

立法會
Legislative Council

LC Paper No. CB(2)1610/05-06
(These minutes have been
seen by the Administration)

Ref : CB2/PL/HA

Panel on Home Affairs

Minutes of meeting
held on Friday, 10 March 2006 at 9:00 am
in the Chamber of the Legislative Council Building

Members present : Hon Tommy CHEUNG Yu-yan, JP (Chairman)
Hon TAM Heung-man (Deputy Chairman)
Hon Margaret NG
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Andrew CHENG Kar-foo
Hon LI Kwok-ying, MH
Hon Daniel LAM Wai-keung, BBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon WONG Ting-kwong, BBS
Hon Patrick LAU Sau-shing, SBS, JP

Members attending : Hon WONG Kwok-hing, MH
Hon Ronny TONG Ka-wah, SC

Members absent : Hon Albert HO Chun-yan
Dr Hon Philip WONG Yu-hong, GBS
Hon LAU Wong-fat, GBM, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon CHEUNG Hok-ming, SBS, JP

Public Officers attending : Item IV

Mrs Carrie LAM
Permanent Secretary for Home Affairs

Mr Stephen FISHER
Deputy Secretary for Home Affairs (1)

Mr John DEAN
Principal Assistant Secretary for Home Affairs (4)

Ms Amy YEUNG
Assistant Secretary for Home Affairs (4)1

Mr Robert ALLCOCK
Solicitor General
Department of Justice

Ms LAI Yuen Man
Government Counsel
Department of Justice

Mr Joseph LAI
Deputy Secretary for Constitutional Affairs

Ms Linda SO
Principal Assistant Secretary for Security C

Ms Apollonia LIU
Principal Assistant Secretary for Security E

Item V

Mr Stephen FISHER
Deputy Secretary for Home Affairs (1)

Ms Joanna CHOI
Principal Assistant Secretary for Home Affairs (2)

Mr Anthony LI
Principal Assistant Secretary for Home Affairs (3)

Ms Julia HUI
Senior Statistician
Home Affairs Bureau

Item VI

Mr Eddy YAU
Assistant Director (Leisure Services) 3
Leisure and Cultural Services Department

Mr LEE Yuk-man
Acting Assistant Director (Libraries and Development)
Leisure and Cultural Services Department

Mr Peter KAN
Chief Executive Officer (Planning) 2
Leisure and Cultural Services Department

Mr Daniel SIN
Acting Principal Assistant Secretary for Home Affairs
(Recreation and Sport)

Mrs Angel CHOI
Chief Executive Officer (2)2
Home Affairs Department

Mrs Celina KWOK
Chief Project Manager
Architectural Services Department

Mrs Sylvia LAM
Senior Project Manager
Architectural Services Department

Mrs Gloria LEE
Senior Social Work Officer
Social Welfare Department

Mr CHEUNG Sing-man
District Environmental Hygiene Superintendent (Islands)
Food and Environmental Hygiene Department

Attendance by invitation : Item IV

Equal Opportunities Commission

Mr Raymond TANG
Chairperson

Mr Ferrick CHU
Head, Policy & Research

Hong Kong Bar Association

Mr P Y LO
Bar Council Member

Power for Democracy

Mr Richard TSOI
Convenor

The Democratic Party

Mr CHAN Ka-wai
Vice Policy Spokesman of Equal Opportunities of the
Democratic Party

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Hong Kong Human Rights Commission

Mr HO Hei-wah
Chairperson

Mr Wong Chi-yuen
Member

Society for Community Organization

Miss Annie LIN
Community organizer

Miss Sarah

Voices of the Rights of Asylum Seekers and Refugees

Mr Michael
Spokesperson

RTHK Programme Staff Union

Ms MAK Lai-ching, Janet
Chairman

Mr POON Tat-pui, Eric
Executive Committee member

The Association for the Advancement of Feminism

Miss CHOI Wing-sze
Orgainser

Hong Kong Committee on Children's Rights

Mr Thomas MULVEY, JP
Executive Committee member

Ms Evelyn RAZACK
Child Participation and Development Officer

Hong Kong Christian Institute

Mr FAN Lap-hin
Secretary

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)2

Staff in attendance : Ms Joanne MAK
Senior Council Secretary (2)2

Miss Sherman WOO
Legislative Assistant (2)2

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As the Chairman was unable to attend the meeting for discussion of agenda items I to IV due to other important commitments, the Deputy Chairman chaired the meeting for discussion of these items in his absence.

I. Confirmation of minutes

[LC Paper No. CB(2)1294/05-06]

2 The minutes of the meeting held on 10 February 2006 were confirmed.

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II. Information paper(s) issued since the last meeting

3. Members noted that no information papers had been issued since the last meeting.

III. Items for discussion at the next meeting

[Appendices I and II to LC Paper No. CB(2)1291/05-06]

4. Members agreed to discuss the following items at the next regular meeting on Friday, 7 April 2006 at 10:45 am –

- (a) briefing on Hong Kong's cultural policy;
- (b) capital works projects : "Sham Shui Po Park Stage II" and "District Open Space in Area 40A, Tseung Kwan O"; and
- (c) creation of directorate posts in the Leisure and Cultural Services Department.

(Post-meeting note: At the request of the Administration and with the concurrence of the Chairman, the next regular meeting was subsequently advanced to start at 9:15 am.)

5. Ms Emily LAU suggested that the Panel should follow up on the concluding observations to be issued on the second report of the Hong Kong Special Administrative Region (HKSAR) under the International Covenant on Civil and Political Rights (ICCPR) at its regular meeting in May 2006.

IV. Submission of report by Hong Kong Special Administrative Region in the light of the International Covenant on Civil and Political Rights

[LC Paper Nos. CB(2)1291/05-06(01) & (02)]

Meeting with deputations

Equal Opportunities Commission (EOC)
[LC Paper No. CB(2)1291/05-06(03)]

6. Mr Raymond TANG, Chairperson of the Equal Opportunities Commission (EOC), presented the views of EOC as detailed in its submission. He said that EOC noted with concern that during the 2004 Legislative Council (LegCo) Election, many polling stations were inaccessible to mobility impaired persons. Besides, EOC considered that there was a need to speed up the introduction of the Race Discrimination Bill in order to facilitate the necessary preparation work of EOC.

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7. Mr TANG further said that EOC proposed to set up a Mental Health Council to coordinate policy formulation, programme delivery, research and public education in the area of mental health. He added that EOC had all along supported the recommendation of the United Nations Human Rights Committee (UNHRC) to set up an independent human rights institution in HKSAR to investigate and monitor human rights violations in HKSAR and the implementation of ICCPR.

Hong Kong Bar Association
[LC Paper No. CB(2)1291/05-06(04)]

8. Mr P Y LO presented the views of Hong Kong Bar Association (Bar Association) as detailed in its submission, which was also the Bar Association's submission made to UNHRC for the hearing on HKSAR's second report under ICCPR. He said that regarding the three occasions on which the Standing Committee of the National People's Congress (NPCSC) exercised its power of interpretation of the Basic Law (BL), the Bar Association observed that a NPCSC interpretation could be sought and given in the absence of a court case, in the middle of a court case, and subsequent to the final adjudication of a court case, and with or without a request from the Chief Executive (CE) of HKSAR. He said that the Bar Association observed that serious concerns remained about the maintenance of the rule of law and the independence of the Judiciary some eight years after the reunification.

