

立法會

Legislative Council

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Report of the Panel on Home Affairs for submission to the Legislative Council

Purpose

This report gives an account of the work of the Panel on Home Affairs during the 2005-2006 Legislative Council (LegCo) session. It will be tabled at the Council meeting on 5 July 2006 in accordance with Rule 77(14) of the Rules of Procedure.

The Panel

2. The Panel was formed by resolution of this Council on 8 July 1998 and as amended on 20 December 2000 and 9 October 2002 for the purpose of monitoring and examining Government policies and issues of public concern relating to district, community and rural matters, human rights, civil education, data protection, press freedom, building management, youth and women matters, the provision of leisure and cultural services as well as matters relating to the development of arts and culture, public entertainment, sport and recreation.

3. The terms of reference of the Panel are in **Appendix I**.

4. The Panel comprises 17 members, with Hon Tommy CHEUNG and Hon TAM Heung-man elected as Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

Major work

Rights of individuals

Reports to the United Nations under international human rights treaties

5. The Panel closely monitored the submission of reports to the United Nations (UN) under various international human rights treaties by the Government of the Hong Kong Special Administrative Region (HKSAR) and its

progress in following up the recommendations made by the UN Treaty Monitoring Bodies concerned in respect of these reports.

6. The Panel discussed with the Administration and deputations the second report of HKSAR in the light of the International Covenant on Civil and Political Rights (ICCPR). The Panel held further discussions with the Administration and received views from deputations on the Administration's response to the concluding observations issued by the UN Human Rights Committee after consideration of the second report.

7. Some members expressed their disappointment at the slow progress made by the Administration in implementing the recommendations made by the UN Human Rights Committee. They queried the rationale for the Administration taking the view that the recommendations were of an exhortatory nature only. A member, however, considered that the HKSAR Government should not give an undertaking to implement whatever recommendations made without regard to the actual situation in the territory.

8. The Administration explained 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. If the recommendations reflected a specific obligation in ICCPR, the HKSAR Government would be obliged to take action. However, the HKSAR Government was not obliged to follow a recommendation made by the UN Human Rights Committee as to a particular way of implementing the Covenant. The Administration reiterated that the HKSAR Government took the recommendations of the UN Human Rights Committee seriously. Many concerns raised by the Committee had been addressed, although not necessarily in the way suggested by the Committee.

9. Some members were of the view that the Administration was backtracking on its stance in respect of the establishment of a human rights commission. They pointed out that the Administration had previously adopted a fairly open mind on the issue and had agreed in principle to explore in that direction. However, the Administration had categorically indicated in its response to the concluding observations issued by the UN Human Rights Committee that there was neither an obvious need nor any plan for the establishment of such an institution. These members reiterated their view that the Administration should set up an independent human rights institution to implement the rights under ICCPR. The Administration stressed that there was no obligation under ICCPR to set up a human rights commission, and there was no change of stance on its part.

10. The Panel discussed the concluding observations issued by the UN Committee on the Rights of the Child after consideration of the initial report submitted by HKSAR under the Convention on the Rights of the Child (CRC) at its meetings on 8 November 2005 and 10 February 2006.

11. Some members expressed disappointment that the Administration had failed to respond positively to the recommendations made by the UN Committee on the Rights of the Child in its concluding observations. They were concerned that the coordination of existing programmes and policies pertaining to children's rights was sectoral and fragmented. These members considered that there was a lack of channels to systematically collect children's views on policies affecting their interests, and it was difficult to ensure the protection of children's interests in the relevant policy-making process. They suggested that the Administration should consider setting up a central body for the monitoring of children's rights and the effective implementation of CRC, as recommended by the UN Committee on the Rights of the Child.

