



Legislative Council

LC Paper No. CB(2)928/02-03

(These minutes have been
seen by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

**Minutes of meeting
held on Monday, 16 December 2002 at 2:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon SZETO Wah
Hon TAM Yiu-chung, GBS, JP
Hon IP Kwok-him, JP
- Members attending** : Hon Cyd HO Sau-lan
Hon CHAN Yuen-han, JP
Hon Michael MAK Kwok-fung
- Members absent** : Hon NG Leung-sing, JP
Dr Hon Philip WONG Yu-hong
Hon YEUNG Yiu-chung, BBS
Hon LAU Ping-cheung
- Public officers attending** : Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs
- Mr Bassanio SO Chek-leung
Acting Deputy Secretary for Constitutional Affairs
- Mrs Philomena LEUNG HO Ye-man
Principal Assistant Secretary for Constitutional Affairs

By invitation : City University of Hong Kong

Professor Joseph Y S CHENG
Professor of Political Science
Department of Public and Social Administration

Mr CHOY Chi-keung
Lecturer
Division of Social Studies

Mr SING Ming
Associate Professor

Hong Kong Baptist University

Dr K L CHAN Kenneth
Assistant Professor
Department of Government and International Studies

The University of Hong Kong

Dr LO Shiu-hing
Associate Professor
Department of Politics and Public Administration

Mr Benson WONG Wai-kwok
Senior Research Assistant
Department of Politics and Public Administration

Mr Bruce KWONG Kam-kuen
PhD Candidate
Department of Politics and Public Administration

Mr Nicholas CHEUNG Yat-fung
MPhil Candidate
Department of Politics and Public Administration

Miss Candy SO Wing-yan
Research Assistant
Department of Politics and Public Administration

Clerk in attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mr Watson CHAN
Head of Research and Library Services Division

Mr Paul WOO
Senior Assistant Secretary (2)3

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2)545/02-03)

The minutes of the meeting held on 21 October 2002 were confirmed.

II. Information paper issued since the last meeting

IN06/02-03 - Supplementary information on "Selected Issues Relating to Declaration of Interests and Avoidance of Conflicts of Interests" prepared by the Research and Library Services Division (RLSD)

2. Members noted that the above information note had been issued for the Panel's information.

III. Items for discussion at the next meeting

(LC Paper Nos. CB(2)661/02-03(01) and (02); 684/02-03(02))

3. Members noted that the Constitutional Affairs Bureau (CAB) had provided a paper with an updated list of outstanding items of the Panel (LC Paper No. CB(2)684/02-03(02)). The list provided indication on the timing for discussion of certain items. CAB would update the list on a quarterly basis.

Agenda for meeting on 20 January 2003

4. The Chairman invited members to consider whether the Secretary for Constitutional Affairs (SCA) should be invited to give a briefing on the CE's 2003 Policy Address at the next Panel meeting on 20 January 2003. Members agreed that it was not necessary to do so as the relevant issues pertaining to the policy portfolio of CAB would be followed up by the Panel.

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5. Members agreed that the following items would be discussed at the meeting on 20 January 2003 -

- (a) Proposals on electoral arrangements for 2003 District Council (DC) elections (paragraph 34 below refers);
- (b) 2004 Legislative Council (LegCo) elections (paragraph 34 below refers);
- (c) Accountability system for principal officials and related issues :
 - (i) Arrangements during principal officials' temporary absence;
 - (ii) Attendance of principal officials at meetings of LegCo (paragraph 34 below refers);
- (d) Report on implementation of the accountability system for principal officials.

Role of members of Government in LegCo

6. The Chairman said that the above item arose from the controversy over whether the Committee on Rules of Procedure (CROP) should be chaired by a LegCo Member who was also an Executive Council (ExCo) Member. The issue was discussed by CROP and the House Committee. The Chairman said that at the House Committee meeting on 22 November 2002, he had suggested that the issue should be examined in the wider perspective of chairmanship of committees of LegCo and in the light of the experience of other places. At the meeting of CROP on 2 December 2002, members agreed that the item could be discussed by this Panel.

7. The Chairman sought members' views on whether RLSD should be requested to conduct a research study on related overseas practices to facilitate the Panel's discussion on the matter. Ms Emily LAU and Miss Margaret NG agreed that a research should be undertaken. Mr TAM Yiu-chung, Mr IP Kwok-him and Mr HUI Cheung-ching expressed reservation about the need for a research study. Mr James TIEN said that there appeared to be no comparable counterparts of non-official ExCo Members in other places. He opined that RLSD might need to conduct some preliminary fact-finding before deciding on whether a more in-depth research study was warranted.

