

# OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 23 January 2008

The Council met at Eleven o'clock

## MEMBERS PRESENT:

THE PRESIDENT

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, G.B.M., G.B.S., J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, G.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

IR DR THE HONOURABLE RAYMOND HO CHUNG-TAI, S.B.S.,  
S.B.ST.J., J.P.

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE MARTIN LEE CHU-MING, S.C., J.P.

DR THE HONOURABLE DAVID LI KWOK-PO, G.B.M., G.B.S., J.P.

THE HONOURABLE FRED LI WAH-MING, J.P.

DR THE HONOURABLE LUI MING-WAH, S.B.S., J.P.

THE HONOURABLE MARGARET NG

THE HONOURABLE MRS SELINA CHOW LIANG SHUK-YEE, G.B.S., J.P.

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN YUEN-HAN, S.B.S., J.P.

THE HONOURABLE BERNARD CHAN, G.B.S., J.P.

THE HONOURABLE CHAN KAM-LAM, S.B.S., J.P.

THE HONOURABLE MRS SOPHIE LEUNG LAU YAU-FUN, G.B.S., J.P.

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI, S.B.S., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG, G.B.S.

THE HONOURABLE WONG YUNG-KAN, S.B.S., J.P.

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE HOWARD YOUNG, S.B.S., J.P.

DR THE HONOURABLE YEUNG SUM, J.P.

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

THE HONOURABLE MIRIAM LAU KIN-YEE, G.B.S., J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE CHOY SO-YUK, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE TAM YIU-CHUNG, G.B.S., J.P.

THE HONOURABLE ABRAHAM SHEK LAI-HIM, S.B.S., J.P.

THE HONOURABLE LI FUNG-YING, B.B.S., J.P.

THE HONOURABLE TOMMY CHEUNG YU-YAN, S.B.S., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE FREDERICK FUNG KIN-KEE, S.B.S., J.P.

THE HONOURABLE AUDREY EU YUET-MEE, S.C., J.P.

THE HONOURABLE VINCENT FANG KANG, J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LI KWOK-YING, M.H., J.P.

DR THE HONOURABLE JOSEPH LEE KOK-LONG, J.P.

THE HONOURABLE DANIEL LAM WAI-KEUNG, S.B.S., J.P.

THE HONOURABLE JEFFREY LAM KIN-FUNG, S.B.S., J.P.

THE HONOURABLE ANDREW LEUNG KWAN-YUEN, S.B.S., J.P.

THE HONOURABLE ALAN LEONG KAH-KIT, S.C.

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

THE HONOURABLE CHEUNG HOK-MING, S.B.S., J.P.

THE HONOURABLE WONG TING-KWONG, B.B.S.

THE HONOURABLE RONNY TONG KA-WAH, S.C.

THE HONOURABLE CHIM PUI-CHUNG

PROF THE HONOURABLE PATRICK LAU SAU-SHING, S.B.S., J.P.

THE HONOURABLE ALBERT JINGHAN CHENG, J.P.

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

THE HONOURABLE MRS ANSON CHAN, G.B.M., J.P.

**MEMBERS ABSENT:**

THE HONOURABLE LAU WONG-FAT, G.B.M., G.B.S., J.P.

THE HONOURABLE TIMOTHY FOK TSUN-TING, G.B.S., J.P.

**PUBLIC OFFICERS ATTENDING:**

THE HONOURABLE FREDERICK MA SI-HANG, J.P.  
SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

THE HONOURABLE STEPHEN LAM SUI-LUNG, J.P.  
SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

DR THE HONOURABLE YORK CHOW YAT-NGOK, S.B.S., J.P.  
SECRETARY FOR FOOD AND HEALTH

THE HONOURABLE TSANG TAK-SING, J.P.  
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE EVA CHENG, J.P.  
SECRETARY FOR TRANSPORT AND HOUSING