9. Mr LO further said that the Bar Association observed that recent court cases had given rise to concern that the Administration might not respect the rights to confidential legal advice and legal representation on occasions because during these court cases, law enforcement departments had used investigative methods that arguably impinged on legal professional privilege. The Bar Association urged UNHRC to continue to express concern about the absence of a statutory human rights commission with investigatory powers in HKSAR, and to express concern about the HKSAR Government's rejection of the proposal of the Legal Aid Services Council for establishing an independent legal aid authority. Mr LO also highlighted the following concerns set out in the Bar Association's submission –

- (a) the treatment of Hong Kong residents under detention in Mainland China and the living conditions of asylum seekers in HKSAR;
- (b) the conditions of detention in the police cells were not conducive to long periods of detention;
- (c) the approach of the Police for handling suspected cases of domestic violence;

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- (d) the Independent Police Complaints Council remained a body that had no investigatory powers and that investigation of complaints against the Independent Commission Against Corruption (ICAC) was undertaken by a unit of the Operations Department of ICAC;
- (e) problems relating to the proposed legislation on interception of communications and surveillance, the Public Order Ordinance (Cap. 245) and the Societies Ordinance (Cap. 151);
- (f) concerns about immigration and family reunions; and
- (g) concerns about protection of the right to take part in the conduct of public affairs and right to vote.

Power for Democracy

10. Mr Richard TSOI from Power for Democracy pointed out that UNHRC had reiterated its concern in its last concluding observations on the HKSAR's first report that the electoral system for LegCo failed to comply with Articles 2, paragraphs 1, 25 and 26 of ICCPR. UNHRC had made such an observation even though it was aware of the reservation entered in respect of Article 25 when the Covenant was extended to Hong Kong. Mr TSOI criticised that the method for selecting CE and the functional constituency (FC) system clearly violated Article 1, paragraph 1, i.e. all people had the right of self-determination and to freely determine their political status and freely pursue their economic, social and cultural development, and Article 25, i.e. every citizen had the right to vote at elections by universal and equal suffrage. Mr TSOI also criticised the Government for failing to provide a timetable for attaining the ultimate aim of universal suffrage as provided for in BL. He stressed that the Administration should clearly explain to UNHRC why the present electoral system for LegCo should be maintained.

11. Mr TSOI further said that the law enforcement agencies in Hong Kong had a poor track record in respect of interception of communications and covert surveillance which had violated human rights. He added that the Power for Democracy would make a submission to UNHRC, a copy of which would be provided to the Panel.

The Democratic Party

[LC Paper No. CB(2)1347/05-06(01)]

12. Mr CHAN Ka-wai from the Democratic Party (DP) presented the views of DP as detailed in its submission. He said that it was stated in ICCPR that each State Party to the Covenant "is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant". DP, however, considered that the HKSAR Government had not tried its best to implement the Covenant. Also, DP was of the view that the NPCSC

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interpretation in 2004 which ruled out the implementation of the elections of CE and LegCo by universal suffrage in 2007 and 2008 respectively had not only contravened Article 2 of ICCPR but had also impeded the progress of constitutional development of HKSAR. DP further considered that the NPCSC interpretation in 2005 had also undermined the independence of the Judiciary. DP urged the Administration to expeditiously implement the various important recommendations raised by UNHRC, as set out in paragraph 12 of DP's submission, and establish an independent human rights commission to enhance the protection and promotion of human rights in HKSAR. Mr CHAN added that DP was preparing its submission to UNHRC, a copy of which would be provided to the Panel.

Hong Kong Human Rights Monitor

13. Mr LAW Yuk-kai of Hong Kong Human Rights Monitor (HKHRM) said that it was regrettable that many of the recommendations made by UNHRC had yet to be implemented, and he considered that LegCo should take this up with the Administration. Mr LAW further said that the Administration was obliged to observe Article 25(b) under which each citizen shall have the right to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage, and it was the understanding of HKHRM that the reservation in respect of the Article did not apply once elections were introduced. HKHRM considered that the protection of human rights under BL as well as the independence of the Judiciary had been seriously undermined by NPCSC interpretations of BL provisions. HKHRM urged the Administration to establish an independent human right institution as recommended by UNHRC to strengthen the protection of human rights in HKSAR.

14. Mr LAW Yuk-kai said that HKHRM was concerned about the slow progress made by the Administration in introducing anti-discrimination legislation and the negative attitude of some government bureaux and departments towards the Race Discrimination Bill. HKHRM was also concerned that the current review of public broadcasting service in Hong Kong seemed to have adopted a wrong direction and it might come up with recommendations which would undermine the editorial independence of Radio and Television Hong Kong (RTHK). He noted that according to the LegCo Brief on Review of Public Service Broadcasting, market and economics seemed to be the primary consideration in public service broadcasting, and it mentioned that there were many other purposes for public service broadcasting to be served, i.e. national interest.

Hong Kong Human Rights Commission

[LC Paper Nos. CB(2)1291/05-06(05) and CB(2)1319/05-06(01)]

15. Mr HO Hei-wah of Hong Kong Human Rights Commission (HKHRC) said that they had made two submissions to UNHRC and many issues raised in the two submissions had been included in the "List of issues to be taken up in

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connection with the consideration of the second periodic report of HKSAR of the People's Republic of China" (Annex C to LC Paper No. CB(2)1291/05-06(01)) published by UNHRC. He expressed deep regret at the lack of progress made by the Administration in implementing the recommendations made by UNHRC. Mr HO said that the fundamental problem to be addressed was whether the recommendations made by UNHRC were binding and the Administration must clarify this point to UNHRC and the public.

16. Mr HO expressed concern that according to some press reports, the Chairman of NPC, Mr WU Bang-guo, had remarked that the provisions of BL could not be interpreted on the basis of common law principles. He considered that the Administration should give a response to these remarks. He further said that the Administration's refusals to introduce changes to existing legislation or policies even though they had been found to have breached provisions of human rights treaties as applied to HKSAR were violations of human rights, and this had resulted in a general lack of trust in the Government and its governance.

Society for Community Organization
[LC Paper No. CB(2)1291/05-06(05)]

17. Miss Annie LIN of the Society for Community Organization (SOCo) presented the views of SOCo as detailed in its submission. She said that there were around 1 000 persons living in Hong Kong pending refugee status determination and their problems as set out below should be addressed –

- (a) the UN High Commissioner for Refugees Hong Kong sub-office did not allow legal representatives to be present during the refugee status determination interviews, nor did it provide detailed written explanation for rejection of applications;
- (b) the Administration should not have ignored its obligations to draw up a screening procedure to process asylum claims and had just left it to the UN High Commissioner for Refugees;
- (c) the Administration should amend the Immigration Ordinance (Cap. 115) so that asylum seekers and refugees were not liable to be detained for overstaying or for not possessing valid travel documents; and
- (d) asylum seekers in Hong Kong were left without any basic means of living, including food and shelter and were subject to detention and deportation.

18. Ms Sarah, who was an asylum seeker from Sri Lanka, gave an account of her predicament in Hong Kong due to the lack of assistance provided by the HKSAR Government to meet her and her family's basic needs of living.

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*Voices of the Rights of Asylum Seekers and Refugees
[LC Paper No. CB(2)1291/05-06(05)]*

19. Mr Michael of Voices of the Rights of Asylum Seekers and Refugees also gave an account of his predicament in Hong Kong as a result of the lack of assistance provided by the HKSAR Government. He further raised the following three main concerns –

- (a) asylum seekers and refugees should be allowed to have legal representatives during the refugee status determination interviews;
- (b) the Administration should ensure that the basic needs of asylum seekers and refugees were met, i.e. by providing shelter, accommodation and food; and
- (c) the Administration should issue asylum seekers identity papers so that they were not liable to be detained.

