

**立法會**  
**Legislative Council**

Ref : CB2/PL/AJLS+SE

LC Paper No. CB(2) 1520/02-03  
(These minutes have been seen  
by the Administration)

**Panel on Security  
and  
Panel on Administration of Justice and Legal Services**

**Minutes of joint meeting held on Saturday, 14 December 2002  
at 9:30 am in the Chamber of the Legislative Council Building**

**Members present** : Panel on Security

- \* Hon James TO Kun-sun (Deputy Chairman)
- \* Hon Albert HO Chun-yan  
Dr Hon LUI Ming-wah, JP  
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP  
Hon Howard YOUNG, JP
- \* Hon Ambrose LAU Hon-chuen, GBS, JP  
Hon IP Kwok-him, JP
- \* Hon Audrey EU Yuet-mee, SC, JP

Panel on Administration of Justice and Legal Services

- ◆ Hon Margaret NG (Chairman)  
Hon Martin LEE Chu-ming, SC, JP  
Hon CHAN Kam-lam, JP  
Hon TAM Yiu-chung, GBS, JP

**Member attending** : Hon CHAN Yuen-han, JP

**Members absent** : Panel on Security

- Hon LAU Kong-wah (Chairman)
- Hon CHEUNG Man-kwong
- Hon Andrew WONG Wang-fat, JP
- Hon WONG Yung-kan
- Hon Michael MAK Kwok-fung

Panel on Administration of Justice and Legal Services

Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)  
Hon Miriam LAU Kin-ye, JP  
Hon Emily LAU Wai-hing, JP

- \* Also a member of Panel on Administration of Justice and Legal Services
- ◆ Also a member of Panel on Security

**Public Officers :** Mr Bob ALLCOCK, BBS, JP  
**attending** Solicitor General

Mr Johann WONG  
Principal Assistant Secretary for Security

Mr Hubert LAW  
Assistant Secretary for Security

**Attendance by :** New Youth Forum  
**invitation**

Mr TANG Wing-chun  
Vice-Convenor

Mr LAU Lung-fei  
Secretary General

Justice & Peace Commission of the Hong Kong Catholic Diocese

Mr Alex YU  
Executive Committee Member

Miss Teresa YIP  
Project Officer

Asian Human Rights Commission

Mr WONG Kai-shing

Mr PARK Jae-man

Civil Human Rights Front

Mr TSOI Yiu-cheong

Ms Rose WU

Hong Kong Journalists Association

Mr Cliff BALE

Convenor, Press Freedom Subcommittee

Ngau Tau Kok Community Affairs Association

Mr CHAN Kam-bor

Chairman

China Labour Bulletin

Mr HAN Dong-fang

Director

Ms Sally CHUN

English Web Editor

Professor David BODOFF

Department of Information and Systems Management

Hong Kong University of Science and Technology

Mr Colin HONG

Yau Tsim Mong Federation of Association

Mr KONG Wei-yeung

Vice-Chairman & Chief Secretary

Mr CHENG Cheung

Community Organizer

Mr MAK Tsing-hang, John

Mr NG Kwok-hung

Mr HAU Kam-lam

Member of North District Council

Amnesty International Hong Kong Section Limited

Ms Patricia CHENG

Ms Bella LUK

Ms TSANG Wing

Kwun Tong Resident Association

Mr POON Chun-yuen

Mr CHENG Chiu-wa

The University Librarians of the Eight Universities of Hong Kong

Dr Colin STOREY

Representative

The Joint Committee of Hong Kong Free Societies Concerning of  
the Legislation of Section 23 of the Basic Law

Mr LEUNG Hon-wa

Miss LEUNG Suet-fong

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

**Staff in attendance** : Ms Bernice WONG  
Assistant Legal Adviser 1

Mr Stanley MA  
Senior Assistant Secretary (2)6

---

Action

**I. Election of Chairman**

Miss Margaret NG was elected Chairman of the joint meeting.