12. The Administration assured members that relevant policies were well coordinated under the existing mechanism to cater for children's needs and interests. Any change in policies or launching of a new policy had first to be endorsed by the Policy Committee chaired by the Chief Secretary for Administration, and by the Executive Council if legislation was considered necessary. The Administration pointed out that in addition to the Commission on Youth which targeted at persons aged between 15 and 24, the Administration had been sponsoring non-governmental organisations of children's rights to organise programmes to gauge children's views.

13. The Administration also explained that there were calls for the setting up of a Commission on Children modelled on the Women's Commission or the Commission on Youth, or the appointment of a Commissioner for Children. The Administration might consider whether it should be setting up a Commission on Children or changing the Commission on Youth into a Commission on Children and Youth. The Administration might also consider whether a policy secretary should be assigned to take up the new position of the Commissioner for Children, or setting up a new office headed by a senior Government official. The Home Affairs Bureau (HAB) was discussing with the chairman of the Commission on Youth, related organisations and other policy bureaux the course of action that should be taken to follow up the recommendation.

14. Some members felt strongly that the Administration should not waste time exploring the option of setting up the proposed mechanism within the Government with only advisory functions or simply changing the Commission on Youth into a Commission on Children and Youth, as it would fall far short of the expectation of the community. They considered that the Administration

should consider the feasibility for The Ombudsman to assume the role of the Commissioner for Children in the review of The Ombudsman Ordinance.

15. Some members shared the concern expressed by the UN Committee on the Rights of the Child about the lack of a comprehensive Plan of Action for the implementation of CRC. They considered that the Administration should demonstrate its determination to implement CRC by issuing such a Plan of Action. The Administration responded that while HAB would have no difficulty in working out a Plan of Action by coordinating with relevant policy bureaux, it would be more useful if the Plan of Action was to be drawn up after consideration of the views of stakeholders by the future Commission on Children or Commissioner for Children.

16. The Administration also consulted the Panel on the proposed establishment of a Children's Rights Forum and a Children's Rights Education Funding Scheme to promote children's rights. While members had no objection to the Administration's proposal, some members reiterated their view that the Administration should establish a Commission on Children which should be an independent body to monitor the implementation of CRC.

17. The Panel discussed the second report of HKSAR under the Convention on the Elimination of All Forms of Discrimination against Women with the Administration and deputations. Some members were strongly of the view that the Administration should take a more proactive approach in enhancing the representativeness of the Women's Commission by including representatives of trade unions and more women from the grassroots in its composition. The Administration responded that a pre-determined number of members for specific categories would not be set and each appointment should be made on the basis of merit. Women who were employees and from the grassroots had been appointed to the Women's Commission. However, the Administration would consider members' view.

18. A member expressed the view that the Equal Opportunities Commission (EOC) should adopt a more active role in promoting equal opportunities in gender and its mission should not be limited to performing statutory duties under the anti-discrimination legislation. The EOC Chairman responded that EOC was committed to discharging its statutory responsibilities to meet the expectation of the community and would strive to fulfil its role as far as possible within the legal framework.

Proposed legislation against racial discrimination

19. The Administration's progress in introducing legislation against racial discrimination continued to be kept under review by the Panel during this

legislative session. At the Panel's request, the Administration had briefed the Panel on the main provisions of the proposed Race Discrimination Bill.

20. Some members reiterated their view that the scope of the Bill should be extended to cover discrimination against new arrivals from the Mainland. These members considered that discrimination against new arrivals from the Mainland, which very often arose from differences in cultural backgrounds and language barrier, was similar to racial discrimination in nature. They expressed concern that as the problem of discrimination against new arrivals from the Mainland was serious, failure to enact legislation would encourage discriminatory acts against them.

21. The Administration explained that the discrimination experienced by new arrivals from the Mainland was a form of social discrimination which could be resolved by public education and publicity. Moreover, an express provision to protect new arrivals from the Mainland in the Bill would not only pose implementation difficulties, but would also constitute racial discrimination, as these new arrivals would be given additional protection in law.