RTHK Programme Staff Union

20. Ms MAK Lai-ching and Mr POON Tat-pui of RTHK Programme Staff Union (the Staff Union) expressed serious concern about the impact of the current review of public broadcasting service in Hong Kong on the editorial independence of RTHK. They said that RTHK was the only *de facto* public service broadcaster under review, but there were no RTHK representatives on the committee set up for conducting the review. RTHK had produced various phone-in programmes which provided open forums for the public to freely express opinions on public affairs and served to monitor the Government. Mr POON considered that since the reunification, RTHK had been under pressure to play a role of propagating Government policies. He said that if the editorial independence of RTHK was undermined, it would mean a further blow to Hong Kong people's freedom of opinion and expression under Article 19 of ICCPR.

21. Mr POON further said that in its submission made to UNHRC, the Staff Union demanded that the Government should protect the editorial independence of RTHK by legislation and making RTHK independent from the Government. The Staff Union further suggested that an interim report on the review progress and the impact of the review should be submitted to UNHRC about a year later.

*The Association for the Advancement of Feminism
[LC Paper No. CB(2)1291/05-06(06)]*

22. Miss CHOI Wing-sze of the Association for the Advancement of Feminism (the Association) presented the views of the Association as detailed

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in its submission. She said that the Association was disappointed at the slow progress made by the Administration in implementing the recommendations of UNHRC, such as the absence of any legislation to prohibit discrimination against persons on the grounds of sexual orientation or race. She urged the Administration to review the legal age of consent to homosexual buggery under the Crimes Ordinance (Cap. 200), and to expeditiously implement the amendments previously proposed by EOC to the Sex Discrimination Ordinance (Cap. 480) and the Disability Discrimination Ordinance (Cap. 487) to plug existing loopholes in the two Ordinances. She pointed out that the Administration had considered EOC's proposals in 2001 and had indicated that it had no objection in principle to some of the proposals. She requested members to urge the Administration to implement the necessary amendments as soon as possible in order to enhance protection against sexual harassment and of other rights under the Ordinances. She also urged the Administration to follow up the concern raised by UNHRC that there was discrimination against women in the Small House Policy.

*Hong Kong Committee on Children's Rights
[LC Paper No. CB(2)1347/05-06(02)]*

23. Mr Thomas MULVEY from Hong Kong Committee on Children's Rights (HKCCR) presented the views of HKCCR as detailed in its submission. In respect of the rights of children, HKCCR urged the Administration to set up an independent Children's Commission to promote and protect children's rights and ensure that their needs were considered by the Government. HKCCR did not accept that the Commission on Youth was an appropriate forum for this purpose. HKCCR opposed the current practice that prisoners as young as 14 years old were held together with young adults aged between 18 and 20 as this was not conducive to protection of juveniles. HKCCR also expressed concern about section 3C(2)(a) of the Juvenile Offenders Ordinance (Cap. 226) which, in their view, was in violation of the principle of "the best interests of the child" and Article 14(4) of ICCPR. HKCCR urged the Administration to further raise the minimum age of criminal responsibility to 14 years in line with neighbouring jurisdictions.

24. Mr MULVEY further said that HKCCR demanded that the Administration should explain what progress had been made in following up –

- (a) the recommendations arising from a research study on "Measures Alternative to Prosecution for Handling Unruly Children and Young Persons" commissioned by the Security Bureau in 2003 which included use of family conferencing and empowerment programme for young offenders; and
- (b) the recommendations made by the Law Reform Commission in the Report on Child Custody and Access in March 2005.

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*Hong Kong Christian Institute
[LC Paper No. CB(2)1358/05-06(01)]*

25. Mr FAN Lap-hin said that Hong Kong people and UNHRC had repeatedly commented on the electoral systems in HKSAR. He pointed out that Hong Kong people's demands for elections by universal suffrage were very clear. However, the Administration had responded by seeking re-interpretation of BL provisions by NPCSC and the Administration now seemed to have given up putting forward any political reforms. He considered that the Administration should not have turned a deaf ear to people's demands and should provide a road map and timetable for attaining the goal of universal suffrage.

Other submission received

26. Members noted that the EOC Concern Group had also provided a submission [LC Paper No. CB(2)1338/05-06(01)] for members' reference.

Initial response of the Administration

27. Permanent Secretary for Home Affairs (PSHA) said that the HKSAR Government was fully committed to implementing ICCPR obligations, but there must be a process in deciding on the exact measures to be adopted and the steps to be taken, and it was these areas which might be considered a bit slow by some quarters. She explained that some of the implementation issues involved were complex and controversial and there were bound to be different views in the community. During the process of implementation, the Administration had to carefully consider the full implications in taking every step forward. PSHA said that the Administration would continue to listen to different views on the various issues raised by the deputations.

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28. PSHA informed members that she would lead a 10-member Government delegation to the hearing of UNHRC on the HKSAR's second report in the light of ICCPR on 20 and 21 March 2006. She undertook that the Administration's written response to the list of issues raised by UNHRC in December 2005 would be provided to the Panel once this had been received by UNHRC.

Issues raised by members

Domestic violence

29. Dr Fernando CHEUNG asked what actions would be taken by the Administration in following up the motion on "Domestic violence" passed at the Council meeting of 8 March 2006.

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30. PSHA said that according to the motion passed, Members had requested the Administration to formulate a wide range of measures for tackling domestic violence. She pointed out that as CE had stated in his Policy Address 2005, the Government did not tolerate any domestic violence, and that the Social Welfare Department (SWD) had also been given additional resources for implementing pilot projects to further tackle domestic violence. She explained that as the subject did not fall under policy portfolio of the Home Affairs Bureau (HAB), she was not in a position to give detailed information on the actions which would be taken by the Administration in following up the motion. She added that the views and suggestions raised by Members during the motion debate would certainly be taken into serious consideration by the Administration.

31. Dr Fernando CHEUNG considered that the PSHA's response had exactly reflected the limitation of the existing institutional arrangements within the Government for the implementation of human rights. He remarked that while domestic violence was related to human rights, HAB could do very little in safeguarding the rights of the affected parties.

Setting up human right institution in HKSAR and the Government's attitude in implementing ICCPR

32. Dr Fernando CHEUNG said that regarding the implementation of ICCPR, the Administration had made very slow progress or had not even adopted a very positive attitude in implementing ICCPR in some areas. He considered that since many Government policies and measures relating to human rights were not under the purview of HAB but other policy bureaux, the Administration should adopt the recommendation of UNHRC and set up an independent human rights institution to monitor human rights violations and implement the rights under ICCPR, which in his view would be a more effective approach than the existing institutional arrangements for the protection of human rights. He added that EOC, the Bar Association and the other deputations had also expressed support for this recommendation.

33. PSHA said that the Administration had explained in detail its stance on the recommendation of establishing a human rights institution in HKSAR in its second report under ICCPR. She further pointed out that there were effective mechanisms within the Government to coordinate the formulation of policies which straddled various bureaux. For example, the introduction of the proposed Race Discrimination Bill would affect different policy bureaux. While HAB would play the role of an advocate, cross-bureaux issues relating to the Bill would be fully discussed by the Policy Committee chaired by the Chief Secretary for Administration and addressed therein.