**II. To receive public views on the Consultation Document on Proposals to implement Article 23 of the Basic Law**

2. The Chairman welcomed representatives of the 18 deputations to the meeting.

Meeting with representatives of the New Youth Forum  
(LC Paper No.CB(2)481/02-03(06))

3. Mr TANG Wing-chun presented the views of the New Youth Forum as detailed in the submission. He concluded that the Forum supported the enactment of legislation to implement Article 23 of the Basic Law (BL23) and the introduction of a blue bill after the three-month consultation period.

Meeting with representatives of the Justice and Peace Commission of the Hong Kong Catholic Diocese  
(LC Paper No.CB(2)481/02-03(07))

4. Mr Alex YU and Miss Teresa YIP presented the views of the Justice and Peace Commission of the Hong Kong Catholic Diocese (the Commission) as detailed in the submission. They concluded that the Commission objected to the enactment of legislation to implement BL23.

Meeting with representatives of the Asian Human Rights Commission  
(LC Paper No.CB(2)481/02-03(08))

5. Mr PARK Jae-man presented the views of the Asian Human Rights Commission as detailed in the submission. He concluded that the Commission held the view that the enactment of legislation to implement BL23 should follow the development of a democratic political system in the Hong Kong Special Administrative Region (HKSAR). If the HKSAR Government insisted to legislate at this stage, a white bill should be introduced for wider public consultation.

Meeting with representatives of the Civil Human Rights Front  
(LC Paper No.CB(2)481/02-03(09))

6. Ms Rose WU and Mr TSOI Yiu-cheong presented the views of the Civil Human Rights Front as detailed in the submission. They concluded that Civil Human Rights Front objected to the enactment of legislation to implement BL23 before a democratic political system was developed in the HKSAR. They also urged the HKSAR Government to give an undertaking that it would not seek an interpretation from the Standing Committee of the National People's Congress (NPC) in the course of

Action

implementing BL23.

Meeting with representative of the Hong Kong Journalists Association  
(LC Paper No.CB(2)481/02-03(10))

7. Mr Cliff BALE presented the views of the Hong Kong Journalistic Association (HKJA) as detailed in the submission. He concluded that HKJA was extremely concerned about the implications of many of the proposals in the Consultation Document, and strongly suggested that a white bill should be published for in-depth public debate on the exact provisions of the legislation on BL23.

Meeting with representative of the Ngau Tau Kok Community Affairs Association  
(LC Paper No.CB(2)481/02-03(11))

8. Mr CHAN Kam-bor presented the views of the Ngau Tau Kok Community Affairs Association as detailed in the submission. He concluded that the Association supported the enactment of legislation to implement BL23.

Meeting with representatives of the China Labour Bulletin  
(LC Paper No.CB(2)481/02-03(12))

9. Mr HAN Dong-fang presented the views of the China Labour Bulletin as detailed in the submission. He concluded that the China Labour Bulletin strongly suggested that the HKSAR Government should conduct a more extensive consultation before enacting legislation to implement BL23.

Meeting with Professor David BODOFF  
(LC Paper No.CB(2)481/02-03(13))

10. Professor David BODOFF presented his views as detailed in his submission. He concluded that in enacting legislation to implement BL23, it was important that the court, instead of a principal government official, should be empowered to determine whether a local group was threatening national security and should be proscribed.

Meeting with Mr Colin HONG  
(LC Paper No.CB(2)481/02-03(14))

11. Mr Colin HONG presented his views as detailed in his submission. He concluded that he supported the enactment of legislation to implement BL23.

Meeting with representatives of the Yau Tsim Mong Federation of Association  
(LC Paper No.CB(2)481/02-03(15))

12. Mr CHENG Cheung presented the views of the Yau Tsim Mong Federation of Association as detailed in the submission. He concluded that the Federation supported the enactment of legislation to implement BL23.

Action

Meeting with Mr MAK Tsing-hang  
(LC Paper No.CB(2)481/02-03(16))

13. Mr MAK Tsing-hang presented his views as detailed in his submission. He concluded that he supported the enactment of legislation to implement BL23.

Meeting with Mr NG Kwok-hung  
(LC Paper No.CB(2)481/02-03(17))

14. Mr NG Kwok-hung presented his views as detailed in his submission. He concluded that he objected to the enactment of legislation to implement BL23.