22. The Administration stressed that given the large number of new arrivals from the Mainland in Hong Kong, it had to carefully assess the overall social and economic impact of introducing such legislation and further public consultation would have to be conducted. The Administration also pointed out that some people had queried whether there was an urgent need to legislate against discrimination encountered by new arrivals from the Mainland, since new arrivals were ethnic Chinese and would be able to assimilate in time. Even if the community came to a view that there was a need for such a proposal, the Administration considered that a separate piece of legislation to prohibit discrimination against new arrivals from the Mainland should be introduced.

23. Some members expressed dissatisfaction that while the Administration admitted that discrimination against new arrivals from the Mainland by local Chinese was a problem, it refused to address the problem because of technical considerations. These members were of the view that as discrimination against new arrivals from the Mainland was prevalent, the scope of the Bill should be extended to cover such discrimination.

24. Some other members queried the need to exempt small companies and employers for three years after enactment of the Bill. They considered that a transitional period of one year was adequate because a code of practice would be issued to provide practical guidance on compliance with the Bill. These members had also expressed reservations about the proposed exception provided for immigration legislation. They did not accept the Administration's explanation that the proposed exception was a common practice in overseas jurisdictions for effective border control.

25. Some members considered that following past controversies surrounding EOC, there were voices in the community questioning the credibility of EOC. They urged the Administration to take measures to restore EOC's credibility and enhance the transparency of the process of appointment of the EOC Chairperson.

26. The Panel noted with concern that despite its previous undertaking to introduce the Race Discrimination Bill into LegCo within the 2005-06 legislative session, the Administration had delayed the schedule to the end of 2006. Some members questioned the Administration's determination to introduce the relevant legislation. The Administration responded that the Administration was determined to introduce legislation against racial discrimination. Given the complexity of the Bill, the Administration considered that it was necessary to conduct adequate consultation work before introduction of the Bill.

Survey on public attitudes towards homosexuals

27. The Panel received a briefing from the Administration on the outcome of the survey on public attitudes towards homosexuals commissioned by HAB in November 2004. Some members expressed concern that the Administration would use the outcome of the survey to evade the responsibility of taking action to protect the sexual minorities by showing that there were conflicting and contradictory views in the community.

28. The Administration explained that as the survey found that more people had accepted the introduction of legislation to prohibit discrimination on the ground of sexual orientation, the Administration would conduct another round of public consultation to gauge the public's view as to whether there was a need to introduce legislation. However, the issue was complicated because it involved debates on religious and moral principles.

29. Some members considered that some organisations might have opposed the introduction of legislation to prohibit discrimination on the ground of sexual orientation on the basis of some misconceptions about the future legislation. They suggested that the Administration should issue a white bill for the next round of public consultation which could provide a solid basis for discussion.

Issues relating to the Equal Opportunities Commission and the Office of the Privacy Commissioner for Personal Data

30. After its discussion of the Report of the Independent Panel of Inquiry on the Incidents Relating to EOC in the last legislative session, the Panel followed up with the Administration and EOC the implementation of recommendations made in the Report of the Independent Panel of Inquiry and the

recommendations made in the two other reports of the internal reviews conducted by EOC.

31. Some members expressed reservations about the Administration's proposal of separating the posts of the Chairperson and the Chief Executive Officer of EOC and making the former a non-executive part-time post, as recommended in the Report of the Independent Panel of Inquiry. They considered that the Administration failed to appreciate the unique nature and role of EOC by comparing EOC with other public bodies such as the Airport Authority and the Hong Kong Tourism Board. These members were concerned that the proposal would adversely affect the public's perception of the EOC's independence which was fundamental to EOC as a human rights body.

32. The Administration explained that the Administration had put forward the proposal because there was concern whether power was over-centralised in the full-time executive Chairperson and there had been calls to enhance the checks and balances over the internal governance of EOC. Experience had also proven that separating the role of chairperson from the executive arm of a public body was a better mode of governance.