**CLERKS IN ATTENDANCE:**

MR RICKY FUNG CHOI-CHEUNG, J.P., SECRETARY GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

**PRESIDENT** (in Cantonese): A quorum is not present. Clerk, please ring the bell.

(After the summoning bell had been rung, a number of Members entered the Chamber)

**PRESIDENT** (in Cantonese): A quorum is now present. The meeting now starts.

### **TABLING OF PAPERS**

The following papers were laid on the table pursuant to Rule 21(2) of the Rules of Procedure:

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Business Registration Ordinance (Amendment: Levy Reduction) Order 2008 .....	4/2008
Intercountry Adoption (Contracting States) Order 2008 .....	5/2008
Foreign Lawyers Practice (Amendment) Rules 2007 .....	6/2008
Hazardous Chemicals Control Ordinance (Commencement) Notice .....	7/2008
Hazardous Chemicals Control (General) Regulation (Commencement) Notice .....	8/2008
Hazardous Chemicals Control (Fees) Regulation (Commencement) Notice .....	9/2008
Mutual Legal Assistance in Criminal Matters (Malaysia) Order (Commencement) Notice .....	10/2008

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**Other Papers**

- No. 58 — Employees' Compensation Insurance Levies Management Board Annual Report 2006-2007
- No. 59 — Employees Compensation Assistance Fund Board Annual Report 2006-2007
- No. 60 — Occupational Deafness Compensation Board Annual Report 2006-2007
- No. 61 — Pneumoconiosis Compensation Fund Board Annual Report 2006
- No. 62 — Equal Opportunities Commission Annual Report 2006-2007
- No. 63 — Hong Kong Arts Development Council Annual Report 2006-2007
- No. 64 — Report on the Administration of the Fire Services Department Welfare Fund, together with the Director of Audit's Report and Audited Statement of Accounts, for the year ended 31 March 2007
- No. 65 — Annual Report 2006-2007 of the Hospital Authority, which contains Statement of Accounts and Auditors' Report
- No. 66 — Report and Statement of Accounts of the Samaritan Fund, together with the Director of Audit's Report, for the year ended 31 March 2007

**ORAL ANSWERS TO QUESTIONS**

**PRESIDENT** (in Cantonese): Questions. First question.

## Management of Women's Street

1. **MR VINCENT FANG** (in Cantonese): *President, the hawker permitted area (HPA) located at Tung Choi Street (commonly known as "Women's Street") in Mong Kok has 1 052 fixed-pitch stall positions, but owing to natural attrition or voluntary surrender of licences for cancellation, there were 321 vacant stalls at Women's Street as at mid-2007. The situation of vacant stalls at Women's Street has given rise to a number of problems, including difficulties in attracting people to the sections with a relatively high vacancy rate, which affect the business of the stalls there; vacant stalls being occupied by unlicensed hawkers, with many of them selling pirated goods, which tarnishes Women's Street's or even Hong Kong's retail business image; and the Food and Environmental Hygiene Department (FEHD) prosecuting hawkers in HPA for illegally occupying adjacent vacant stalls, which has even led to confrontations between the two sides recently. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of prosecutions instituted last year by the Government against illegal hawking, sale of pirated goods or illegal extension of business area at Women's Street; and*
- (b) *of the arrangements to be made by the Government regarding the above vacant stalls, whether it will plan to reduce the area of Women's Street; or whether it will arrange hawkers in other districts to operate those stalls; if there are no plans for the time being to arrange other hawkers to operate those stalls, whether the Government will consider leasing, through short-term tenancies, the above vacant stalls to the hawkers operating the adjacent stalls, so as to revitalize Women's Street, until it makes other arrangements regarding the usage of those stalls?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): Madam President, the Tung Choi Street Hawker Permitted Places, located at the section of Tung Choi Street between Argyle Street and Dundas Street, is one of the large on-street licensed hawker sites under the management of the FEHD. It has 1 052 fixed-pitch stall positions and is a shopping attraction for many local people and tourists.