8. The Chairman suggested that the matter should be decided at the next meeting.

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IV. Research Report on "The Relationship between the Government and the Opposition or Minority Parties in Selected Places"

(RP01/02-03; LC Paper Nos. CB(2)661/02-03(03); 676/02-03(01); 692/02-03(01) - (03); 771/02-03(01) & (02))

9. The Chairman welcomed academics to the meeting and invited them to present their views on the Research Report on "The Relationship between the Government and the Opposition or Minority Parties in Selected Places" prepared by RLSD (RP01/02-03)). Their major views were highlighted in the paragraphs below.

City University of Hong Kong

Professor Joseph Y S CHENG, Professor of Political Science

(LC Paper No. CB(2)711/02-03(01))

10. The views of Professor CHENG were summarised as follows -

- (a) The only way to nurture the development of political parties was to provide opportunities for them to share the power of governance. Political parties or groups in Hong Kong, however, regardless of whether they were pro-Government or otherwise, had no recognised status. They played no significant part in the process of policy formulation;
- (b) Political parties in Hong Kong did not receive sufficient resources and financial support from the Government in undertaking research on policy issues. The lack of constructive opinions and proposals from political parties on Government policies had seriously hampered the role of political parties and affected public confidence in them; and
- (c) To assist the development of representative government and improve policy formulation, the Government should provide additional resources to political parties and LegCo Members (through increased resources provided to the LegCo Secretariat) in undertaking policy research studies. Availability of a multitude of views on Government policies and policy options for the public to consider would be conducive to the good governance of Hong Kong.

Mr CHOY Chi-keung, Lecturer

(LC Paper No. CB(2)692/02-03(03))

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11. The views of Mr CHOY Chi-keung were summarised as follows -
- (a) A crucial factor for the continued development of political parties was to provide opportunities for political parties to assume the power of governance. However, this would be quite remote for Hong Kong in the absence of major constitutional reform. To promote constitutional development in Hong Kong, the Government should provide more assistance to political parties. In some overseas democratic jurisdictions, political parties which succeeded in securing a certain proportion of the seats in the legislature were entitled to financial assistance from government. The possibility of introducing a similar practice in Hong Kong should be considered;
 - (b) Government assistance to candidates at elections would encourage more people to participate in political affairs and enhance the development of political parties. In this regard, the Administration's recent proposal to introduce a package of measures to assist candidates standing in the 2004 LegCo elections, including provision of financial subsidy to candidates in accordance with the number of votes received, was supported. Nevertheless, the Administration should consider lowering the threshold of 5% or more of valid votes received to 3% for a candidate to be entitled to the subsidy, so as to be consistent with the proposal to lower the threshold to 3% for the return of election deposit;
 - (c) The Administration should reconsider its recommendation to reduce the two existing rounds of free mailing of election advertisements to one. An alternative approach worth consideration was that candidates on a geographical constituency list could provide election advertisements in the form of A4 size paper for the Government to mail to electors in bulk; and
 - (d) Similar financial support should be provided to candidates standing in DC elections.

Mr SING Ming, Associate Professor
(LC Paper No. CB(2)676/02-03(01))

12. The views of Mr SING Ming were summarised as follows -
- (a) To enhance constitutional development in Hong Kong, increased resources should be made available for policy research studies by parties other than the Government. Increased funding should be provided for LegCo Members and/or LegCo Secretariat for

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conducting policy research;

- (b) Compared with other places, Hong Kong was lagging behind in policy research. For instance, Hong Kong was outperformed by South Korea and Taiwan in terms of professional research expertise as well as the quantity and quality of research reports produced. This hampered the ability of political parties and groups to examine Government policies and formulate alternative proposals to challenge the dominance of the Government in policy-making. As regards RLSD of the LegCo Secretariat, the increased complexity of research studies, the inadequate research officers and expertise, and the need to balance the conflicting ideology of LegCo Members in drawing the scope of research appeared to have affected the quality of the research reports produced by RLSD; and
- (c) Speeding up the pace of democratisation in Hong Kong would encourage political parties to become more proactive in producing innovative ideas on policy issues and formulating policy alternatives.

Hong Kong Baptist University

Dr K L CHAN, Assistant Professor
(LC Paper No. CB(2)661/02-03(03))

13. The views of Dr K L CHAN were summarised as follows -

- (a) There was a multitude of interests and opinions in society. The development of political parties was a natural course under a democratic system of representative government. The Government should adopt an open and positive attitude towards such development;
- (b) LegCo was central to the development of democracy and party politics in Hong Kong. A coalition could be formed between pro-government parties and independent/non-partisan Members so as to provide the Government with stable support and a source of leadership in the workings of LegCo. On the other hand, opposition groupings could come together to act as a balancing power; and
- (c) LegCo should develop its own rules of procedures or convention to govern the relationship between the Government and the opposition parties in the legislative process, and that between pro-government parties and independent/non-partisan Members to

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ensure that they were provided with time for Council business and resources proportionate to their share of seats in LegCo.