33. Members who had expressed reservations about the proposal were of the view that there were other measures to enhance the transparency and accountability of EOC's work such as opening up the meetings of EOC to the public as well as drawing up clear selection criteria and adopting an open recruitment process for the appointment of its Chairperson. These members also considered that the Administration should elaborate on the division of roles and responsibilities between the Chairperson and the Chief Executive Officer of EOC, and provide detailed justifications for the proposal. They requested the Administration to revert to the Panel on these issues before drawing up the relevant legislative proposal.

34. Following the controversies surrounding the duty visits made by the senior management staff of EOC and the Office of the Privacy Commissioner for Personal Data (PCO), the Panel held discussions with the Administration, EOC and PCO on the proposal to request the Chairperson of EOC and the Privacy Commissioner to seek prior approval of the Secretary for Home Affairs (SHA) before embarking on overseas duty visits. The Administration explained that the proposal was put forward in response to public concern about the inadequacy of the existing monitoring mechanism for overseas duty visits of statutory bodies.

35. Some members were opposed to the Administration's proposal on the grounds that it would adversely affect the independent status of the two statutory bodies. They considered that if the proposal was implemented, HAB would inevitably interfere with the day-to-day operations of the two bodies. These

members suggested that the Commission as the governing body of EOC and the Personal Data (Privacy) Advisory Committee should be the authority to approve any duty visit to be undertaken by the Chairperson of EOC and the Privacy Commissioner respectively. Another member suggested that as an alternative, EOC and PCO could be asked to put in place best practices of corporate governance for the purpose of enhancing the transparency and accountability in their administrative management. At the Panel's request, the Administration agreed to seriously consider the views expressed by members and revert to the Panel once consensus had been reached with EOC and PCO on the matter.

36. The Panel also received a briefing by the Privacy Commissioner on the work plan of PCO. Some members were of the view that PCO should take active measures to enhance the understanding of the public of the requirements of the Personal Data (Privacy) Ordinance as well as the data protection principles. They also expressed concern about the nuisance caused by direct marketing activities. The Privacy Commissioner informed members that PCO had issued codes of practice and pamphlets which were aimed at enhancing the understanding of the public about the work of PCO and the requirements under the Ordinance. PCO also intended to publicise the rights of data subjects under the Ordinance and would discuss with relevant organisations such as the Consumers' Council to work out ways to tackle the problem arising from direct marketing activities.

Arts, culture, recreation and sport

Hong Kong's cultural policy

37. The Panel received a briefing by SHA on Hong Kong's cultural policy. Some members were of the view that there was inadequate assistance to the development of new and small arts groups and artists, and that a dedicated fund should be set up for subsidising the start-up costs of budding arts groups. The Administration informed the Panel that the Hong Kong Arts Development Council (HKADC) which mainly supported medium and small arts groups was dedicated to creating a thriving environment for artistic pursuits and supported the diversified development of local arts groups and artists. While the Leisure and Cultural Services Department (LCSD) was the main source of funding to major arts groups, it also provided various kinds of assistance to small and budding arts groups as well as new artists, including venues and basic facilities for performance and subsidy for programme expenditure.

38. Some members expressed concern about the dominant role of the Administration in the provision of cultural facilities and resources deployment. They pointed out that LCSD was given the bulk of resources for supporting arts and cultural development which amounted to some \$2 billion each year.

However, the annual budget of HKADC which had a high level of community involvement was about \$100 million only. These members considered that the institutional arrangements would not be conducive to enhancing community involvement and the long-term development of culture and the arts.

39. The Administration explained that one of the underlying principles of the Administration's policy of resource deployment on culture and the arts was to encourage diversified and balanced development. The Administration had set up the Committee on Performing Arts, the Committee on Museums and the Committee on Libraries, as recommended by the Culture and Heritage Commission, to follow up the policy recommendations of the Commission and to review the use of resources. The Administration would continue to engage in dialogue with stakeholders, arts groups and the public in promoting the development of culture and the arts.

