

立法會
Legislative Council

LC Paper No. CB(2)3310/03-04
(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

**Minutes of meeting
held on Monday, 21 June 2004 at 2:30 pm
in the Chamber 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 Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Fred LI Wah-ming, JP
Hon Margaret NG
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon Bernard CHAN, JP
Hon SIN Chung-kai
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Hon WONG Sing-chi
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing, JP
Hon HUI Cheung-ching, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon LAU Wong-fat, GBS, JP
Dr Hon LAW Chi-kwong, JP
Hon MA Fung-kwok, JP

Public officers attending : Items IV and V

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Clement MAK Ching-hung
Permanent Secretary for Constitutional Affairs

Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

Item IV only

Ms Julina CHAN Woon-yee
Principal Assistant Secretary for Constitutional Affairs

Items V - VIII

Miss May CHAN Wing-shiu
Principal Assistant Secretary for Constitutional Affairs

Items VI - VIII

Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

Items V and VI only

Mr LI Wing
Chief Electoral Officer

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

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

Mr Watson CHAN
Head (Research and Library Services)

Mr Thomas WONG
Research Officer 4

Mr CHAU Pak-kwan
Research Officer 5

Miss Millie WONG
Senior Council Secretary (2)4

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I. Confirmation of minutes of meetings

(LC Paper Nos. CB(2)2845/03-04 and 2846/03-04)

The minutes of the meetings held on 19 April 2004 and 17 May 2004 were confirmed.

II. Information papers issued since the last meeting

(LC Paper Nos. CB(2)2510/03-04(01), 2555/03-04(01), 2820/03-04(01) and 2872/03-04(01))

2. Members noted that the following papers had been issued since the last meeting -

- (a) LC Paper No. CB(2)2510/03-04(01) - Invitation letter dated 21 May 2004 sent by the Panel Chairman to Mr ZHU Yucheng, Director of the Institute of Hong Kong and Macao Affairs;
- (b) LC Paper No. CB(2)2555/03-04(01) - Administration's reply on cases handled by Independent Commission Against Corruption in past elections concerning the use of force or duress against electors with a view to influencing their voting behaviour;
- (c) LC Paper No. CB(2)2820/03-04(01) - Paper provided by the Administration on results of the 2004 Voter Registration Campaign; and

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- (d) LC Paper No. CB(2)2872/03-04(01) - Administration's response to Hon Audrey EU's query on the difference between the number of registered electors in certain functional constituencies and the number of registered voters in their corresponding Election Committee subsectors as shown in Appendices 1 and 3 of the Third Report of the Constitutional Development Task Force.

3. In response to Mr CHEUNG Man-kwong regarding the invitation letter sent to Mr ZHU Yucheng, the Chairman said that the letter was sent to Mr ZHU via the local office of the Institute of Hong Kong and Macao Affairs (IHKMA), and a reply was pending. Secretary for Constitutional Affairs (SCA) said that the Administration had made enquiries of Mr ZHU's local office and was given to understand that a reply would be given to the Panel.

4. Mr CHEUNG Man-kwong considered it irresponsible of Mr ZHU not to give any response to the Chairman's letter after a lapse of one month. Mr CHEUNG suggested and members agreed that the Chairman should pursue the request for meeting with Mr ZHU by sending a further letter to him.

(Post-meeting note: The Chairman's letter was hand delivered to Mr ZHU's local office on 24 June 2004 for onward transmission to him. IHKMA's reply dated 25 June 2004 and the Chairman's letter dated 10 July 2004 were issued to members vide LC Paper No. CB(2)3074/03-04 on 13 July 2004.)

III. List of outstanding issues

(LC Paper No. CB(2)2857/03-04(01))

5. Miss Margaret NG expressed disappointment at the lack of progress of the item "Application of certain provisions of the Prevention and Bribery Ordinance (Cap. 201) to the Chief Executive (CE)" which had remained outstanding since February 1999. She requested the Chairman to write to the Director of Administration (DoA) enquiring about the progress of the item. Ms Emily LAU concurred with the view of Miss NG and further suggested that a meeting of the Panel should be held in July 2004 to discuss the item. While the Chairman agreed to take up the matter with DoA in writing, he said that whether a meeting would be held in July would depend on whether DoA's response was substantive.