The University of Hong Kong

Dr LO Shiu-hing, Associate Professor, and Miss Candy SO Wing-yan, Research Assistant
(LC Paper No. CB(2)771/02-03(02))

14. The views of Dr LO Shiu-hing and Miss Candy SO Wing-yan were summarised as follows -

- (a) Although a ruling party did not exist in Hong Kong, it could be said that there was a ruling coalition composed of non-party principal officials of the Government and non-official Members of ExCo, including the two leaders of the Liberal Party and the Democratic Alliance for Betterment of Hong Kong respectively;
- (b) There were no formal ruling party or opposition/minority parties in Hong Kong. The function of a "Shadow Cabinet" could be performed informally by political parties that played the role of the opposition in LegCo;
- (c) The Government should meet regularly with members of political parties to enhance communication; and
- (d) DCs would be a useful training ground for local politicians to experiment the operation of ruling/opposition parties, through the formation of Executive Committees at DCs to manage district affairs.

Mr Benson WONG Wai-kwok, Senior Research Assistant
(LC Paper No. CB(2)692/02-03(01))

15. The views of Mr Benson WONG Wai-kwok were summarised as follows -

- (a) In Hong Kong, political parties were not formally recognised by law, including the Basic Law. There was also no legislation on political parties. The relationship between the Government and opposition/minority parties depended on the Government's attitude towards political parties;
- (b) In overseas democratic countries, opposition parties played the role of a "faithful critic" which monitored the Government for the common good. The Government, therefore, should recognise

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opposition/minority parties as playing a constructive role in ensuring good governance, and establish a partnership relationship with political parties; and

- (c) Opposition/minority parties, on the other hand, should consolidate their positions and influence to strengthen their role of monitoring the Government.

Mr Bruce KWONG Kam-kuen, PhD Candidate
(LC Paper No. CB(2)692/02-03(02))

16. The views of Mr Bruce KWONG Kam-kuen were summarised as follows -

- (a) Under an elected legislature, Government should attach importance to the views of the largest political party in formulating government policies;
- (b) Under the existing constitutional framework of Hong Kong, it was not possible for any political party to form the Government. This could lead to increased antagonism between political parties and the Government. To address the problem, it might be necessary to undertake constitutional reform to provide a constitutional role for opposition/minority parties and to enable the establishment of a formal relationship between the Government and opposition/minority parties; and
- (c) Furthermore, the election of LegCo members and the Chief Executive (CE) by universal suffrage should be implemented as soon as possible in order to improve the relationship between the Government and LegCo.

Mr Nicholas CHEUNG Yat-fung, MPhil Candidate

17. The views of Mr Nicholas CHEUNG Yat-fung were summarised as follows -

- (a) It was difficult to apply the same concept of opposition/minority parties as in other jurisdictions to Hong Kong as the role of political parties was not formally recognised;
- (b) To promote the development of political parties in Hong Kong, it was desirable to enact political party law to provide formal recognition of political parties and a statutory regime within which political parties were to conduct their activities. Reference could be drawn from the experience of other

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jurisdictions such as the system adopted in New Zealand; and

- (c) Furthermore, Government should provide financial support to political parties and groups, including subsidy to cover election expenses of candidates, financial assistance for maintaining political party offices and undertaking policy research work etc.

Issues raised by members

Development of political parties

18. Ms Emily LAU referred to an article written by SCA and published in the press on 14 December 2002, which mentioned that the recently announced measures relating to, inter alia, provision of financial support to candidates standing in the 2004 LegCo elections would encourage broader participation in elections and promote the development of political parties and groups. She sought the academics' comments on the statement.

19. Dr K L CHAN said that he agreed that the new measures proposed by the Administration could have the effect of promoting participation of political parties or groups. He added that under a system where the Government had policy-making power but exercised no vote in LegCo, it was necessary for the Government to strengthen the line-up of support in LegCo, especially from political parties or groups which in general lent support to the Government on policy issues. The Government should also take necessary measures to improve its relationship with other political parties or groups in LegCo.

20. Mr CHOY Chi-keung opined that there were measures which limited the development of political parties in Hong Kong. For example, an elected CE candidate with political party background was required to withdraw his membership from the political party. The adoption of proportional representation system for LegCo elections had deterred candidates from participating in elections as members of political parties. Furthermore, unlike the system in some other jurisdictions, government funding to assist political parties in their work in the legislature was not available in Hong Kong.

21. Miss Margaret NG said that the experience of democratic jurisdictions like the United Kingdom showed that the existence of a strong opposition party in the legislature, whose duty was to "oppose" the government, served an important role of checking and balancing the government and avoiding autocratic governance. The opposition party's views, however, must be based on good grounds for a constructive purpose.