Meeting with Mr HAU Kam-lam, member of the North District Council  
(LC Paper No.CB(2)481/02-03(18))

15. Mr HAU Kam-lam presented his views as detailed in his submission. He concluded that he supported the enactment of legislation to implement BL23.

Meeting with representatives of Amnesty International Hong Kong Section Limited  
(LC Paper No.CB(2)481/02-03(19))

16. Ms Patricia CHENG and Ms Bella LUK presented the views of the Amnesty International Hong Kong Section Limited as detailed in the submission. They concluded that the Amnesty International considered the proposals in the Consultation Document vague and imprecisely worded, and contrary to international standards on clarity in the definition of criminal offences. The Amnesty International suggested that the HKSAR Government should extend the consultation period and issue a white bill.

Meeting with Mr TSANG Wing  
(LC Paper No.CB(2)481/02-03(20))

17. Mr TSANG Wing presented his views as detailed in his submission. He concluded that the HKSAR Government should take into account the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (the Johannesburg Principles) when drafting the proposed provisions and issue a white bill for a wider consultation.

Meeting with representatives of the Kwun Tong Resident Association  
(LC Paper No.CB(2)481/02-03(21))

18. Mr POON Chun-yuen presented the views of the Kwun Tong Resident Association as detailed in the submission. He concluded that the Association supported the enactment of legislation to implement BL23, and urged the Administration to ensure clarity of the legislation to facilitate enforcement and protect the fundamental human rights and freedoms guaranteed by the Basic Law.

Action

Meeting with representative of the university librarians of the eight University Grants Committee-funded universities

(LC Paper No.CB(2)481/02-03(22))

19. Dr Colin STOREY presented the concerns of the university librarians of the eight University Grants Committee-funded universities as detailed in their joint submission. He concluded that the eight university librarian held a strong view that academic libraries should be exempted from the offence of dealing with seditious publications and the offence of possession of seditious publications; and that a senior police officer of an appropriate rank should obtain a search warrant issued by a magistrate before he could enter academic libraries for investigation of BL23 offences.

Meeting with representatives of the Joint Committee of Hong Kong Free Societies Concerning the Legislation of Section 23 of the Basic Law

(LC Paper No.CB(2)481/02-03(23))

20. Mr LEUNG Hon-wa presented the views of the Joint Committee of Hong Kong Free Societies as detailed in the submission. He concluded that legislation to implement BL23 should be enacted after the legislature was composed of Members who were all elected under a one-person-one-vote system and a consensus was reached in the Chinese community on the re-unification of Taiwan with the Mainland.

Other submissions received

21. The Chairman informed the meeting that apart from the deputations attending the meeting, a total of 14 organisations and individuals had provided written submissions without requesting to make an oral representation to the Panels.

Issues raised by Members

22. Ms Audrey EU pointed out that the Secretary for Justice (S for J) had, during the Legislative Council debate on enacting legislation to implement BL23 on 11 December 2002, commented that most of the concerns about the proposals in the Consultation Document, including the alleged chilling effect of the proposals, were cliches. She asked how HKJA would respond to S for J's comments.

23. Mr Cliff BALE responded that journalists were now becoming more cautious about making media reports on issues which were sensitive to the Central Authorities. He pointed out that unless the offences in the legislation to implement BL23 were clearly and tightly defined, the chilling effect of the offences on the media would last and lead to further self-censorship.

24. Ms Audrey EU asked about the views of deputations on the proposed proscription mechanism and the provision of additional power to the Police for investigating some BL23 offences, particularly local organisations and individuals who

Action

had a connection or affiliation with a Mainland organisation which had been proscribed in the Mainland by the Central Authorities on the ground of endangering national security. Referring to paragraph 6 of the submission of the Justice and Peace Commission of the Hong Kong Catholic Diocese, Ms EU sought clarifications about the “state secrets” which the Commission had obtained from a Mainland citizen.

25. Mr HAN Dong-fang responded that the China Labour Bulletin would very likely be proscribed under the proposed proscription mechanism because its work was mainly to encourage and assist workers in the Mainland to establish independent unions which were not permitted under the relevant law in the Mainland. He considered that providing the Police with the emergence entry, search and seizure powers for investigating BL23 offences was a retrograde step in the development of a democratic society.