(Post-meeting note : DoA's response was issued to members vide LC Paper No. CB(2)3027/03-04 on 6 July 2004. The Chairman advised that the item would be further pursued in the next session.)

6. The Chairman expressed concern about the progress of the items "Mechanism for amending the Basic Law" and "The question of important bill under Article 50 of the Basic Law". SCA responded that as these items involved complex

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constitutional issues, it would take more time for the Administration to study the relevant issues and to discuss with the relevant departments of the Central Authorities. The Administration would revert to the Panel when it was in a position to do so.

7. Members agreed that the list of outstanding items would be carried forward to the next session.

IV. Review on constitutional development after 2007
(LC Paper No. CB(2)2857/03-04(02))

8. SCA briefed members on the progress of work of the Constitutional Development Task Force (Task Force) after the publication of its Third Report. He said that to encourage different sectors of the community to discuss and exchange views on the issues set out in the Third Report, the Task Force had commissioned the Central Policy Unit to hold two seminars in the form of group discussions on 24 May and 11 June 2004. Each group comprised about 20 participants. More than 240 participants attended the seminars, including Members of the Executive Council and Legislative Council (LegCo), Chairmen and Vice Chairmen of District Councils (DCs), Chairman of Sub-committees of DCs, Election Committee Members, the academia, the legal and other professional sectors, the industrial and commercial sector, and representatives of think tanks. SCA further said that a number of cross-sector focus group discussions would be organized in the near future.

9. Ms Audrey EU asked about the differences between the seminars and the cross-sector focus group discussions, and for the latter, the number to be organized and the criteria for selecting participants. In the light of her experience in attending one of the two seminars, Ms EU said that each of the 20 odd participants in a group was only given a couple of minutes to state his views, and the participants did not have time to engage in thorough discussions. She commented that it might be more worthwhile for the participants to submit written submissions instead.

10. SCA said that he was aware that limited time was provided for participants to have thorough discussions in the two seminars. However, the two seminars provided an opportunity for people with different views to gather together and commence discussions. SCA further said that different sectors of the community, such as professional bodies, community organizations, non-governmental organizations, religious organizations, educational organizations, minority ethnic groups, employers' associations and trade unions would be invited to participate in the cross-sector focus group discussions. The size of the cross-sector focus group discussions would be smaller, and more time would be given for in-depth discussions. A number of cross-sector focus group discussions would be held at the end of June and in July 2004, but the exact number would be determined at a later stage.

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11. Ms Emily LAU pointed out that the public was not invited to attend the seminars and the cross-sector focus group discussions. The outcome of the current consultation which was confined to selected sectors would not have credibility and would not be acceptable to the public. In view of the importance of the issues under discussion, she suggested that a large scale constitutional convention lasting for several weeks should be organized for the public to participate in the process and sufficient time should be allowed for in-depth discussions.

12. SCA agreed to reflect Ms LAU's view to the Task Force. SCA said that the Task Force would use different channels to collect views from the community. As he had mentioned earlier, two seminars were held and the summaries and video recording of the reporting sessions had been uploaded onto the Constitutional Development website for public information. Further consultation would be conducted in the form of cross-sector focus group discussions. The Task Force would collate the more representative views which emerged from the three-month consultation exercise for further consultation in its next report to be published in this fall. SCA added that the Task Force continued to welcome written submissions and proposals from organizations and individuals on issues set out in the Third Report and other related areas.

13. On Ms LAU's comment about the credibility of the outcome of the consultation, SCA said that under the Basic Law, the requirement for any amendments to the methods for selecting CE and forming LegCo to obtain the support of a two-thirds majority of LegCo Members could ensure that such amendments would reflect the views of the Hong Kong community.

14. The Chairman commented that the summaries of the reporting sessions of the two seminars were superficial, which merely stated the views of the participants in each group and had failed to provide any analysis or basis for arriving at such views. He opined that the current format of preparing the summaries would only serve to facilitate the Task Force to draw up whatever conclusions it saw fit.

