2000.)

Meeting with representatives of the Hong Kong Clerical Grades Civil Servants General Union

(LC Paper Nos. CB(2) 347/00-01(06) and 448/00-01(01))

2. Mr CHAN Wai-keung presented the views as detailed in the further submission of the Hong Kong Clerical Grades Civil Servants General Union, which had been issued vide LC Paper No. CB(2) 448/00-01(01) on 8 December 2000, and concluded that POO should be amended. He said that the Hong Kong Clerical Grades Civil Servants General Union had no intention to oppose the Government. However, it considered that POO should be amended to foster a harmonious environment and safeguard social stability.

Meeting with Mr SZE Man-hung

(LC Paper No. CB(2) 468/00-01(01))

3. Mr SZE Man-hung presented the views as detailed in his further submission tabled at the meeting and concluded that POO should be amended. He said that some academics considered that a debate on the motion on POO should be deferred so that sufficient time would be allowed for a more thorough review of POO, such as by the Legislative Council (LegCo) and the Law Reform Commission (LRC). He said that civil disobedience might result if the motion on POO was passed at the LegCo Meeting on 20 December 2000.

(*Post-meeting note* : The further submission tabled at the meeting was issued to members vide LC Paper No. CB(2) 483/00-01(04) on 13 December 2000.)

Meeting with Miss WONG Yuk

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(LC Paper No. CB(2) 448/00-01(02))

4. Miss WONG Yuk presented the views as detailed in her submission and concluded that there was no need to amend POO.

Meeting with representative of New World First Bus Company Staff Union

(LC Paper No. CB(2) 347/00-01(01))

5. Mr CHUNG Chung-fai presented the views as detailed in the submission of New World First Bus Company Staff Union and concluded that POO should be amended.

Meeting with Ms TSE Woon-sung

6. Ms TSE Woon-sung presented her views and said that POO should be amended as follows -

- (a) the notice period should be shortened to 24 hours. No restriction should be imposed on the notice period in case of unexpected incidents;
- (b) the system of notice of no objection should be abolished; and
- (c) failure to comply with the notice requirement under POO should not be criminalized but only punishable with a fine.

(*Post-meeting note* : The submission of Ms TSE Woon-sung was issued to members vide LC Paper No. CB(2) 669/00-01(01) on 11 January 2001.)

Meeting with representative of Personal Care Workers and Home Helpers Association

(LC Paper No. CB(2) 347/00-01(03))

7. Mr MAK Tak-ching presented the views as detailed in the submission of Personal Care and Home Helpers Association and concluded that POO should be amended. He said that public meetings or public processions were usually organized within a very short time in labour disputes. It was impractical for seven days' notice to be given in such cases.

Meeting with representative of CSX Terminals Employees Union

(LC Paper No. CB(2) 347/00-01(04))

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8. Mr TAM Chun-yin presented the views as detailed in the submission of CSX Terminals Employees Union and concluded that POO should be amended. He said that public meetings or public processions were usually organized within a very short time when workers demand for the payment of outstanding wages from their employers. If seven days' advance notice was to be given, the employers concerned would have ample time to abscond from Hong Kong and evade from paying the outstanding wages. He added that the existing notice requirement in POO was unacceptable.

Meeting with representative of Personal Services Workers General Union
(LC Paper No. CB(2) 347/00-01(05))

9. Miss CHAN Yim-may presented the views as detailed in the submission of Personal Services Workers General Union and concluded that POO should be amended.

Meeting with representatives of New Territories Association of Societies
(LC Paper Nos. CB(2) 448/00-01(03) and CB(2) 468/00-01(02))

10. Ms CHAU Chuen-heung presented the views as detailed in her speaking note for the meeting and concluded that there was no need to amend POO.

Meeting with representatives of Hong Kong Federation of Students
(LC Paper No. CB(2) 347/00-01(07))

11. Miss YUEN Hoi-yan informed Members that the Hong Kong Federation of Students considered that POO should be amended. Besides the views as detailed in its submission, the Hong Kong Federation of Students considered that -

- (a) public assemblies and public processions were channels for drawing community attention to the requests or demands of a group of people;
- (b) regulation of public meetings and public processions should be confined to traffic and other arrangements. Screening should not be made of the purpose of or the political stance of organizers of public meetings or public processions;
- (c) in Israel, the purposes for which roads could be used covered public meetings and public processions;
- (d) the role of the Police should be that of facilitating the holding of public meetings or public processions in an orderly manner. Prior notification of the Police was already sufficient for such a

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purpose. No application with the Police should be required. Where the Police was not notified, public meetings and public processions could still be held peacefully, if well arranged; and

- (e) there was already other legislation against misbehaviour and violence in public meetings and public processions.