26. Mr Alex YU responded that the “state secrets” obtained from a Mainland citizen contained only information on the number of AIDS carriers in Hunan. He added that the information was also available on the Internet.

27. Ms Audrey EU cited the biography of the former President of South Africa which described his lifelong endeavours to fight against racial discrimination to illustrate how library collections had contributed to Dr Nelson Mandela's strategies and plans towards achieving liberation of black people and developing a democratic government in South Africa. She asked how university librarians would respond to the proposed offences of dealing with seditious publications and possession of seditious publications.

28. Dr Colin STOREY responded that once censorship of collections in libraries became lawful for political reasons, the process would be endless and move across all subject boundaries. This would mean that display of special books on science, technology and military matters for academic research might eventually be caught by the offence of dealing with seditious publications.

29. Mr James TO considered the scope of “protected information” specified in paragraph 6.19(b) of the Consultation Document (which included security, intelligence and defence information; and information relating to international relations, relations between the Central Authorities of the PRC and the HKSAR and commission of offences and criminal investigations) was too wide. He cited the recent statement of a Senior Law Officer of the Department of Justice and asked whether communications between the PRC and the HKSAR on the abolishment of the Linked Exchange Rate System would be “protected information” relating to relations between the Central Authorities of the PRC and the HKSAR, and whether a disclosure of such communications was damaging to the interest of the State. He considered that the inclusion of confidential financial or economic information in the category of “protected information” would jeopardise the reputation of the HKSAR as an international centre for finance and business.

Action

30. Mr Cliff BALE responded that HKJA held a strong view that financial and economic information should not be covered by the Official Secrets Ordinance (OSO). If certain financial or economic information should be kept confidential, the HKSAR Government and the Central Authorities in the Mainland should collaborate to ensure no leakage of the information by appropriate means. The media should not be prosecuted for publishing any financial or economic information which were clearly in the public interest to disclose, but were classified as “protected information” and the disclosure of which was perceived by the Central Authorities or the HKSAR Government as damaging to the interest of the State.

31. Mr CHOY Yiu-cheong considered that the meaning of "information relating to relations between the Central Authorities of the PRC and the HKSAR" was unclear. He believed that it was very likely whether a certain piece of information was "protected information" would be determined by the Central Authorities after it was unlawfully published. He did not agree to the saying that the protection of information relating to relations between the Central Authorities of the PRC and the HKSAR was proposed as an adaptation of laws after Reunification. He added that the expanded ambit of the term “protected information” would seriously affect the work of the media and the information technology sector.

32. Mr TSANG Wing said that it should be legitimate for the media in a democratic society to publish information which might be perceived as damaging by the relevant authorities but was clearly in the public interest to disclose. He suggested that the HKSAR Government should make reference to Principle 15 of the Johannesburg Principles which stated that the public interest in knowing information should be a primary consideration, and that no person should be punished for disclosure of information if the disclosure did not actually harm and was not likely to harm a legitimate national security interest, or the public interest in knowing the information outweighed the harm from such disclosure.

33. The Chairman and Mr James TO invited deputations to quote examples of “protected information” which was not related to those areas of national security, intelligence and defence, and international relations. The Chairman also expressed concern that it might not be easy for journalists to distinguish between economic and non-economic information in some circumstances.

34. Mr Cliff BALE responded that it was extremely dangerous to extend the concept of “state secrets” in the Mainland to the HKSAR, giving the all encompassing nature of the term “state secrets” in the PRC and the precedent cases involving journalists who were detained or prosecuted for allegedly revealing what were purported to be “state secrets”. He stressed that HKJA held a strong view that the existing OSO had already covered what should be covered under the area of “protected information”.

35. Mr Alex YU pointed out that almost all religious documents were classified as “state secrets” by the Central Authorities in the Mainland. Since international

Action

relations might cover the relation between the Central Authorities and the Vatican, Mr YU expressed concern that people working for the Churches might inadvertently be involved in revealing or publishing “protected information” and be caught by the new offence of making an unauthorized and damaging disclosure of information protected under Part II of the OSO that was obtained (directly or indirectly) by unauthorised access to it.