34. Ms Emily LAU said that she had moved a motion at the Council meeting of 1 March 2006 urging the Administration to implement the recommendations of UNHRC. Mr MA Lik, Chairman of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), had remarked

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during the motion debate that the recommendations of UNHRC were not legally binding and should only be implemented according to the circumstances in HKSAR. Ms LAU further said that although there were 26 votes for and 25 votes against the motion, the motion was not passed under the procedures for voting on motions in LegCo as specified in BL which required a simple majority vote of each of the two groups of Members present (i.e. Members returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee) for the passage of a motion. Ms LAU considered that the HKSAR delegation would need to explain, at the forthcoming hearing, why a motion simply urging the Administration to implement the recommendations of UNHRC was not passed by LegCo.

35. Regarding the remarks made by Mr MA Lik, Miss CHOY So-yuk clarified that DAB had opposed the motion moved by Ms LAU because it considered that the HKSAR Government should not give an undertaking that whatever recommendations made by UNHRC should and could be implemented in HKSAR without regard to the actual situation of the territory. She added that many countries including the United States (US) also implemented the Covenant having regard to their actual situation.

36. PSHA said that the circumstances of Hong Kong were special and the implementation of the principle of “one country, two systems” was unprecedented. She illustrated the point by referring to the voting on the Government’s constitutional development package, i.e. proposals put forth in the Fifth Report of the Constitutional Development Task Force (the Fifth Report). She said that sometimes she also found it hard to explain to people in overseas countries why the two motions moved by the Administration to amend the methods for selecting CE and for forming LegCo as stipulated in Annexes I and II of BL respectively at the Council meeting of 21 December 2005 were not passed, even though the two motions received the support of more than half of LegCo Members and had majority support in the community. PSHA further said that while she had no intention to start a debate on the issue at this meeting, she wished only to point out that regard had to be given to the very special circumstances in Hong Kong and the BL provisions in explaining about the situation of Hong Kong.

37. Mr Ronny TONG, however, pointed out that it was a common practice in overseas jurisdictions that any amendments to constitutional documents would require the support of an absolute majority in the legislature. He further said that surveys had found that 70% of Hong Kong people were in support of elections by universal suffrage as soon as possible, and he queried why this was not taken by the Administration as a clear consensus of the community.

38. Ms Margaret NG remarked that it would not be consistent with the rule of law and did not reflect the commitment to fulfill the obligations under ICCPR if the State Parties refused to give an undertaking to follow the

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recommendations to be made by UNHRC. She requested the Administration to explain the rationale for taking the view that the observations, concerns and recommendations of UNHRC were of an exhortatory nature and State Parties were not bound by them.

39. Solicitor General (SG) of the Department of Justice (D of J) responded that the HKSAR Government accepted the international obligations to implement ICCPR which were defined by the provisions of the Covenant and any relevant declarations and reservations. However, the recommendations made by UNHRC were of a varying nature. If the recommendations reflected a specific obligation in ICCPR, the HKSAR Government would be obliged to take action. In many cases, recommendations made by UNHRC went beyond what the Covenant specifically required, for example by suggesting how a particular obligation could best be implemented. In that case, the HKSAR Government might properly decide to implement the obligation in another way. He explained that the HKSAR Government was not obliged to implement ICCPR in any particular way, and to that extent it did not have to follow a recommendation made by UNHRC as to a particular way of implementing the Covenant.

40. SG further said that many concerns raised by UNHRC had been addressed although not necessarily in the way suggested by UNHRC. For example, UNHRC had expressed concern that the Public Order Ordinance (Cap. 245) could be applied to restrict unduly enjoyment of the rights guaranteed in Article 21 of ICCPR. UNHRC had therefore recommended that the Ordinance should be reviewed to bring it in line with ICCPR. He explained that the Ordinance had been subjected to legal challenge which went up to the Court of Final Appeal (CFA). CFA held that the system under the Ordinance was consistent with ICCPR. SG reiterated that the HKSAR Government took the recommendations of UNHRC seriously. Among the 12 recommendations made by UNHRC in its previous concluding observations, the Administration had taken substantial steps to respond to at least six of them. It had also set out the reasons for not following the remaining six recommendations in the second report of HKSAR under ICCPR.

Re-interpretation of BL provisions and political reform

41. Referring to the first issue on the list of issues published by UNHRC, Ms Emily LAU urged the Administration to explain the circumstances under which NPCSC would re-interpret BL provisions, as UNHRC had expressed concern about the impact of the re-interpretation issued by NPCSC on 6 April and 26 April 2004 on the authority of the courts and the principle of universal suffrage in the elections of CE and LegCo in 2007 and 2008 respectively. She also requested the Administration to give its response to the concern raised in the same paragraph, i.e. how the re-interpretation was consistent with NPCSC's obligation to respect civil and political rights in HKSAR. Ms LAU also queried whether the Chief Executive Election and Legislative Council Election

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(Miscellaneous Amendments) Bill 2006 would contravene the principle of gradual and orderly progress as specified in BL, as the effect of the Bill was that the 2007 CE Election and 2008 LegCo Election would be held on the basis of existing arrangements.

42. Deputy Secretary for Constitutional Affairs (DSCA) said that NPCSC's power to make the interpretation originated from Article 67(4) of the Constitution of the People's Republic of China and BL158(1). The power of interpretation of BL conferred by BL158(1) was in general and unqualified terms, and its exercise was not restricted or qualified in any way by BL158(2) and 158(3). He further said that this principle had also been confirmed by the courts in Hong Kong. He added that NPCSC's exercise of power to interpret BL, therefore, did not and would not compromise the independence of the Judiciary or the rule of law in the territory.

43. DSCA further said that the Central Authorities and the HKSAR Government had always acted according to BL to promote constitutional development so that CE and all LegCo Members would ultimately be returned by universal suffrage. He pointed out that it was the Administration's view that the proposed package put forth in the Fifth Report was consistent with the BL provisions as well as the Interpretation and Decision made by NPCSC in April 2004, and was a substantive and democratic package leading Hong Kong's political structure towards the ultimate aim of universal suffrage. The package had broad public support. However, it was a fact that the proposed package did not receive the support of a two-thirds majority of all LegCo Members as required in BL. He said that while the two motions on amendment to Annexes I and II of BL put by the Administration could not be processed further, the Administration remained committed to the promotion of constitutional development. It also understood and recognised the community's aspirations in regard to universal suffrage.

44. DSCA further said that the Committee on Governance and Political Development under the Commission on Strategic Development (CSD) had already commenced discussions on a roadmap for universal suffrage at its first meeting in November 2005. He pointed out that as CE had stated in public, the Commission aimed to draw conclusions in early 2007 on its discussions on principles and concepts relating to universal suffrage and the electoral systems for CE and LegCo when attaining universal suffrage. He added that the Administration hoped that on the basis of the conclusions, discussions on the way forward for universal suffrage would commence. Ms Emily LAU, however, queried how public opinions could be represented in the discussions held by CSD since only a few legislators had been appointed to it.

45. SG supplemented that the Administration did not accept that the NPCSC interpretation might somehow be inconsistent with provisions of ICCPR. He said that in its previous concluding observations, UNHRC expressed concern that the power of interpretation under BL158(1) could be used in circumstances

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that undermined the right to a fair trial under Article 14 of ICCPR. SG, however, pointed out that the issue involved in the 2004 interpretation was related to a determination of constitutional interpretation that did not affect rights under Article 14 of ICCPR. If the court had carried on to determine the issue and the case went up to CFA, CFA would have to refer the matter to NPCSC for interpretation under BL158. SG said that in fact, the courts had not been given the power of final determination on all issues relating to constitutional interpretation and the application of the interpretation mechanism under BL158 in no way undermined the independence of the Judiciary.