15. Miss Margaret NG asked about the purpose of the group discussions and the weight to be accorded to the outcome of the discussions, pointing out that these group discussions were not open to the public and held in open forums. Miss NG further said that when the public was invited by the Task Force to give views on the issues of principle and legislative process in the Basic Law relating to constitutional development, the public did not expect that the consultation would lead to the recommendation of the Task Force that CE should request the Standing Committee of the National People's Congress to make a determination relating to methods for selecting CE and forming LegCo. Miss NG expressed concern whether the views gathered in the group discussions would be manipulated in such a way as to achieve the intended purpose of the Task Force. Miss NG urged the Task Force to publish a timetable on the way forward. She also sought clarification as to whether the

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accuracy of the summaries of the reporting sessions of the two seminars had been confirmed by the participants concerned.

16. SCA responded that the group facilitators of the seminars were academics or professionals in their respective fields, and they were given the flexibility to organize discussions in their own groups. The facilitators reported to the plenary session on the outcome of the discussion. The summaries of the reporting sessions were prepared by the Secretariat of the Task Force on the basis of the facilitators' oral reports. The participants had been advised that they could submit supplementary views direct to the Task Force if they so wished. SCA added that the seminars and cross-sector focus group discussions enabled different sectors of the community to give preliminary views on the issues set out in the Third Report. On the basis of the views gathered, the more representative views would be set out in the next report of the Task Force for further consultation. While SCA said that he could not provide a timetable at this stage, he assured members that there would be sufficient time for the new electoral arrangements to be implemented in 2007.

17. Mr Fred LI said that he had attended the seminar held on 11 June 2004, and noted that many of the participants were Election Committee members. He did not feel that the seminar was meaningful as some participants were not familiar with the issues under discussion, and some merely proposed increasing the number of functional constituencies to represent the interests of certain sectors. He also considered that the seminar was not cost-effective as it was held in the Hong Kong Convention and Exhibition Centre. He suggested that the Task Force should consider alternative venues such as the community centres in the districts.

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18. SCA said that the cross-sector focus group discussions would be held in the Civil Service Training Centre. Miss Margaret NG requested the Task Force to provide a list of the participants who had attended the two seminars to the Panel for information.

19. The Chairman asked when specific proposals would be published for public consultation. In view of the forthcoming LegCo election, he pointed out that some LegCo Members might not have time to give views on the Third Report before the election.

20. SCA responded that the deadline for the public to put forward views on the Third Report was 31 August 2004, which could be extended if necessary. As the Task Force would need to collate and analyze the views received, the next report of the Task Force would be published in fall. In response to the Chairman's request for an undertaking that the report would not be published or its content disclosed before the 2004 LegCo election, SCA said that he believed that the report would be published after the LegCo election. Nevertheless, he would reflect the Chairman's concern to the Task Force.

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V. Publicity for the 2004 Legislative Council election
(LC Paper No. CB(2)2857/03-04(03))

21. SCA briefed members on the Administration's paper which set out the main features of the proposed publicity programme to promote the third term LegCo election. He highlighted that the 8-week publicity programme would start from 17 July 2004 up to the polling day on 12 September 2004. The main objectives were to encourage voter participation in the LegCo election by providing voters with information on the candidates and the voting procedures, and encouraging registered electors to vote on 12 September 2004. The importance of honest and clean elections would also be publicized. A provision of \$30 million had been set aside for the publicity programme.

22. Ms Emily LAU asked whether the Government had made enquiries with the Mainland authorities about the alleged use of duress by Mainland officials and residents against electors with a view to influencing their voting preferences. Ms LAU said that she had raised the issue with the Chairman of the Electoral Affairs Commission (EAC), but was told that this would be outside the jurisdiction of EAC. She had also raised a relevant LegCo question at the Council meeting on 16 June 2004, but she did not get a response from SCA.

23. SCA responded that CE had made enquiries of the Central Authorities and was given the assurance that the Central Authorities fully supported the governance of the Hong Kong Special Administrative Region (HKSAR) Government in accordance with the Basic Law and Hong Kong law, the protection of freedom of speech, and implementation of "One Country, Two Systems".

24. Ms LAU further asked whether the Central Authorities had issued clear instructions to its provinces and cities that Mainland authorities and residents should not use duress to influence the voting preferences of electors in Hong Kong. SCA said that the position of the HKSAR Government and the Central Authorities was that such conduct would not be tolerated. The Central Authorities was in full support of conducting public elections in Hong Kong in accordance with the law.