- (a) Officers of the hawker control team (HCT) under the FEHD are deployed to conduct hawker control at the Tung Choi Street Hawker Permitted Places and take enforcement actions against non-compliant licensed hawkers and unlicensed hawkers every day under the Public Health and Municipal Services Ordinance (Cap. 132) and its relevant subsidiary legislation. The FEHD will conduct joint operations with other departments to maintain good order in the Hawker Permitted Places as necessary.

In 2007, a total of 568 prosecutions were instituted by the FEHD for the offence of extending the business area beyond the stall boundary and causing public obstruction in the Tung Choi Street Hawker Permitted Places, and two batches of goods left by hawkers were seized. No illegal hawking was found in the above Hawker Permitted Places in that year.

The Customs and Excise Department (C&ED) is responsible for taking enforcement actions against pirated goods and maintains close contact with the FEHD in this regard. The two departments will carry out joint operations if necessary so as to institute prosecution against offenders under relevant legislation. In 2007, the C&ED cracked down on a total of 146 cases involving stalls selling pirated goods at Women's Street and seized 29 167 pieces of goods which are worth about \$1.64 million. A total of 47 people were arrested in these operations.

- (b) As at 10 January 2008, there were a total of 329 vacant fixed-pitch stall positions in the Tung Choi Street Hawker Permitted Places. Most of them were located in the rear. Of these vacant stall positions, nine were reserved for temporary use by licensed fixed-pitch hawkers who had to relocate their stalls due to development works, road construction, traffic or environmental improvement projects in the district. The remaining 320 vacant stall positions were available for use by holders of itinerant hawker licences (IHLs) under the voluntary surrender scheme of IHLs. At present, the FEHD has no plan to reduce the area of the Tung Choi Street Hawker Permitted Places.

Under the existing policy, a hawker licence holder will only be allocated one hawker stall to ensure that each hawker will be equally provided with a business operating area. Leasing the vacant stalls to the hawkers operating the adjacent stalls through short-term tenancies may give rise to grievances from the traders over the overall arrangement of stall allocation, and other hawkers may also demand for extending their stall area. In addition, shop owners in the neighbourhood may have reservation about the *de facto* extension of the hawkers' stall area. The Food and Health Bureau and the FEHD are jointly conducting a review on hawker licensing policy, in the context of which the efficient use of vacant fixed-pitch stall positions will also be explored. We plan to consult the Legislative Council Panel on Food Safety and Environmental Hygiene on our preliminary proposal in the middle of this year. Besides, the FEHD will maintain regular dialogue with the representatives of traders in the Tung Choi Street Hawker Permitted Places to explore ways to improve the management of the Hawker Permitted Places.

**MR VINCENT FANG** (in Cantonese): *President, during our previous debate in this Council on the hawker issue, the Secretary also mentioned that the Bureau was studying the existing hawker policy. However, the situation at Women's Street is different from the general situation because the former is a popular tourist spot and an open-air bazaar, attracting many tourists there for shopping every year. Such bazaars with special characteristics should be revitalized. May I ask the Secretary if it is possible to give consideration from the angle of enhancing the vitality of Women's Street? Can vacant stalls at Women's Street be leased temporarily by drawing lots until the problem is tackled in the future upon the completion of the review of hawker policy?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): Madam President, I am very grateful to Mr Vincent FANG for the views expressed. I would also like to thank him for visiting Women's Street on 13 December to mediate a dispute on that day.

According to my understanding, the review being undertaken currently is aimed at strengthening the vitality or activities of Women's Street. This is not only because my family members often go there for shopping or bring their

expatriate friends there for shopping. Actually, many local people go there for shopping, and sightseeing tourists would also like to pay a visit to Women's Street. Therefore, in our review of the hawker licensing policy, we hope people in the districts and Honourable Members will provide us with constructive ideas by all means.