46. Referring to the BL provision concerning the term of office of CE, SG said that NPCSC's interpretation of this provision did not undermine in any way the rights under ICCPR, because the provision was not related to a right under ICCPR.

47. Miss CHOY So-yuk asked the Administration to confirm whether the existing electoral method for selecting CE and for forming LegCo was legally in compliance with ICCPR. SG responded that the electoral system for selecting CE was consistent with ICCPR, as ICCPR did not mandate a particular type of system for the selection. The electoral system for forming LegCo would not be consistent with Article 25 of ICCPR if the reservation against Article 25(b) did not exist.

Prohibition of discrimination

48. Mr Ronny TONG said that the Government had a constitutional obligation and was also obliged under Articles 2 and 26 of ICCPR to enact legislation to prohibit discrimination against persons on any ground such as race, colour, sex, language, religion, political or other opinion, etc. He pointed out that it was unacceptable for the Administration to defer taking action in this regard in the excuse that there was not yet a consensus reached on the need to introduce such legislation, since people who suffered from discrimination were always the minority group in the community. He further said that the imposition of a levy on employers of foreign domestic helpers (FDHs) and the introduction of the seven years' residence requirement for social security benefits were acts of the Government taking the lead to discriminate. He pointed out that the levy was in effect a kind of indirect tax which was only imposed on FDHs, whereas the residence requirement constituted discrimination on the ground of specified status. He asked whether the Administration would consider enacting legislation as soon as possible to prohibit all forms of discrimination for the implementation of Article 26 of ICCPR.

49. Deputy Secretary for Home Affairs (1) (DSHA(1)) responded that discrimination laws in Hong Kong specifically included sex, disability and family status as prohibited grounds of discrimination. He explained that with regard to the exceptions included in the respective legislation, it was necessary

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for the Administration to look at the actual situation and introduce legislation separately in different areas of discrimination. DSHA(1) pointed out that in considering the need to introduce certain anti-discrimination legislations which might give rise to religious and moral controversies, it would be necessary for the Administration to first understand the public attitudes towards the subjects. He clarified that the Administration's stance was not that anti-discrimination legislation should be considered only when the majority of the community agreed to such a need. He explained that public education and seeking consensus in the community were important components of the initial phase of any legislative exercise. In deciding whether to put forward any legislative proposal, the Administration must need to know whether there was support in the community and LegCo. Under many circumstances, the support of LegCo Members for a legislative proposal would hinge upon the support in the community.

50. SG supplemented that a judicial review had been sought on the levy on employers of FDHs and the court had ruled that the levy was not a form of tax, but was a levy imposed on FDH employers for retraining purpose.

51. PSHA pointed out that the introduction of the seven years' residence requirement had the endorsement of LegCo in 2003 before implementation. In addition, the new policy had been vetted by the Human Rights Unit under D of J and was confirmed to be consistent with the Hong Kong Bill of Rights Ordinance (Cap. 383). She added that it was also common, and was not unreasonable, for governments to take into consideration resources constraints in their welfare policies and to adopt residence requirements for qualification for social security benefits. Mr Ronny TONG, however, considered that the support of some LegCo Members for the introduction of the new residence requirement should not be used as an excuse by the Government to breach its international obligations.

52. In response to Miss CHOY So-yuk's enquiry about the position of the Race Discrimination Bill, DSHA(1) said that the drafting of the Bill was at its final stage and it was intended to be introduced into LegCo within the current legislative session. Miss CHOY further asked about the Administration's plan to introduce any additional anti-discrimination legislation. DSHA(1) said that after the enactment of the Bill, the Administration would conduct further studies on the need to introduce legislation to prohibit discrimination on the grounds of sexual orientation, age and religion.

Article 25(b) of ICCPR

53. Mr Ronny TONG considered that the requirement under the Chief Executive Election Ordinance (Cap. 569) that a nomination of a candidate was invalid unless it was made by not less than 100 members of the Election Committee was in breach of Article 25(b) which provided that every citizen had the right to vote and to be elected at genuine periodic elections. Noting

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that the Administration had recently introduced the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Bill 2006 into LegCo, Mr TONG asked why the Administration had not taken the opportunity to rectify the above problem.

54. SG pointed out that the Administration did not accept that the CE elections were inconsistent with Article 25(b) of ICCPR, because the provision did not require elections for any specific organs, and there was no general obligation that the executive organs of government must be elected.

55. Ms Margaret NG urged the Administration to address the concerns raised by UNHRC that the electoral system for LegCo did not comply with several Articles including 25(b) of ICCPR. She pointed out that Article 25(b) applied once LegCo elections were held and the FC system in no way fulfilled the requirement of election by universal and equal suffrage.

56. SG responded that, insofar LegCo elections were concerned, the Administration maintained its view that the reservations in relation to Article 25, which was entered when ICCPR was extended to Hong Kong, still applied. The Administration remained of the view that the electoral system was appropriate to Hong Kong's circumstances and gave rise to no incompatibility with any of the provisions of ICCPR as it applied to Hong Kong. He added that legislatures in most mature democracies had also developed their elected systems towards universal suffrage over a period of time.

57. Mr Ronny TONG, however, pointed out that in its judgment delivered in 1999, the court had already ruled that the justification given by the Government for maintaining the reservations in relation to Article 25 was not legally sound and he urged the Administration to make reference to that judgment.

Basic needs of asylum seekers

58. Dr Fernando CHEUNG requested the Administration to address the concerns raised by some of deputations regarding the basic needs of asylum seekers in Hong Kong, such as asylum seeking children's right to education. Admin DSHA(1) undertook to relay Dr CHEUNG's concerns to the bureaux concerned for a written response.

Accessibility of polling stations by persons with a disability and voting in elections via the Internet

59. Dr Fernando CHEUNG said that once during an election, he found that a polling station claimed to be accessible to persons with a disability was not so. He urged the Administration to make improvements. He also asked about the progress made with the development of a new programme to enable voting in elections via the Internet.

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60. DSCA responded that the Registration and Electoral Office (REO) attached great importance to improving the accessibility of polling station by persons with a disability. He said that in the 2004 LegCo Election, more than 50% of the polling stations were accessible to persons with a disability and REO would continue to make improvements. DSCA suggested that Dr CHEUNG should provide him with information of the polling station that he had referred to for follow-up actions. As regards the development of new programme to enable voting in elections via the Internet, DSCA explained that the Administration was concerned that there might be a general lack of confidence among voters in the openness and impartiality of such a new voting method, and the Administration needed to first resolve some technical problems.

Establishment of a Mental Health Council

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61. Dr Fernando CHEUNG sought the Administration's response to the suggestion of EOC about the establishment of a Mental Health Council. DSHA(1) responded that as there were no representatives of the Health, Welfare and Food Bureau (HWFB) at the meeting, he would request HWFB to give a written response to the Panel later.

(The meeting suspended for about five minutes. After the break, the Panel Chairman chaired the meeting for discussion of agenda items V to VI.)