40. The Panel would continue to hold discussions with SHA on Hong Kong's cultural policy and would receive views from the relevant organisations and the public on the subject.

Provision of arts, cultural, sports and recreation facilities

41. The Panel continued to monitor the provision of arts, cultural, sports and recreation facilities. The Administration consulted the Panel on its proposal to increase the approved project estimate for the Tseung Kwan O Sports Ground project from \$293.1 million to \$352.3 million. Members noted that the project would be delivered by a design-and-build (DB) contract whereby the selected DB contractor would be responsible for both the design and construction work.

42. Some members had great reservations about the proposed increase to meet the total project cost submitted by the recommended tenderer. They considered that since the facilities under the original design had already met international standards, there was no justification for incurring additional resources to upgrade the facilities. These members expressed the view that the resources should instead be channelled to sports promotion in schools and training of elite athletes or medical and welfare services with more pressing needs.

43. Some other members, however, supported the proposed increase in the approved project estimate as the innovative designs for the facilities could upgrade the quality of the sports ground. They considered that building a sports ground with facilities matching the standards of the International Association of Athletics Federations for holding major athletic events would facilitate Hong Kong in hosting large-scale international athletic events in future; and hence would further promote sports development in Hong Kong.

44. Some members also expressed concern whether it would be appropriate to implement a work project in the DB mode if it was critical to complete the project on schedule. They considered that the Administration might be forced to accept a high tender price because of the urgency of the project. The Administration undertook to conduct a review of the appropriateness of the use of the DB approach for the implementation of work projects which had a timing constraint.

45. The Panel also discussed six other proposed capital works projects including Indoor Recreation Centre, Community Hall cum Library in Area 17, Tung Chung, Lantau Island; Sham Shui Po Park Stage II; District Open Space in Area 40A, Tseung Kwan O; Renovation of Libraries Phase II; Local Open Space in Area 16, Tuen Mun; and District Open Space in Area 107, Tin Shui Wai before they were submitted to the Public Works Subcommittee.

46. The Panel set up a subcommittee in March 2005 to monitor the Government in following up the outstanding leisure and cultural services (LCS) projects of the former municipal councils and implementing other relevant projects. The Subcommittee had held six meetings with the Administration and received views from the 18 District Councils (DCs) and professional bodies in the construction industry. In response to the Subcommittee's repeated requests, the Administration agreed to advance the implementation schedules for 11 of the 25 projects identified in the Chief Executive's Policy Address in 2005 for priority treatment. The Administration had also agreed to conduct a review of the 74 outstanding LCS projects of the former municipal councils in consultation with DCs. After the review, the Administration agreed to proceed with the planning work of 19 projects and another two new projects. The Administration also undertook to conduct annual reviews with DCs to examine the priorities of the remaining 55 projects.

Funding proposal on hosting the 2009 East Asian Games

47. In July 2003, the Finance Committee accepted in principle the financial implications for Hong Kong to host the 2009 East Asian Games (EAG). The Sports Federation and Olympic Committee of Hong Kong, China, as the National Olympic Committee, submitted the bid to the EAG Association and won the hosting right for the event.

48. The Panel received a briefing by the Administration on the progress of the preparation for hosting the 2009 EAG. The Administration also consulted the Panel on its financial proposal to revise the Government's subsidy to support the organisation of the event from \$84 million to \$123 million.

49. Some members were supportive of the financial proposal. They considered that hosting of the 2009 EAG would help promote young people's

interest in sports, and benefit the tourist industry and the local economy. Some of these members, however, stressed that the Administration must ensure that the funds allocated would be used in a cost-effective manner. They also considered that funding support from the Administration should be capped.