Meeting with representative of the Chinese University of Hong Kong Student Union

(LC Paper No. CB(2) 347/00-01(08))

12. Mr FUNG Ka-keung said that besides the views as detailed in its submission, the Chinese University of Hong Kong Student Union was opposed to the "notice of no objection" system, which was in effect a system requiring prior approval from the Police. It considered that the right to hold public meetings and public processions was a fundamental right. If the Administration was allowed to impose conditions on or prohibit the holding of public meetings or processions, it would be equivalent to requiring prior approval from the Administration before views could be expressed. A public meeting or public procession would become meaningless if it was required to be held at a very remote location or at late night. He further said that the role of the Police should be that of facilitating the holding of public meetings or public processions in an orderly manner. There was already other legislation against misbehaviour and violence in public meetings and public processions. He considered that the non-compulsory notification system adopted in Queensland of Australia was a fair system providing protection for human rights. He added that -

- (a) legislation should not be enacted by a non-representative legislature. The public had a right to participate in the enactment of legislation;
- (b) legislation should be enacted for regulating the power of the Government and protection of the general public; and
- (c) legislation should be drafted in such a way that facilitated the public's understanding of the exact requirements in the law. They should not be set out in such a way that left much discretion to the Administration in enforcement.

He concluded that POO should be amended.

Meeting with representative of Lingnan University Students Union

(LC Paper No. CB(2) 477/00-01(01))

13. Mr LO Wai-ming presented the views as detailed in his speaking note

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for the meeting and concluded that POO should be amended.

(*Post-meeting note* : The speaking note provided by the Lingnan University Students Union was issued to members vide LC Paper No. CB(2) 501/00-01(03) on 14 December 2000.)

Meeting with representatives of Hong Kong University of Science and Technology Students' Union

(LC Paper No. CB(2) 478/00-01(01))

14. Mr SIU Yu-kwan presented the views as detailed in the submission of Hong Kong University of Science and Technology Students' Union and concluded that POO should be amended. He added that as amendments were made to POO in 1997 by the Provisional Legislative Council, the legal basis of POO was doubtful.

Meeting with representatives of Hong Kong University Students' Union

(LC Paper No. CB(2) 468/00-01(03))

15. Mr LEUNG Hin-wah informed Members that besides the views as detailed in its submission, the Hong Kong University Students' Union considered that -

- (a) the penalty for non-compliance with the notice requirement, which was not proportionate to the offence especially in comparison with other criminal offences, should be decriminalized and reduced;
- (b) misbehaviour and violence in public meetings and public processions could be dealt with by existing legislation other than POO;
- (c) the Police should be required to apply to the court for an injunction to prohibit public processions;
- (d) in appeals under POO, the burden of proof should be on the Administration; and
- (e) it was inappropriate for some organizations to link up POO to the arson at the Immigration Department's (ImmD's) Wanchai office in August 2000, as the latter was related to murder rather than unauthorized assembly.

He concluded that POO should be amended.

Meeting with representatives of Asian Human Rights Commission

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(LC Paper No. CB(2) 448/00-01(05))

16. Mr WONG Kai-shing presented the views as detailed in his speaking note for the meeting and concluded that POO should be amended.

(*Post-meeting note* : The speaking note provided by the Asian Human Rights Commission was issued to members vide LC Paper No. CB(2) 501/00-01(02) on 14 December 2000.)

Meeting with representative of New Territories Commercial and Industrial General Association

(LC Paper No. CB(2) 448/00-01(06))

17. Mr SUNG Wai-ching presented the views as detailed in the submission of the New Territories Commercial and Industrial General Association and concluded that there was no need to amend POO.