V. Report on the survey on public attitudes towards homosexuals
[LC Paper No. CB(2)1291/05-06(07) & (08)]

62. Members noted that the following report and submissions were tabled at the meeting for members' reference –

- (a) a survey report provided by Hong Kong Alliance for Family and summary of the report [LC Paper No. CB(2)1351/05-06(01)];
- (b) the initial response of family values and religious concern groups to the Survey on Public Attitudes towards Homosexuals [LC Paper No. CB(2)1351/05-06(02)]; and
- (c) four submissions from the Balance of Human Rights Watch [LC Paper No. CB(2)1351/05-06(03)].

Briefing by the Administration

63. DSHA(1) briefed members on the salient points of the Administration's paper reporting on the outcome of the Survey on Public Attitudes towards Homosexuals commissioned by HAB in November 2004 (the Survey). DSHA(1) said that the report would be uploaded onto the Internet. He added

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that the Administration might consider commissioning another survey targeted at homosexuals and bisexuals to gauge information on the extent of discrimination encountered by them.

64. DSHA(1) clarified that the Survey was not conducted for the purpose of preparing for the introduction of legislation to prohibit discrimination on the ground of sexual orientation. He said that the Survey was conducted to provide more information on the issue, and the Administration would need to conduct further consultation before deciding on the way forward.

Issues raised by members

Public education and administrative measures

65. The Deputy Chairman said that during a publicity activity organised by EOC, a participant who was a homosexual had expressed the view that there were many misconceptions in the community about homosexuality and public education for the elimination of discrimination on the ground of sexual orientation was inadequate. In this connection, the Deputy Chairman asked whether the Administration would strengthen education in schools on sexual orientation, and whether there was a plan to implement administrative measures to eliminate such discrimination in the fields of employment, education and in the provision of services or goods.

66. DSHA(1) responded that the Education and Manpower Bureau (EMB) had incorporated elements on promotion of equal opportunities for people of different sexual orientation in school curricula. The Gender Identity and Sexual Orientation Unit set up under HAB in May 2005 was also responsible for promoting equal opportunities for people of different sexual orientation by launching publicity and education programmes, and handling enquiries and complaints in relation to sexual orientation and gender identity. DSHA(1) said that HAB had issued a manual on anti-discrimination on the ground of sexual orientation in the field of employment for reference and compliance by employers. DSHA(1) pointed out that while complaints relating to Government or public authorities would be dealt with in accordance with the Hong Kong Bill of Rights Ordinance, complaints in the private sector were mostly settled by conciliation.

67. DSHA(1) further said that subject to the outcome of an ongoing court appeal case relating to discrimination on the ground of sexual orientation, legislative proposals and policy reviews in various policy areas might be initiated in the light of relevant judgment given by the court and actual circumstances.

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The way forward and difficulties anticipated for legislation

68. Dr Fernando CHEUNG queried why the Administration had conducted the Survey if its outcome was not intended to have any impact on policies. He considered that in order to assess the extent of discrimination faced by homosexuals, the Survey should have directed relevant questions to homosexuals only. He requested the Administration to provide details of its plan to conduct the next survey and whether it was going to implement administrative measures to address the problem of discrimination on the ground of sexual orientation, if the Administration did not intend to introduce legislation.

69. DSHA(1) responded that the Administration intended to commission the survey targeted at homosexuals and bisexuals in the next 12 months. Dr CHEUNG suggested that HAB should adopt more the views of the sexual minorities in the questionnaire design for the next survey. He pointed out that there had been criticisms that the advisory committee on the questionnaire design for the Survey did not comprise representatives from the sexual minorities. He urged the Administration to make improvements for the next survey. DSHA(1) agreed to take note of the comments.

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70. DSHA(1) said that the public consultation on sexual orientation in 1996 had found that over 80% of the respondents objected to the introduction of legislation to prohibit discrimination on the ground of sexual orientation. The Survey, however, found that more people had accepted the introduction of such legislation. DSHA(1) said that the next step of the Administration would be to consider whether any policy should be made by deepening the discussion to see if there was a need to introduce legislation to prohibit discrimination on the ground of sexual orientation. However, as proposals on legislating against discrimination on the ground of sexual orientation would be controversial, the Administration had to listen to more views.

71. The Chairman asked whether the Administration had set any benchmark of public acceptance level for the introduction of legislation to prohibit discrimination on the ground of sexual orientation. DSHA(1) responded that apart from public support, the Administration had to consider whether it had adequate support of LegCo if such a legislative proposal was introduced. He further said that based on its assessment, the Administration considered that it was not yet the right time to do so.

72. Miss CHOY So-yuk agreed that the issue of discrimination on the ground of sexual orientation was indeed very controversial and could be divisive. She asked whether the Administration would consider adopting an approach of widening the common ground and narrowing mutual differences such that it would initially introduce legislation in less controversial areas and deal with the very controversial issues at a later stage.

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73. DSHA(1) pointed out that organisations and groups which opposed the introduction of legislation to outlaw discrimination on the ground of sexual orientation considered that overseas experience had shown that if such a legislation was introduced, challenges against the legal age of consent to homosexual buggery and the legalisation of same-sex marriages would follow. They considered that all these would adversely affect traditional family values and concept of marriage. DSHA(1) said that these organisations and groups were also concerned that with the introduction of the legislation, they could no longer freely express their views on homosexuality. DSHA(1) pointed out that Miss CHOY's proposed approach was not workable given these circumstances and also would not be acceptable to some organisations and groups.

74. Ms Emily LAU expressed concern that the Administration seemed trying to evade the responsibility of taking actions to protect the sexual minorities by using the outcome of the Survey to show that there were conflicting and contradictory views in the community on the issue. She said that the outcome of the Survey had reflected that there were problems with the public attitudes towards homosexuality which should be rectified. She considered that the Administration should adopt a more proactive approach for eliminating and preventing discrimination on the ground of sexual orientation and strengthen its efforts in public education. She sought the Administration's views as to whether it agreed that the introduction of legislation was a way to eliminate such discrimination.

75. DSHA(1) said that the Administration had done a lot of work to eliminate and prevent discrimination on the ground of sexual orientation, e.g. establishing the Sexual Minorities Forum and the Gender Identity and Sexual Orientation Unit to enhance communication with the sexual minorities as well as devoting more resources to strengthen public education. DSHA(1) explained that the organisations and groups which opposed the introduction of legislation to outlaw discrimination on the ground of sexual orientation considered that if the legislation was introduced, their freedom of speech would be hampered and the work of their organisations and groups would also be affected. He pointed out that compared with the other existing anti-discrimination legislation or even the proposed race discrimination legislation, the issue under discussion was more complicated because it could involve debates on religious and moral principles. DSHA(1) said that the Administration needed more time to discuss with and explain to the opposing organisations and groups about the Administration's stance on anti-discrimination and equal opportunities. He said that it was necessary for the Administration to eliminate misunderstanding about the Government's motive.

76. In response to Ms LAU's enquiry about the concerns raised by these organisations and groups, DSHA(1) pointed out that they were concerned that in other jurisdictions in North America or in Europe where had put in place legislation to safeguard equal opportunities for sexual minorities, many lawsuits had arisen from people's expression of opinions against

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homosexuality, and some employers had also restrained their employees from expressing such opinions.

Issuance of a white bill

77. Ms Margaret NG reminded the Administration that it had to meet its international obligations under the relevant human rights treaties to protect any minority group from discrimination, and it should not give up such work simply because it had encountered great resistance from the community. She suggested that the Administration should issue a white bill to provide a solid basis for discussion. She said that the merits of publishing a white bill were that it could help clarify some misunderstandings about the undesirable impact of the legislation and would be conducive to concrete discussion. She pointed out that the Administration could initiate the drafting of the blue bill only when a consensus was reached.