We hope to conduct the review under four major principles: First, these street hawking activities must be safe and conducted in good order. Second, environmental hygiene must not be significantly affected. Third, the so-called commercial interest of Women's Street must be balanced. In other words, nearby shops or shop owners will not face a serious problem of unfair competition. Lastly, the views of the locals concerned, including District Council (DC) members or their representatives, must be respected. Under these four principles, the policy relating to these bazaars or hawker licensing policy will be reviewed.

We are aware that each district has its unique viewpoint. For instance, some people agree that Tung Choi Street is an excellent bazaar. However, there may be different views in other districts. Many people like the idea of having these hawkers in their own districts, but they do not want these hawkers do business downstairs in the stalls outside their flats. Therefore, these issues must be addressed seriously. This is why I find it very difficult to strike a balance in this regard. However, the Government still hopes to put forth a proposal shortly, preferably before this summer, to give the panels of this Council an explanation.

**MR WONG YUNG-KAN** (in Cantonese): *President, Women's Street has already become a tourist spot of the territory. Many foreigners, including the Hong Kong Tourism Board, are vigorously promoting it. May I ask whether the Government has any plan to beautify the surrounding environment of Women's Street to enhance its beauty so that it can really become a tourist spot for further development?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): Madam President, as I mentioned earlier, we hope to retain Women's Street's existing image, or even enhance its image, through an orderly, safe and energetic approach. Of course, we note that the vacant stalls might affect the competitive edge of the

stall holders in Women's Street. Women's Street is divided into four sections, with the environment of each section being slightly different. Therefore, we hope to examine, in a holistic manner, ways to revitalize the entire Women's Street. The area is also home to the representatives of different trades. I hope to respect their views while studying ways of improvement. Furthermore, the Yau Tsim Mong DC will allocate funds to organize events every year to, for instance, enhance the festive atmosphere of the area. We will continue to make efforts in this regard. However, insofar as longer-term tasks are concerned, such as mapping out ways of making future arrangements, diversifying commodities or organizing more vibrant activities, I believe the joint involvement of the trade is required.

**MISS CHOY SO-YUK** (in Cantonese): *President, the Secretary pointed out in the last paragraph of the main reply that the hawker policy was being reviewed. May I ask the Secretary if the review covers the issuance of new licences to people who are not holders of hawker licences?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): Madam President, the review will be conducted from two aspects. First, the overall issue of hawker licences. This is because the existing hawker licensing policy has been in use since the 1970s, and the number of hawkers will not be increased. Furthermore, hawker licences can only be transferred to next of kin. Second, the review will target the local development of Tung Choi Street. A review will be conducted in these two aspects simultaneously.

**PRESIDENT** (in Cantonese): Has your supplementary question not been answered?

**MISS CHOY SO-YUK** (in Cantonese): *The part which has not been answered concerns whether the people who are not holders of hawker licences will be covered.*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): Madam President, I will certainly consider the need to maintain the existing hawker licensing

system. At present, hawker licences can only be surrendered, not issued. We have not yet taken a more liberal stance regarding this. Moreover, it has not yet been decided that the approach adopted in the 1970s must be adhered to.

**MS AUDREY EU** (in Cantonese): *President, I would also like to ask the Secretary a question on the review of hawker policy. May I ask if the Secretary will conduct a review and consultation, in which all DCs are included, to consult different districts whether it is possible to develop bazaars which can help promote the local community economy or tourism?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): Madam President, the engagement of DCs is vital to such hawker activities. Therefore, we very much hope that DCs can make more suggestions to us regarding the need to establish additional hawker areas in their districts or ways to improve the situation in the existing bazaars. If the relevant improvements can only be made or the need can only be met through the issuance of more hawker licences, we will certainly give active consideration. As pointed out by me earlier, we will look at the relevant issues with a more liberal attitude now in the hope that we can boost the commercial activities in the districts while adhering to the four principles mentioned by me earlier.