22. Dr K W CHAN echoed Miss Margaret NG's views. He said that in overseas democratic jurisdictions, the existence of a strong opposition party had the effect of subjecting the ruling party to the task of good governance and

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accountability, as failure to do so would result in the Government being voted out of power in the next election. He opined that the Government should assume an open attitude and recognise the value of the different views and opinions from opposition/minority parties in the legislature.

23. Mr CHEUNG Man-kwong said that DCs assumed part of the function of the executive authorities in the administration of district affairs. DCs were a good training ground of political leadership as DC members could gain valuable experience in public affairs by participating directly in the business of DCs. He agreed with Mr CHOY Chi-keung's view that to promote the development of political parties, the Administration should provide financial support to candidates at DC elections.

Policy research work

24. Ms Emily LAU invited Mr SING Ming to elaborate on his view that democratisation would encourage political parties to devote more efforts in policy research work.

25. Mr SING Ming responded that at present, not all Members of LegCo were directly elected. The power of LegCo Members was also restricted, for example, in introducing bills. He said that speeding up the pace of democratisation could remove some of the constraints, hence motivating greater incentive of political parties and groups to undertake policy research work.

26. Mr SING Ming further said that as compared with the Central Policy Unit (CPU) and other research institutions in Hong Kong, non-profit making "think-tank" organisations like the Sejong Institute in South Korea and the Academia Sinica in Taiwan were playing a more proactive role in undertaking policy research work. Policy-oriented research reports produced by these institutions surpassed there in Hong Kong in both quantity and quality, with high transparency of research findings and ease of access to research data by the public.

27. Ms Cyd HO opined that as CPU was financed by public money, the data and information collected by CPU in research projects should be made available for use by the general public and interested parties. Mr SING Ming said that in his view, non-sensitive information kept by CPU might be made public.

28. In response to members, SCA responded that he would convey the suggestion to CPU for its consideration.

29. In reply to the question from the Chairman, Mr SING Ming said that there were no indications that research reports produced by the Sejong Institute

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and the Academia Sinica were influenced by the government or had party political inclinations.

30. Mr CHOY Chi-keung said that he shared the observation of Mr SING Ming that a significant part of research reports produced by RLSD were purely fact-finding exercises. He opined that to stimulate new ideas on policy issues, additional resources should be made available to political parties to strengthen their research studies on government policies.

Response of the Administration

31. At the invitation of the Chairman, SCA made the following comments in response to the issues raised at the meeting -

- (a) The Administration recognized that Hong Kong was a pluralistic society and people were free to express views on matters of public interest and concern. Although an opposition party did not exist in Hong Kong, the Administration had taken note of the diverse views expressed in and outside LegCo, and sought to widen the common ground with those taking a different stance from the Government for the benefit of the interests of Hong Kong;
- (b) The Administration had no intention to suppress the development of political parties. The growing importance of political parties, particularly in reflecting different interests of the society and helping to achieve the broadest possible consensus on social, economic and livelihood issues, was recognised. In this connection, two political party leaders had been appointed as unofficial Members of ExCo. Also, with the implementation of the accountability system, people with political party background could be appointed as principal officials;
- (c) The Administration's proposal to provide partial financial assistance to candidates at the 2004 LegCo elections was generally supported by the public, although some queries had been raised as to the justifications for providing the subsidy out of public money. The Administration also reckoned the important role played by DC members in the management of public affairs at the local level. However, there were difficulties in providing similar financial assistance to DC candidates, particularly in view of the present financial situation faced by the Administration. The matter, however, could be reviewed at a later stage, having regard to the experience of the 2004 LegCo elections;
- (d) The proposal made by Mr CHOY Chi-keung relating to free mailing of election materials for candidates could be further

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considered; and

- (e) The Administration accepted that policy research studies could generate constructive new thinking which was beneficial to the long term development of Hong Kong. The strengthening of policy research work, nevertheless, would likely be affected by resources considerations, such as funding available from both the Government and the private sector. The emphasis placed by the Government on the third sector in recent years reflected this thinking.

V. Proposals on electoral arrangements for 2003 District Council elections

VI. Accountability system for principal officials and related issues

- (a) Arrangements during principal officials' temporary absence
- (b) Attendance of principal officials at meetings of LegCo

VII. Any other business

- (a) Proposed research outline on "The Regulatory Framework of Political Parties in Germany, New Zealand, and Singapore"
- (b) Proposed research study on "Measures in support of development of political parties"
- (c) **2004 Legislative Council Elections : Functional Constituencies and Other Electoral Arrangements**

32. As discussion on agenda item IV had overrun, members agreed that agenda items V, VI and VII above should be deferred to the next meeting on 20 January 2003.

33. The meeting ended at 4:45 pm.

Council Business Division 2
Legislative Council Secretariat
17 January 2003