78. DSHA(1) responded that while the Administration could consider the suggestion, the Administration's usual approach was the issuance of a public consultation paper, which could incorporate detailed proposals for consultation. He explained that the demerit of the issuance of a white bill was that its preparation was time-consuming. He added that the Administration considered that it still required more time for consideration as to the right timing for conducting a public consultation on the introduction of the legislation.

79. Ms Margaret NG said that based on her contacts with those opposing organisations and groups, she noted that some of their worry about the impact of the legislation was due to their misunderstanding that it would contain, to a large extent, provisions similar to the relevant legislation in US. She considered that if a white bill was issued for public consultation, such misunderstanding would be cleared up as these organisations and groups could also seek legal advice on whether the proposed legislation would really have the undesirable effects they anticipated. She urged the Administration to consider her suggestion since the preparation of a detailed consultation paper would also be time-consuming.

80. DSHA(1) reiterated that the Administration did not have a timetable for conducting an extensive public consultation on the introduction of legislation at the present stage. He said that even when the consultation was conducted, the Administration was inclined to publishing a detailed consultation paper instead of a white bill. He explained that there was not much difference in the preparation work between a white bill and a blue bill. However, if a white bill was to be drawn up, the Administration needed to take a position on various policy issues. The Administration could have some flexibility if it issued a consultation paper because the Administration was allowed to only list out different options in the consultation paper to invite public views.

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81. The Chairman asked whether the Administration would consider attaching a white bill to a detailed consultation paper for the public consultation exercise to be conducted. Ms Margaret NG expressed support for adopting such an approach. She added that the additional resources devoted to the preparation of a white bill would not be wasted because much work in the preparation of the blue bill at a later stage would be saved.

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82. DSHA(1) responded that the issuance of a white bill would first require the completion of extensive internal discussion on the relevant legislative proposals within the Government and the endorsement of such proposals by the Executive Council (ExCo). He explained that as ExCo would need to know whether the proposals had public support or not, it was preferable for the Administration to first issue a consultation paper to gauge public opinions on the various options or else it could not assess the extent of public support for specific proposals. He, however, undertook that the Administration would consider the Chairman's suggestion. Ms Emily LAU reminded the Administration that it was obliged to explain to the public that it had the responsibility, under the relevant international human rights treaties as applied to Hong Kong and in accordance with BL39, to protect the rights and freedoms of Hong Kong residents including those of any minority group.

VI 256RS – Indoor Recreation Centre, Community Hall cum Library in Area 17, Tung Chung, Lantau Island
[LC Paper No. CB(2)1291/05-06(09)]

83. Acting Principal Assistant Secretary for Home Affairs (Recreation and Sport) (PASHA(R&S)(Atg)) briefed members on the salient points of the Administration's paper on the development of the proposed indoor recreation centre, community hall cum Library in Area 17, Tung Chung, Lantau (the Project). PASHA(R&S)(Atg) informed members that this was an ex-Provisional Municipal Council (ex-PMC) project for implementation to meet the demand for indoor recreation centre and district library in Tung Chung. PASHA(R&S)(Atg) explained that in order to optimise the land use of the Project site, a community hall proposed by the Home Affairs Department (HAD), a residential care home for the elderly proposed by SWD and office accommodation proposed by Food and Environmental Hygiene Department (FEHD) would also be developed under the proposed Project. PASHA(R&S)(Atg) said that the construction works were expected to start in December 2006 for completion in October 2009.

Expediting implementation of the Project and noise mitigation measures

84. Mr LI Kwok-ying and Mr WONG Kwok-hing expressed support for the Project. They urged the Administration to speed up the implementation, as there would be a lapse of 10 years since the endorsement of the Project by the Provisional Regional Council for implementation up to the scheduled

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completion date. Mr LI also asked whether measures would be taken to mitigate the noise impact of the works as the Project site was located next to a school.

85. Chief Project Manager (CPM) of the Architectural Services Department (ArchSD) responded that as the “Design and Build” (DB) mode would be adopted for implementation of the Project, it was necessary to allow the tenderers adequate time to prepare the design in the tendering process because they would need to include their initial design proposal in their bids. She further said that on the basis that the funding application for this Project was endorsed by the Finance Committee in May 2006 and the tendering process commenced right away, the tender returns were expected to be received around September 2006. CPM explained that as a two-stage vetting process would be conducted, it would take a comparatively longer assessment period. She added that as it was necessary to follow the established tendering procedures, the project commencement date would be December 2006.

86. CPM also pointed out that after conducting the site investigation, it was found that the rock level was rather deep and a high degree of difficulty in piling work was expected for the Project. She explained that because the site was adjacent to the MTR (Tung Chung Line) Protection Zone, it also posed constraints to the foundation work. She said that the anticipated construction time was considered reasonable as more time would be required for the piling works. She added that the Administration, however, would try its best to expedite the implementation with a view to advancing the completion date as far as possible.

87. As regards noise mitigation measures, CPM informed members that the selected contractor would be required to adopt a non-percussive piling method in order to minimise nuisance to the neighbouring school. She added that the contractor would be required to comply with the Noise Control Ordinance (Cap. 400) and ArchSD would maintain close liaison with the school during the construction period to alleviate their concern.

Proposed scope of and facilities to be included under the Project and public consultation on its design

88. Mr WONG Kwok-hing asked whether the proposed indoor recreation centre could include provision of a dancing room and whether a small district office of the Labour Department (LD) could be included under this Project to facilitate the handling of labour disputes and employment related matters in Tung Chung. Assistant Director (Leisure Services) 3 (AD(LS)3) said that the indoor recreation centre would include a multi-purpose activity room which would be suitable for organising activities such as dancing and yoga. At the request of the Chairman, AD(LS)3 undertook to consult LD as to whether it would require a small district office to be provided under this Project and to give a response to the Panel later.

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89. Mr Daniel LAM also expressed support for the Project. He said that he did not ask the Administration to advance the completion date as he only hoped that there would be no delay. He requested LCSD to ensure that the proposed leisure and recreational facilities could cater for local demands. He noted that there was a proposal to provide a handball court under this Project but he considered that handball was not a very popular sport in Tung Chung especially compared with other sports, such as basketball. He added that as a representative of the Islands District Council (IsDC), he would further discuss with LCSD on the specific needs of local residents later.

90. Ms Emily LAU said that the Administration should try to get to know what sports were really popular with youngsters in Tung Chung and try to include such popular leisure and recreational facilities in the Project as far as possible. She said that this could avoid low usage rate of the relevant facilities in the future and could also cater for the needs and interest of young people in Tung Chung. She suggested that LCSD should consult IsDC and any other concerned parties at the early stage before finalising the scope of the Project. She further said that as the Chairman of the Subcommittee to Follow Up the Outstanding Leisure and Cultural Services Projects of the Former Municipal Councils, she had met with the Deputy Director of LCSD on the previous day, and it was noted that the development of an indoor recreation centre in another district had been held up because there was a new suggestion of including a skateboard rink in the proposed development made by some DC members at a late stage. She considered that the Administration should learn from the experience in taking forward the proposed Project to avoid unnecessary delay.

91. Ms Emily LAU further suggested that consideration should be given to extending the opening hours of indoor recreation centres for young people so that they could engage themselves in some recreational activities and this might be a way to resolve the problem of young night drifters.