**MR CHAN KAM-LAM** (in Cantonese): *President, the Secretary stated in the main reply that a lot of problems would arise if the control on the existing vacant stalls in Women's Street was relaxed to allow other people to operate them. Actually, those stalls have been left vacant for a considerable period. However, a policy to address the relevant problems has been lacking. Will this not give people an impression that the policy adopted by the FEHD to tackle such problems is too rigid? Many illegal hawkers are found hawking on footbridges, at roadsides and on the streets. Can the relevant government policy tie in with this situation? In particular, illegal hawking may be commonly found in Women's Street during the Lunar New Year. Can the Government complete the review earlier instead of waiting until the middle of this year? With more than a month to go before the Lunar New Year, will the Government expeditiously introduce some temporary improvement measures to tackle the adverse situation in the days to come?*

**PRESIDENT** (in Cantonese): Mr CHAN Kam-lam, I remember that you have raised a total of four supplementary questions. Could you consolidate them into one and put it in a concise manner?

**MR CHAN KAM-LAM** (in Cantonese): *President, the thrust of my question is that the existing policy is quite rigid. Can the review be completed earlier to cope with illegal hawking, which will become more serious in the days to come, and can a flexible approach be adopted as well?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): Madam President, as mentioned by me earlier, our present attitude towards this policy is more liberal. However, the four principles mentioned by me earlier must still be observed. In particular, such activities must not cause nuisances to nearby residents in the district and pose problems to the safety or hygiene of the environment. I agree that the policy left behind by the Urban Council and Regional Council in the 1970s cannot deal with these issues flexibly. Therefore, our review will seek to tackle the problems confronting us in a pragmatic manner by all means. I believe we cannot simply make a decision shortly because a number of District Councils and different trades and industries have to be consulted. It is already a very quick timetable if a proposal can be submitted in summer.

**PRESIDENT** (in Cantonese): We have spent more than 17 minute on this question. Last supplementary question.

**MR ABRAHAM SHEK** (in Cantonese): *President, may I ask why it has to take six months before the problem mentioned by the Secretary in the main question regarding the vacant stalls in Women's Street can be reviewed? Those problems still exist. President, why do we have to wait six months before the review can be conducted?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): Madam President, I was not saying that the review could not be conducted until six months later.

We are now conducting the review in the hope of presenting an account on the outcome of our review and our proposal to the relevant panels six months later.

**MR ABRAHAM SHEK** (in Cantonese): *President, my supplementary question is: As the Government is already in the process of conducting the review, why does it have to take six months before the Government can give an account to this Council in the middle of this year? President, does the Government have any policy to tackle the problem confronting us now?*

**PRESIDENT** (in Cantonese): Secretary, do you have anything to add?

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): The first point I have to add is that this problem does not arise only today. It has existed for a considerable period of time. But the question is whether members of the public or the trade have only just begun to feel that the problem is worsening. Therefore, during our review, as pointed out by me earlier, we must consult the trade, nearby residents, the DCs, and so on. Furthermore, consultation takes time.

**PRESIDENT** (in Cantonese): Second question.

### **Safety Measures at Light Rail Platforms**

2. **MR DANIEL LAM** (in Cantonese): *President, it has been reported that accidents in which Light Rail (LR) passengers who are blind fell from platforms onto railway tracks had occurred time and again recently. In this connection, will the Government inform this Council whether it knows:*

- (a) *at present, which LR stations have tactile guide paths installed at their platforms and the details of such facilities, and whether the MTR Corporation Limited (MTRCL) will install such facilities at all other LR platforms; if so, of the details of the installation plan; and*

- (b) *in addition to the above facilities and other relevant existing facilities, whether the MTRCL has studied the adoption of other measures to enhance the safety of passengers, especially blind people, when awaiting or boarding trains at LR platforms?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President,

- (a) The design of the trains, stations and platforms of the LR system complies with international safety standards in order to provide a safe and reliable service to passengers.