VI. Research Report on "Operation of electoral regulatory bodies in selected places"
(LC Paper Nos. RP04/03-04 and IN09/03-04)

25. Head (Research and Library Services) (H(RL)) briefed members on -

- (a) the Research Report on the operation of statutory electoral regulatory bodies in the United Kingdom (UK), Australia, New Zealand, New Jersey of the United States of America (USA) and the HKSAR; and

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- (b) the Information Note which provided supplementary information about the regulatory arrangements for major election-related activities at parliamentary general elections in the five places studied in the Research Report.

26. Miss Margaret NG said that the main concern of the Panel was whether the EAC had too much power over election-related activities. Quoting the example of shortening of polling hours proposed by EAC for the 2003 DC election, she said that a committee with appointed membership was empowered to implement the proposal following public consultation, without the need for legal backing. In addition, the scope of the EAC's supervisory functions was very wide, covering many minute aspects of election-related activities. EAC also had the sole discretion to decide and impose sanctions against non-compliance with electoral guidelines. Miss NG expressed concern whether the system in Hong Kong had given too much powers to EAC and whether certain monitoring mechanism should be put in place to prevent EAC from exercising excessive powers in regulating election activities. Miss NG asked whether the research study had indicated that EAC had more powers than its counterparts in the selected overseas places, and whether enactment of legislation was required to underpin any proposals made by the overseas electoral bodies. Referring to a similar proposal to shorten the polling hours in the UK, Miss NG also enquired whether the UK Government was required to enact legislation to give effect to the proposal after conducting public consultation. She pointed out that if this was the case, the due process for implementing such a proposal in UK was drastically different from that in Hong Kong.

27. H(RL) said that the research study did not provide information on the specific case in UK referred to by Miss NG. However, the research had highlighted the election-related activities supervised by the selected overseas electoral bodies and the EAC. The scope of the supervisory functions of EAC was much wider. Many of the election-related activities supervised by EAC were not regulated by the overseas bodies, and some of these activities were prohibited by electoral laws in the first place.

28. Ms Audrey EU said that the scope of supervisory functions of EAC was much wider than the other four places studied. She pointed out that EAC had been too stringent in regulating election-related activities, which would discourage persons without political background to stand for election. She questioned whether it was absolutely necessary for candidates to submit two copies of an Election Advertisement (EA) to EAC before display. As the requirement was an administrative measure, she urged EAC to consider revising the guidelines to be published to allow candidates to have the flexibility to submit copies of the EA after display.

29. Chief Electoral Officer (CEO) explained that in the light of experience of the

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1999 DC election, the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (EAC Regulation) was amended in 2000 to provide that copies of an EA should be submitted to the Returning Officer (RO) before display. The new requirement would facilitate RO to handle complaints relating to EAs, as there had been precedents where an EA, which was the subject of a complaint and not submitted to RO before display, could not be produced afterwards. Ms EU cited an example to illustrate that the requirement was not practical and would cause inconvenience to candidates. She further pointed out that Hong Kong, among the five places studied in the research study, was the only place which had such a requirement. The Chairman added that there were different views on the requirement when it was implemented in 2000 and requested EAC to reconsider the matter. The Chairman advised members that the Subcommittee on subsidiary legislation relating to 2004 Legislative Council elections was scrutinizing the EAC (Amendment) Regulation, and members who had further views on the issue raised were welcome to attend its next meeting to be held on 24 June 2004. CEO agreed to relay Ms EU's concern to EAC for consideration.

30. The Chairman further sought clarification whether letters sent out by a candidate appealing for donation to support his election would constitute an EA. CEO responded that the definition of EA was provided for in the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO), and each case would be assessed in its own circumstances.

31. Mr Albert HO commented that the calculation of the period during which expenses incurred should be counted as election expenses was very cumbersome and unclear, and posed difficulties to incumbent Members who would run in the election. The regulated period in the other four places studied in the Research Report was much simpler and basically started from the date on which a person became a candidate. CEO responded that the terms "candidate" and "election expenses" were defined in ECICO.