50. The Administration explained that amount of the funding support which would be maintained at around 50% of the overall operating budget was calculated on the basis of estimates in terms of expenditures and revenue. A registered company limited by guarantee was set up for the delivery of the 2009 EAG with the policy steer of the Planning Committee which had been set up to oversee the planning and preparation of the event. The company would be required to submit annual audited financial statement to the Administration and the Planning Committee to ensure that its funds were used in a cost-effective manner.

51. Some other members expressed reservations about the financial proposal. They queried the justifications for proposing an increase in the estimated expenditures for a number of items which they considered as non-essential for holding the event, such as the opening and closing ceremonies. These members took the view that the Administration had not promoted a sporting culture at the community level, particularly among students. They also criticised the Administration for allocating most of the resources to building sports infrastructure and subsidising major National Sports Associations. These members stressed that the Administration must allocate adequate funding to strengthen training for elite athletes to prepare them for participation in the 2009 EAG. At the request of the Panel, the Administration had provided information on the long-term strategies and measures for the development of sports in Hong Kong. The Panel would follow up the issue with the Administration.

Management and resumption of private streets

52. Although a Private Street Resumption Programme had been launched since 1986 to coordinate efforts among government departments in resuming those private streets under multiple ownership and with serious environmental problems, the subject matter was raised in LegCo Members' regular meetings with DC members from time to time. The Panel therefore brought the relevant policy issues up for discussion with the Administration.

53. Members expressed dissatisfaction at the progress made by the Administration in addressing the long standing problem of private streets where there was a serious lack of management and maintenance. Members also considered that the Administration should not have deleted some private streets from the Programme on the policy consideration that resumption of these streets would incur compensation claims from owners who might suffer loss in site area calculation on redevelopment.

54. Members pointed out that apart from environmental and hygiene problems, some private streets had become breeding grounds for illegal activities. Members were of the view that even though compensation claims might be incurred, the Administration should proceed with the resumption if environmental, hygiene or law and order conditions there so warranted. Members suggested that the Administration should explore possible means to address the problem of compensation claims such as granting a bonus plot ratio in case of redevelopment instead of giving monetary compensation to owners concerned and stipulating in the law that the Government would not need to make compensations if 80% to 90% of the affected owners consented not to seek compensations. Members also considered that the Administration should enhance coordination and cooperation with DCs to deal with the problem of private streets in their respective districts.

Other issues

55. The Panel received briefings from the Administration on the Chief Executive's Policy Address in 2006 and the Administration's proposal to improve the overall arrangements for rice distribution activities in future. The Panel also discussed a directorate staffing proposal of LCSD.

Meetings held

56. From October 2005 to June 2006, the Panel held a total of 11 meetings.

Council Business Division 2
Legislative Council Secretariat
29 June 2006

Panel on Home Affairs

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to district, community and rural matters, human rights, civic education, data protection, press freedom, building management, youth and women matters, the provision of leisure and cultural services as well as matters relating to development of arts and culture, public entertainment, sport and recreation.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

Panel on Home Affairs

Membership list for 2005-2006 session

Chairman	Hon Tommy CHEUNG Yu-yan, JP
Deputy Chairman	Hon TAM Heung-man
Members	Hon Albert HO Chun-yan Hon Margaret NG Hon James TO Kun-sun Dr Hon Philip WONG Yu-hong, GBS Hon LAU Wong-fat, GBM, GBS, JP Hon Emily LAU Wai-hing, JP Hon CHOY So-yuk, JP Hon Andrew CHENG Kar-foo Hon Timothy FOK Tsun-ting, GBS, JP Hon LI Kwok-ying, MH Hon Daniel LAM Wai-keung, BBS, JP Dr Hon Fernando CHEUNG Chiu-hung Hon CHEUNG Hok-ming, SBS, JP Hon WONG Ting-kwong, BBS Hon Patrick LAU Sau-shing, SBS, JP (Total : 17 Members)
Clerk	Miss Flora TAI Yin-ping
Legal Adviser	Mr Stephen LAM Ping-man
Date	13 October 2005