To facilitate the use of LR service by visually impaired passengers, the pre-merger Kowloon-Canton Railway Corporation (KCRC) installed tactile guide paths at parts of the platforms of 12 LR stations so as to guide visually impaired passengers to wait at the first door of the first train compartment, such that train drivers can render assistance to such passengers when any need arises. These 12 stations include Tuen Mun Station which was renovated to tie in with the commissioning of West Rail Line in December 2003, as well as the 11 stations along the LR Tin Shui Wai Extension which was opened in December 2003. These stations are Chung Fu, Tin Fu, Tin Yat, Tin Heng, Wetland Park, Tin Sau, Tin Yuet, Ginza, Tin Wu, Tin Tsz and Tin Shui Wai Stations.

To further facilitate the use of LR service by visually impaired passengers, and after consultation with the groups representing the visually impaired, the MTRCL will carry out enhancement works at 159 platforms of the 68 LR stations. In other words, all LR platforms will have tactile guide paths of full platform length in the future, and these tactile guide paths will also lead visually impaired passengers to await trains at the position of the first door of the first train compartment.

The abovementioned enhancement works have commenced since 2007 and have already been completed at three stations, namely Tin Wing, Lung Mun and Town Centre Stations. The MTRCL has indicated that while such works are scheduled to be completed by



2010, the Corporation will try to expedite the progress as far as practicable in the light of the concerns arising from the incidents involving visually impaired passengers falling onto rail tracks.

- (b) Apart from tactile guide paths, the Corporation has also adopted the following measures to ensure the safety of passengers, including those who are visually impaired, at platforms and for boarding trains:
- (i) yellow tactile lines have been installed at all LR platforms to remind visually impaired passengers that they are close to the front edge of the platform. The MTRCL has also enhanced its public announcement at LR platforms to remind passengers to stand behind the yellow lines and to beware of the platform gap;
  - (ii) before the rail merger, the KCRC already commenced works in 2005 to install plastic fillers at the edge of platforms in phases at 37 LR stations with wide platform gaps so as to narrow the gap. At present, platform gap fillers have been installed at 34 such stations. Works for the remaining three stations are expected to be completed before the first quarter of 2008;
  - (iii) trains are required to operate at low speed when entering and leaving stations. Train drivers will also stay alert to monitor traffic at crossings and the situation of passengers awaiting trains at platforms and be ready to take necessary action if the need arises;
  - (iv) to facilitate visually impaired passengers, when a LR train arrives at stations and train doors open, in-train announcement on route number and destination of the train will be broadcast. Before train doors close, a buzzing sound together with in-train announcement will be made to remind passengers that train doors are about to close and to stay away from the train doors; and
  - (v) Passenger Service Assistants and Traffic Regulators patrol LR stations regularly and maintain close contact with the

Operation Control Centre to provide assistance for passengers in need. During rush hours, the Corporation also deploys Platforms Assistants at stations with larger passenger flow to assist passengers in boarding and alighting.

The MTRCL will continue to maintain regular liaison with groups representing disabled persons to listen to their views with an aim to enhance or improve the facilities as far as practicable to meet their needs.

**MR DANIEL LAM** (in Cantonese): *As regards the Secretary's reply, I must say I do also agree that the Government has been monitoring the situation, and that the Corporation has also been making the corresponding improvements. However, since accidents are still frequent in the black spots on LR platforms, can the Government inform this Council whether it will step up publicity by, for example, giving friendly reminders, with a view to reducing the number of accidents?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, Mr LAM is right. One important thing must of course be passengers' safety awareness. In regard to traffic safety, we will step up passenger publicity in conjunction with the MTRCL. As Members all know, platforms are not very spacious. But we will nonetheless try to put up additional notices as far as practicable.