Meeting with representative of Hong Kong Human Rights Monitor

18. Mr LAW Yuk-kai presented the views as detailed in the submission of the Hong Kong Human Rights Monitor, which was tabled at the meeting, and concluded that POO should be amended. He pointed out that in its concluding observations dated 4 November 1999 on the Fifth Periodic Report of the Hong Kong Special Administrative Region (HKSAR) under the International Covenant on Civil and Political Rights (ICCPR), the United Nations Human Rights Committee (UNHRC) had stated its concern that POO could be applied to restrict unduly enjoyment of the rights guaranteed in Article 21 of ICCPR. UNHRC considered that HKSAR Government should review POO and bring its terms into compliance with Article 21 of ICCPR.

(*Post-meeting note* : The submission tabled at the meeting was issued to members vide LC Paper No. CB(2) 483/00-01(02) on 13 December 2000. A further submission from the Hong Kong Human Rights Monitor was issued to members vide LC Paper No. CB(2) 501/00-01(01) on 14 December 2000.)

Meeting with Miss Grace LING

19. Miss Grace LING presented the views as detailed in her submission tabled at meeting and concluded that there was no need to amend POO. As regards labour disputes, she considered that it would be more appropriate for employees to seek the assistance of the Labour Department in taking legal actions against the employers concerned. Public processions would not prevent employers from absconding from Hong Kong.

(*Post-meeting note* : The submission tabled at the meeting was issued to

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members vide LC Paper No. CB(2) 483/00-01(03) on 13 December 2000. A further submission provided by Miss Grace LING was issued to members vide LC Paper No. CB(2) 531/00-01(01) on 18 December 2000.)

Issues raised by Members

20. Miss Emily LAU said that the four special Panel meetings held to receive views on POO had provided opportunities for the discussion of the issue in a rational manner. Noting from the meetings that there were divergent views on the issue, she asked whether it was the time to vote on a motion regarding whether POO should not be amended at the LegCo meeting on 20 December 2000.

21. Mr SZE Man-hung considered that the following week was not a suitable time for LegCo to vote on whether POO should not be amended. He said that more discussions on POO should be held by LegCo, the Executive Council, the Security Bureau, the Department of Justice (D of J), and LRC. As the community had divided views on whether POO should be amended, more discussions in the community might help to resolve the differences in views. On the other hand, civil disobedience might result if the motion on POO was passed by LegCo in the following week.

22. Mr MAK Hoi-wah said that as many organizations had expressed strong views about the enforcement of and penalties under POO, the passage of the motion might result in civil disobedience. He added that the Administration would be setting a bad precedent to move a motion on whether a piece of legislation should be amended. He questioned whether motions on other legislation would also be moved in LegCo each year. He considered that it would be more appropriate for LRC to review POO and make recommendations.

23. Miss CHANG Wan-ki considered that it was unusual for the Administration to move a motion to confirm that a piece of legislation needed not be amended. It was questionable why such a motion was needed if the legislation was considered to be in order. She said that the special meetings of the Panel to receive public views on POO was only the beginning of public consultation. The views received should be analyzed before the way forward was determined. If the motion debate was held in the following week by LegCo, which was not representative, it would be an indication of the Administration's disregard of the views of the public on the issue.

24. Mr LEUNG Hin-wah said that as current disputes were related to legal terms such as national security, public safety and the circumstances under which ICCPR was applicable to Hong Kong, it was more appropriate for the issues to be examined by LRC and the legal profession before the motion was debated.

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25. Mr CHENG Chun-wai said that the divergence of views on whether POO should be amended reflected that more views should be sought from the public and the issue should be further examined cautiously. The motion should not be debated until more thorough consultation and review of POO were made.

26. Mr FUNG Ka-keung said that many organizations and individuals had called for the amendment of POO. The Administration would be disregarding public views if it insisted that POO needed not be reviewed. He added that the passage of a Government motion in LegCo was easier in that it only required a simple majority vote of the Members present, whereas the passage of a Member's Bill or motion would be more difficult in that it required a simple majority vote of the two groups of Members present. He condemned the Administration for rationalizing POO through a Government motion.

27. Secretary for Security (S for S) questioned why Mr SZE Man-hung was so convinced that civil disobedience would result if the motion was passed. She questioned whether Mr SZE intended to organize, lead or take part in such civil disobedience, and whether he was using this to threaten the Administration. She pointed out that civil disobedience was not a legal term. In overseas countries, persons who took part in civil disobedience were prepared for imprisonment. She asked who should be held responsible if people who did not know much about civil disobedience participated in the activity and became liable for criminal offences.