92. AD(LS)3 responded that the demands of local residents would always be acceded to in the provision of leisure and recreational facilities and those currently proposed for the Project included badminton courts, indoor facilities for dancing and yoga, table tennis facilities, children playrooms, etc. He undertook that the Administration would conduct consultation on the proposed range of facilities with IsDC once again as soon as possible.

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93. Referring to paragraph 12 of the Administration's paper, the Deputy Chairman asked whether the proposed residential care home for the elderly could provide sufficient places for needy elderly people in Lantau, as the population of residents aged 65 and above in Lantau was projected to increase from around 8 000 in 2004 to 10 630 in 2009.

94. Senior Social Work Officer of SWD responded that there were only two subvented residential care homes for the elderly providing a total of about 150

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places for Lantau Island. She pointed out that one of them had a relatively long history and its inmates were becoming frail. She informed members that upon conversion of the home for the aged to provide care-and-attention places, there would be a reduction of places in the residential care home, resulting in an increase in the overall demand for such places in Lantau. She explained that as some elderly people in Lantau had a preference for residential care homes located in Lantau, it was necessary for the Administration to provide an additional residential care home for the elderly in order to meet the service demands.

95. The Deputy Chairman asked whether at present, there was office accommodation for FEHD in Tung Chung and, if not, how the FEHD staff carried out their enforcement actions in the area. District Environmental Hygiene Superintendent (Islands) (DEHS(Is)) responded that there was no dedicated office accommodation in Tung Chung for the staff of the Hawker Control Team (HCT) and Pest Control Section (PCS) of the Islands District Environmental Hygiene Office. It had relied on the FEHD staff stationed in Mui Wo to provide services to Tung Chung and this was not convenient. Therefore, the Administration had proposed to include office accommodation for HCT and PCS of the Islands District Environmental Hygiene Office under the Project.

96. Mr Patrick LAU pointed out that the proposed residential care home for the elderly was technically not very compatible with facilities, such as the library and the indoor recreation centre, which were expected to generate noise whereas the elderly inmates would like to have a quiet environment. CPM responded that the Administration would take note of Mr LAU's concern and would specify in the tendering document that the design should pay attention to the need of separating the entrance of the proposed residential care home for the elderly from other facilities, e.g. the library and the indoor recreation centre.

97. Dr Fernando CHEUNG also expressed support for the Project which he considered had been long awaited by local residents. He, however, noted that the Project site was located nearer to Fu Tung Estate than to Yat Tung Estate where had much larger population than Fu Tung Estate. He pointed out that the residents in Yat Tung Estate would have to travel to the proposed indoor recreation centre and the community hall by public transport, or by cycling which was a common mode of transport in Tung Chung. He requested the Administration to cater for the transport needs of the residents in Yat Tung Estate for traveling to the proposed indoor recreation centre. Apart from this, Dr CHEUNG further raised the following concerns –

- (a) many residents in Yat Tung Estate were ethnic minorities. The Administration should consult these ethnic minority residents as well on the design of the Project and, where necessary, provide translation service to facilitate collection of their views on the proposed facilities; and

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- (b) the user's point of view should be adopted for the design of the proposed facilities to ensure that they would be barrier-free for people with disabilities. The design requirements promulgated in the Design Manual: Barrier Free Access 1997 had already been updated and the revised Manual was under consultation. The Administration should follow the updated requirements in implementing the Project.

98. CPM said that the original Project scope had not included parking space for bicycles. She, however, agreed to take note of the suggestion and identify space for bicycle parking under the Project. AD(LS)3 said that the Administration had consulted the Community Affairs, Culture and Recreation Committee of IsDC on the Project, and the views of the ethnic minorities in Tung Ching had been gauged via the Area Committee. He reiterated that consultation with IsDC would be conducted again.

99. Dr Fernando CHEUNG suggested that instead of consulting IsDC, the Administration should conduct an extensive consultation exercise targeting at all the residents in Tung Chung on the proposed facilities. The Chairman, however, expressed reservations about the suggestion as such a step might substantially delay the implementation process of the Project. He considered that consultation with IsDC and also the Area Committee should suffice since DC members were representatives of residents in advising on district affairs.

Hiring construction workers in Tung Chung

100. Mr WONG Kwok-hing pointed out that there were many unemployed construction workers in Tung Chung. He asked the Administration whether it could be made a term in the tender that the selected contractor would have to give priority to hiring construction workers living in Tung Chung. CPM explained that this might not be feasible as such a term might give rise to complaints from construction workers in other districts on the ground of equal opportunity principles.

Opportunity for LegCo Members to comment on the design of the recommended tender under DB approach before giving approval to relevant funding application

101. Mr Patrick LAU suggested that the Administration should learn from the experience of the development of Tseung Kwan O Sports Ground which was also delivered by a DB mode, and should seek to enhance the transparency of the process. He suggested that the Administration should make available the proposed design submitted by tenderers to LegCo Members for comments by stipulating this requirement in the tendering documents. He added that Mr Albert CHAN had also expressed support for the suggestion. CPM responded that it was considered inappropriate to release the design before the tender was

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awarded. She said that having learnt from the experience of the development of Tseung Kwan O Sports Ground, the Administration this time would not require to seek additional funding for the Project by capping the tender price to be proposed by tenderers. She added that the existing policy on the DB mode did not provide for such a procedure for the Government to make public the design submitted by the selected tenderer before the tender was awarded. She undertook that the Administration would consider the request and review the current policy.

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102. The Chairman, Ms Margaret NG, Ms Emily LAU and Dr Fernando CHEUNG also expressed concern about the lack of a mechanism for LegCo Members to comment on the proposed facilities to be included in the Project and its design before funding approval for the Project was to be given. They considered that if such a mechanism was provided, the Administration could request the tenderer to make necessary improvements to the design and proposed facilities before awarding the contract. The Chairman further pointed out that the bone of contention in the development of Tseung Kwan O Sports Ground was that LegCo was requested to increase the approved commitment for the Project and the justification for the cost increase was that the recommended tender incurred higher costs as it proposed a more innovative design and included better facilities. However, LegCo Members were not given the chance to see the new design because the Administration said that it was bound by a confidentiality clause as long as the tender had not yet been awarded. Ms Margaret NG added that when the Panel discussed the development of Tseung Kwan O Sports Ground at its special meeting held on 23 January 2006, members had expressed grave concern about the demerits of the DB mode of implementation and the Panel had already requested the Administration to review whether there was room for improvements in the use of DB mode.

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103. Ms Emily LAU requested that before submitting the current proposal on the Project to the Public Works Subcommittee for consideration, the Administration should first resolve the problem, i.e. when LegCo was requested to give funding approval for a works project implemented through DB mode, LegCo Members were not given the chance to see and comment on the design of the selected tender. The Chairman pointed out that if necessary, LegCo Members could consider holding closed meetings for discussion of the design so that it could be kept confidential. He said that while the Liberal Party supported the Project, he urged the Administration to review its policy and explore to provide for the abovementioned mechanism as stated in paragraph 102.

104. In concluding the discussion, the Chairman said that no members who had expressed views on this item had raised objection to the Project. Members, however, considered it necessary for the Administration to at least provide the design submitted by the selected tenderer to LegCo for consideration when LegCo scrutinised the relevant funding proposal.

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105. There being no other business, the meeting ended at 12:40 pm.

Council Business Division 2
Legislative Council Secretariat
7 April 2006