**DR FERNANDO CHEUNG** (in Cantonese): *At present, the LR is very congested during peak hours. Platforms and compartments are terribly congested. It is very difficult for people with disabilities, especially the visually impaired, to board and alight from LR trains during peak hours.*

*Many sightless people, along with several organizations representing them, have expressed the hope that automatic platform gates can be installed along LR platforms to enhance passenger safety. Why is the Government reluctant to install automatic platform gates along LR platforms?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, we have actually given serious consideration to the installation of automatic platform gates. Dr CHEUNG was right in pointing out that the LR is rather congested. For this reason, some time earlier, we already gave our approval for the LR to purchase new trains. Twenty-two new trains have thus been purchased to enhance service. However, the design width of an LR platform is only 4 m. After deducting the room occupied by platform facilities, the remaining width is just 2 m to 3 m. The installation of half-height platform screen doors may thus create other problems. For instance, on a crowded platform, the passengers queuing up for trains may step onto the tracks or other areas, thus giving rise to safety problems. Therefore, after weighing the pros and cons, I hold that as long as we can implement the package of safety measures mentioned just now and make more efforts in terms of manpower, management and broadcasts, we should be able to provide a safe and reliable service. I must therefore add that while the installation of platform screen doors is a very sound proposal *per se*, it may not always be feasible in each and every station because other problems may result.

**DR FERNANDO CHEUNG** (in Cantonese): *If the authorities have indeed conducted studies on whether the installation of automatic platform gates is feasible from the design perspective, can they provide us with a written reply after the meeting?*

**PRESIDENT** (in Cantonese): But this is not part of your supplementary question just now.

**DR FERNANDO CHEUNG** (in Cantonese): *Regarding automatic platform gates .....*

**PRESIDENT** (in Cantonese): Please press the button and wait for another turn. If possible, I shall let you ask a question again.

**PROF PATRICK LAU** (in Cantonese): *I also wish to ask the same question. But I wish to clarify one more point here. Automatic platform screen doors, or*

*platform gates, are already found at Sunny Bay Station, that is, the Disneyland Station, right? The proposal is actually feasible and will not occupy too much room. And, I also fail to see the problem described by the Secretary just now. My question is: Why is the proposal feasible at Disneyland Station but not at other stations?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, the Disneyland Station is a newly constructed station. We have been to that station before, so we know that it is spacious, comfortable and excellent in design. But what we are talking about now are very busy stations. And, as I have mentioned, there are design constraints at these stations. In many cases, a platform is only 4 m in width. Since there are various facilities on a platform, only a width of 3 m is left. If automatic platform gates are installed ..... Members who have been to these stations will know that they are very crowded, especially during peak hours. The platforms are very crowded, so when trains arrive, they may not be able to pick up all the waiting passengers. Such is the situation, and during the busiest hours, there will be one dispatch every one minute and 30 seconds. There are as many as 2 800 dispatches on the LR every day. We really think that the installation of platform gates for a system like this will pose operational and safety problems.

**PRESIDENT** (in Cantonese): Is your supplementary question not answered?

**PROF PATRICK LAU** (in Cantonese): *President, yes, it has been answered. But her reply is not quite so appropriate because the room required for installing platform gates .....*

**PRESIDENT** (in Cantonese): Prof Patrick LAU, if you only think that her reply is not quite so appropriate, you will have to follow up the matter through other channels.

**PROF PATRICK LAU** (in Cantonese): OK. Thank you.

**MR CHEUNG HOK-MING** (in Cantonese): *It is mentioned in part (a) of the Secretary's main reply that the MTRCL will install tactile guide paths on the 159 platforms of 68 stations during the three-year period from 2007 to 2010. May I ask the Government how it is going to monitor the MTRCL during these three years? Has the MTRCL adopted any interim measures, such as the deployment of additional staff, increasing the frequency of broadcasting audible messages and adjusting their volumes? This is the supplementary question I wish to ask.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, the MTRCL has actually been making continued efforts to assist visually impaired passengers, and measures have been adopted at three stations. Admittedly, the tactile guide paths in some stations are not long enough to cover the entire lengths of the platforms, but they can nonetheless lead passengers to the first door of the first train compartment, where train drivers may provide assistance as much as possible. We know that rather than being used by just one single route, an LR platform has to serve several different routes, so the assistance of train drivers is of the utmost importance. I believe the MTRCL will provide train drivers with further training and remind them to assist visually impaired passengers by all means. And, there are other support measures, such as in-train announcements, which can help these passengers identify the routes they want to take. I have also mentioned that Traffic Regulators and Passenger Service Assistants will patrol LR stations regularly to provide assistance.