28. Mr SZE Man-hung responded that he was only asking the Administration to address the problem rather than threatening it. He said that the Administration had not enforced POO in more than 400 public meetings or public processions where prior notification had not been given. This reflected that the Administration was in breach of the rule of law, as enforcement actions had not been taken against persons in breach of POO. Some people would stand out to oppose a piece of legislation, if it was unfair. Demonstration was a right needed by the poorest and most pressurized groups in the community. It would be unfair if such a right was to be restricted. He pointed out that the maximum penalty for assaulting others was an imprisonment term of three years, whereas the maximum penalty for failure to comply with the notice requirement was an imprisonment term of five years. This could only be found with a Fascist government. He added that while the provisions in POO were even worse in the colonial times, there was still room for the HKSAR Government to improve the provisions in POO.

29. S for S responded that the Administration had never said that the holding of public meetings and public processions would breach the rule of law. She pointed out that about 100 public meetings or public processions were held in a year in the 1980s. This number had risen to about 500 to 600 before reunification and about 2 000 after reunification. It was obvious that there was more room for public meetings and public processions after reunification. She

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added that an examination revealed that public meetings and public processions were held for different reasons, including the expression of views on district matters and the refurbishment work of the Housing Department. Thus, public meetings and processions were not only held by the most pressurized groups in the community.

30. S for S stressed that the Administration had never restricted freedom of expression. It was not breaching the rule of law in deciding not to prosecute the participants of some 400 public meetings or public processions where the prior notification requirement had not been complied with. She pointed out that it was an offence under the law for a person to cross the road without following the traffic lights, to travel in private cars without wearing seat belts and to use the autotoll gates of tunnels without the automatic payment equipment installed in the car. The Administration had not instituted prosecutions against all persons in breach of these offences. In fact, there were many pieces of legislation which provided the enforcement agencies the discretion of whether to institute prosecutions. Providing flexibility in enforcement should not be regarded as a breach of the rule of law. She pointed out that whether prosecution would be instituted in public meetings or public processions were based on -

- (a) whether the public meeting or public procession was held peacefully, such as whether there were clashes between different groups of people; and
- (b) the demonstrators' response towards the warnings of law enforcement officers.

She considered that many of the views expressed by Mr SZE, such as the view that the right of an individual to demonstrate and express dissatisfaction should override other rights, were very subjective.

31. S for S said that although many representatives of student unions said that many organizations called for the amendment of POO, there were also many organizations which took the view that POO should not be amended. The latter included the travel industry, the Lan Kwai Fong Holdings Limited, the various chambers of commerce, traditional district organizations, the Fukienese Association and Kiangsu and Chekiang Residents (Hong Kong) Association. These were representative of a large sector of the community. She further said that there was no need to rationalize POO through a motion debate. The passage of a motion on POO on 20 December 2000 did not mean that discussions on POO could not continue. In fact, no one could stop the community from continuing discussion on the issue. The wording of the motion was that "That this Council considers that the Public Order Ordinance's existing provisions relating to the regulation of public meetings and public processions reflect a proper balance between protecting the individual's right to

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freedom of expression and right of peaceful assembly, and the broader interests of the community at large, and that there is a need to preserve these provisions". It did not imply that reviews or amendments could not be made to POO in the future.

32. Mr SUNG Wai-ching expressed support for the views of S for S. He considered that the public could continue to express their views even if the motion debate was held as scheduled.

33. Miss CHANG Wan-ki said that the Administration should be more proactive in the review and amendment of legislation. Although various suggestions had been made on the amendment of POO, the Administration had no intention to carry out a full review on POO. It was necessary to resort to civil disobedience, given that other ways to urge the Administration to review and amend POO were unsuccessful. She pointed out that although the Administration had stated that flexibility was exercised in enforcement, the criteria adopted in exercising such flexibility was unclear. She further pointed out that although S for S said that many organizations were in support of not amending POO, it should be noted that there were also many organizations which supported the amendment of POO and made proposals after studying overseas practices and consulting experts. As there was much dispute on whether POO should be amended, she considered that a referendum should be held on the issue.