32. Mr HO further asked how EAC could ensure individual candidates would comply with the provisions of ECICO. CEO responded that EAC would rely on candidates monitoring one another's electioneering activities, and would only act on complaints.

33. The Chairman concluded that the issues raised in the Research Report could be further explored in the next session.

VII. Research Report on "The regulatory framework of political parties in Germany, the United Kingdom, New Zealand and Singapore"
(LC Paper No. RP05/03-04)

34. H(RL) briefed members on the regulatory framework of political parties in

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Germany, UK, New Zealand and Singapore. The Research Report covered -

- (a) modes of regulatory framework;
- (b) registration of political parties;
- (c) proscription of political parties;
- (d) rules for party and campaign financing;
- (e) regulation of selection of candidates for election;
- (f) rules on party operation; and
- (g) other related rules such as broadcasting rules and anti-defection rules.

35. In response to Ms Emily LAU, Deputy Secretary for Constitutional Affairs (DSCA) said that the proposal of introducing a political party law was discussed by the Panel in early 2003. The position of the Administration was that it was unnecessary to introduce a political party law at this stage. Political parties and groups had different views on the proposal, and some political parties had expressed the view that it was unnecessary for a political party law to be introduced.

36. Ms LAU considered it opportune to discuss the matter, in the light of the constitutional development of the HKSAR and the recent remark made by the Chief Secretary for Administration calling for the business sector to participate actively in the political scene. She said that the public would expect transparency and accountability as far as the funding of political parties was concerned, and considered that a regulatory framework of political parties should be established.

37. DSCA reiterated the position of the Administration. He said that there were different means to encourage interested parties to participate actively in the political process, and enacting a political party law was not the only means to achieve the objective. However, the Administration would listen to further views from members.

38. Miss Margaret NG said that that laws were introduced for regulatory purposes. Hence, the introduction of a political party law in Hong Kong could impose restrictions on the operation of political parties. She pointed out that in UK, many constitutional conventions gave recognition to political parties, and, an Act was only recently enacted to establish a regulatory system controlling the registration, donations, and expenditure of political parties. She further said that the regulation of political parties by legislation and the development of political parties were two separate matters. Given that the election of CE by universal suffrage in 2007 had been ruled out, Miss NG considered that the Administration should consider formulating policies to encourage the development of political parties, before giving consideration to the introduction of a political party law.

39. Dr YEUNG Sum said that the Administration had not given due recognition to political parties. This was evident from the fact that any elected CE who belonged to a political party was required to resign from the political party. He was concerned

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that the introduction of political party law would hinder rather than facilitate the development of political parties.

40. The Chairman concluded that a number of complex issues would need to be examined carefully in considering the proposal of introducing a political party law. The Panel would further discuss the matter in the next session.

VIII. Information Note on "Selection of Head of State and Head of Government in Selected Places"

(LC Paper No. IN11/03-04)

41. H(RL) briefed members on the Information Note on the selection of head of state and head of government in France, Germany, USA, UK, Singapore, New Jersey of USA and Scotland of UK.

42. The Chairman said that the Information Note would be of useful reference to the Constitutional Affairs Bureau and the Central Policy Unit. SCA said that that he would pass on a copy of the Information Note to the Task Force for consideration.

43. In respect of the head of state of Scotland, the Chairman asked H(RL) to find out whether the Monarch of the UK was the head of state and to make suitable amendments if necessary.

(Post-meeting note : Replacement sheets for pages 1, 19, 20, 21 and 24 of the Information Note were issued to members vide LC Paper No. CB(2)3122/03-04 on 20 July 2004.)

IX. Any other business

Annual report of the Panel

44. The Chairman said that the draft annual report of the Panel for the 2003-04 session for presentation to the Council would be circulated to members for endorsement shortly.

(Post-meeting note : The draft report was issued to members for endorsement vide LC Paper CB(2)2984/03-04 on 29 June 2004. The report was presented to the Council on 7 July 2004.)

Vote of thanks

45. The Chairman recorded a vote of thanks to members and staff of the Secretariat for their contribution in the 2003-04 session.

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46. The meeting ended at 4:35 pm.

Council Business Division 2
Legislative Council Secretariat
6 September 2004