36. At the Chairman’s invitation, Solicitor General (SG) stressed that the proposals to implement BL23 would not in any way extend the national laws in the Mainland to the HKSAR and their legislative effects should not be interpreted by making reference to similar offences in the Mainland. SG had also taken the opportunity to clarify the following –

- (a) Unlike the issue of the right of abode which involved the rights of persons conferred under the Basic Law, offences in relation to the seven areas under BL23 would be adjudicated by Hong Kong courts in accordance with the domestic law enacted to implement BL23;
- (b) Courts were empowered to determine the categories of “protected information” in the context of the OSO and would not be affected by the clarifications of official secrets by the Central Authorities;
- (c) The decision to proscribe a local organisation affiliated with a Mainland organisation which had been proscribed in the Mainland by the Central Authorities on national security reasons would only be made if the Secretary for Security (S for S) was satisfied by evidence of the affiliation and believed it necessary to do so in the interest of national security or public safety or public order. Even so, a decision of proscription was subject to appeals on points of law as well as on points of fact; and
- (d) The Administration would seriously reconsider the proposed offence of possession of seditious publications in the light of the community’s concerns. The Administration had no intention to monitor the operation of libraries or restrict free flow of information in the community. In fact, under the proposal in the Consultation Document, a publication would only be seditious if it would incite the crime of treason, secession or subversion, which was narrower in scope than the definition of a publication with seditious intention under the existing Crimes Ordinance.

37. Mr Martin LEE said that the Administration might seek an interpretation of the relevant provisions of BL from the Standing Committee of the NPC in case the Court of Final Appeal adjudicated that a certain provision of the legislation enacted to implement BL23 was not in line with BL27 which guaranteed certain fundamental rights and freedoms of Hong Kong residents, or BL39 which stipulated, inter alia, that the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights should be

Action

implemented in the laws of the HKSAR.

38. Mr CHOY Yiu-cheong responded that it was very likely that in case of a major inconsistency between the provisions in the legislation to implement BL23 and the provisions of BL27 or BL39, the Administration might ultimately seek an interpretation from the Standing Committee of the NPC on BL23, BL27 or BL39. He reiterated that the Administration should give an undertaking that it would not do so in the future.

39. Mr HAN Dong-fang said that he could not believe that courts in the HKSAR would not be affected by the views of the Central Authorities in their adjudication on cases involving the concept of national security.

40. SG said that the blue bill on the legislation to implement BL23 would contain an express provision to the effect that the application and interpretation of the legislation should be consistent with the human rights which were guaranteed under the Basic Law. The alleged situation in which the legislation to implement BL23 would not be consistent with the fundamental human rights and freedoms of Hong Kong residents protected under BL27 and BL39 simply would not arise. He added that the Administration had accepted Mr David Pannick's view that legislation to implement BL23 should be in consistence with BL27 and BL39. The Chairman remarked that it might be too early for the Administration to openly express acceptance of Mr Pannick's suggestion of incorporating a provision of compliance with BL27 and BL39 into the proposed legislation to implement BL23.

41. Mr James TO sought clarifications about the views of the New Youth Forum as to whether the local courts or the courts in the Mainland should adjudicate the case of a HKSAR citizen of Chinese nationality who was outside Hong Kong and had committed an offence under BL23 and under the national law in the Mainland by virtue of their extra-territorial effects.

42. Mr TANG Wing-chun responded that the New Youth Forum held the view that the courts in Hong Kong should be empowered to adjudicate where the offence was criminalised both in the HKSAR and the PRC.

### **III. Any other business**

43. The Chairman reminded members that the next joint meeting of the Panel on Security and the Panel on Administration of Justice and Legal Services to receive public views on the Consultation Document on proposals to implement Article 23 of the Basic Law would be held on 19 December 2002 from 9:30 am to 12:30 pm.

Action

44. The meeting ended at 12:40 pm.

Council Business Division 2  
Legislative Council Secretariat  
18 March 2003