34. Mr SIU Yu-kwan said that clashes in public meetings and public processions could be dealt with by legislation other than POO. He added that if the motion was passed by LegCo, the Administration should be responsible for the resulting civil disobedience.

35. Miss Grace LING said that in exercising one's rights, one was also responsible for the rights of other persons. It would be against the spirit that all persons were equal under the law, if certain rights of an individual were so important and overrode the rights of other persons. She considered that as public meetings and public processions could be held if the advance notice requirement in POO was complied with, Hong Kong had not reached the stage where expression of views could only be made through civil disobedience. She added that civil disobedience was a negative rather than positive way of expression. Such expression would be justified only if all other legal channels of expression had been used and proved to be of no effect.

36. Mr FUNG Ka-keung commented that the Administration had mentioned different criteria in respect of the enforcement of POO at different times. This reflected that POO had provided the Administration with much discretion in enforcement.

37. Mr MAK Hoi-wah said that civil disobedience in Hong Kong only

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meant the open expression of views against existing legislation or policy in a peaceful manner. He considered that the purpose of Mr SZE mentioning civil disobedience was simply to remind the Administration rather than threatening it. On the other hand, the Administration had motivated a number of organizations to express support for not amending POO. He pointed out that the public was concerned whether the Administration was selective in the enforcement of POO. He added that the relaxation of requirements in POO in 1995 had not resulted in any substantial increase in the number of public meetings and public processions. POO should be amended to remove the restrictions on freedom of expression.

38. Mr MAK Hoi-wah further said that the passage of the motion would be easy because half of the LegCo Members were elected from the functional constituencies or Election Committee. The people they represented did not have a need to resort to demonstrations to fight for their rights and express their views. He considered that the expression of views through peaceful means by the general public, workers and the underprivileged was only aimed at drawing the Administration's attention to their requests and views. A relaxation of requirements on peaceful demonstration would not result in more clashes and riots in the community. Providing more room for the public to express their views would facilitate the Administration in modifying its policy and reducing dissatisfaction of the public. He added that the arson at ImmD's Wanchai office in August 2000 could be dealt with by legislation other than POO.

39. Mr LEUNG Hin-wah said that although S for S maintained that there was no need to amend POO, it could be noted that the penalties under POO were disproportionate, as the maximum penalty for failure to comply with the notice requirement was an imprisonment term of five years, whereas the maximum penalty for assaulting others was an imprisonment term of three years.

40. Mr SZE Man-hung pointed out that while there was conflict between a person's right to assembly and the rights of other persons, John RAWLS had stated that the right to assembly was a fundamental human right that should override the economic interests and convenience of other persons. He said that the maximum penalty of an imprisonment term of five years was not proportionate to the offence of failure to comply with the notice requirement. He reiterated that more discussions on POO should be held by LegCo, the Executive Council, the Security Bureau, D of J and LRC before a decision was made on POO.

41. S for S said that the Administration had never linked up POO to the arson at the ImmD's Wanchai office in August 2000. It was only a view expressed by some deputations who attended previous special meetings of the Panel. She pointed out that apart from reiterating their views, the students had not been accurate in respect of some facts. While many attending representatives had said that there was a lack of flexibility in POO for the Police to accept notice periods of less than seven days, POO actually provided that if

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the Commissioner of Police (CP) was reasonably satisfied that earlier notices could not have been given, he must accept shorter notice. In fact, the notices of about 20% of some 6 000 public meetings and public processions held after reunification were less than seven days and the Police had accepted all these applications. It was thus incorrect to say that there was no flexibility in the notice requirement and that POO restricted the freedom of holding public meetings and public processions. While it was stated in the submissions of some student unions that a public procession could be held only when a notice of no objection was issued by the Police, POO actually provided that if CP did not issue a notice of no objection or a notice of objection 48 hours before the holding of a public procession, he was taken to have issued a notice of no objection and the procession could proceed.

42. S for S said that while there were claims that the right of peaceful assembly was the most fundamental right, many LegCo Members had also stated in the previous year that right of abode was the most fundamental right. She considered that the view that a person's right to express his dissatisfaction was most important and should override the rights of other persons was unacceptable. This was against the principle that everyone was equal under the law. She added that it was unfair to describe a piece of legislation as draconian merely because a breach of it would subject a person to criminal liability. She questioned whether legislation related to safety seat belts was draconian, as failure to wear seat belts would also subject a person to criminal liability.

43. On the question of penalty, S for S said that it was not appropriate to compare the maximum penalty for failure to give notice and that for assaulting other persons. Assault usually involved the injury of one person. However, the public meeting or public procession of a group of persons who deliberately disobeyed the law might result in arson attacks and throwing of stones, especially in times of social instability. The consequence of such incidents would certainly be more serious than the assault of one person. Under such circumstances, the rioters would usually be prosecuted for attacking the Police and misbehaviour in public places in addition to participating in unauthorized public meeting or public procession. Although the maximum penalty of five years' imprisonment for failure to comply with the notification requirement was heavier than that for assaulting other persons, it should be noted that this maximum penalty of five years' imprisonment was applicable only when a person had no reasonable excuse or knowingly took part in a public meeting or public procession. She added that it was noted at a former Bills Committee meeting that a person convicted of stealing a piece of candy was liable under the Theft Ordinance (Cap. 210) to a maximum penalty of 10 years' imprisonment.

44. S for S stressed that consistent criteria were adopted by the Police in the enforcement of POO. In deciding whether information relating to a case should be provided to D of J for assessing whether prosecution should be instituted, the Police would have regard to -

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- (a) whether the public meeting or public procession was in breach of the peace; and
- (b) the response of the demonstrators towards warnings given by law enforcement officers.

There was no question of selective enforcement of POO.

45. Mr James TO commented that S for S was mixing up many fundamental and non-fundamental rights. He said that the maximum penalty for failure to comply with the notice requirement was disproportionate, as it was even heavier than that for violence in public assemblies and public processions. The maximum penalty for failure to comply with the notice requirement and that for assaulting others could be compared in terms of the degree of violence. S for S said that the Administration would provide its response on the criminal sanction on participants of public assemblies at the next special meeting of the Panel on 16 December 2000.

46. Miss Grace LING said that John RAWLS had given equal importance to the different rights of a person and stated that the rights of different people were equal. He had not stated that civil right was the most fundamental and basic right of a person. She added that each right was associated by a responsibility. Legislation was enacted on one's responsibilities.

47. Mr LAW Yuk-kai said that a major characteristic of human rights was that certain rights under ICCPR should not merely be decided by the majority views in the society. The provisions in relevant legislation should be reviewed by legal experts of LRC to examine whether they were compatible with ICCPR. Where necessary, technical advice should be sought from UNHRC on how to bring the terms of POO into compliance with ICCPR. He pointed out that while the Administration had stressed the importance of flexibility in enforcement, it should be noted that consistency, predictability and fairness were very important in law. The current problems were the result of the Administration's selective enforcement of the law. He added that many pieces of legislation of the colonial times were enacted in such a way to control, pressurize and defend against the public. Although a majority of such legislation had already been amended, the remaining ones should be reviewed and amended where necessary. He considered that the Administration should do more to balance between security and the rights of a person. The maximum penalty for an offence should be amended, if it was disproportionate.

48. Mr SIU Yu-kwan commented that the notice of no objection requirement in POO was in fact a system enabling the Police to scrutinize public meetings and public processions.

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49. S for S said that the Police's power to object to the holding of a public meeting or public procession was not absolute. If an applicant was dissatisfied with the decision of the Police, an appeal could be lodged with an appeal board. An applicant dissatisfied with the decision of the appeal board could apply for a judicial review. She pointed out that even the Hong Kong Bar Association accepted the retention of a notification system, although it had a different view about the length of notice required. A notification requirement was also found in the relevant legislation of Queensland.

50. Referring to his question at the previous meeting about public processions held on the sea, Mr James TO said that the Legal Service Division of LegCo had studied the issue and noted that public processions on the sea were regulated by section 66B of the Shipping and Port Control Regulation (Cap. 313). Any person who committed an offence under the section was liable to a fine at level 1.

51. The Chairman thanked all the deputations for attending the meeting. He expressed appreciation that all deputations had discussed issues related to POO in a rational manner despite differences in views. He assured the deputations that their submissions would be provided to all LegCo Members and the Administration.

52. The meeting ended at 12:30 pm.

Legislative Council Secretariat

8 May 2001