Besides, we also need to maintain constant contact with organizations for the visually impaired. At present, we will meet with them on a quarterly basis in the transport group chaired by the Transport Department, and improvement measures are raised in these meetings. We hope that we can assist the visually impaired through different channels. While we expect to complete the enhancement works in 2010, we will nonetheless try to advance the completion date by all means. The works are not complicated, but since the LR operates for 20 hours a day and we do not want to disrupt its frequency and services, we must conduct the works after its closure. The conduct of the works must tie in with the operation schedule of the LR.

**DR FERNANDO CHEUNG** (in Cantonese): *I actually want to ask for more information from the Secretary, but I have decided that I may discuss this matter*

*with her after the meeting. In the meantime, I wish to raise another issue, or a very modest request. Some blind people and organizations representing them have told me of a very simple measure. Is it possible to broadcast some soft audible signals as a train approaches a station, so that blind people can know that a train is approaching and thus raise their alertness?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, we are always prepared to listen to and consider any proposals. We will relay this proposal to the MTRCL for discussions. As I have mentioned, we are talking about the periods of high train frequency. If technically possible, there should not be any other major problems with broadcasting some audible signals at the approach of a train.

But this may not be the case with certain proposals made in the past. One example is the broadcasting of route announcements for passengers on platforms. The problems involved may be rather complicated, and nearby residents may also be affected. Since the LR operates for 20 hours a day, there may be problems if an announcement is broadcast at the approach of every train every day. However, if we are just talking about broadcasting some soft and high-pitched audible signals, there should not be any problems. At present, train door movements are preceded by a buzzing sound. But I suppose Dr CHEUNG's proposal is about the broadcasting of audible signals before the arrival of a train. We shall explore the technical feasibility of this proposal after the meeting.

**MISS TAM HEUNG-MAN** (in Cantonese): *This was not the first time that a blind person fell onto LR tracks. Despite the increasing social emphasis on a barrier-free environment and barrier-free facilities, the LR does not seem to have made any substantial efforts. As the largest shareholder of the MTRCL, how is the Government going to exert its influence and urge it to provide satisfactory and barrier-free facilities on the LR?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, both the MTRCL and all of us in the Transport and Housing Bureau are extremely concerned about the safety of passengers (including passengers

with visual impairment). I have already mentioned a series of works projects. For instance, by 2010, all the 68 LR stations should have been equipped with tactile guide paths. And, as also mentioned in my main reply, there are other safety measures, such as the installation of yellow tactile lines to remind visually impaired passengers that they are close to the edge of the platform. In addition, some stations are already equipped with tactile guide paths to direct visually impaired passengers to the first door of the first train compartment. And, train drivers will also be happy to assist them in boarding and alighting and inform them of the route numbers of their trains.

We have also installed other facilities to assist visually impaired passengers, such as Braille plates on Platform Card Processors and other operating instructions and also colour contrast grab poles inside train compartments. We will always offer as much assistance as possible to visually impaired passengers in both platform design and facilities.

**PRESIDENT** (in Cantonese): Third question.

### **Non-local Media Organizations and Journalists Based in Hong Kong**

3. **DR DAVID LI:** *Madam President, will the Government inform this Council:*

- (a) *of the respective numbers of non-local media organizations and journalists based in Hong Kong as of 1 January 2007 and 1 January 2008;*
- (b) *whether the Government has any policy to attract more non-local media organizations and journalists to base themselves in Hong Kong; if it has such a policy, of the nature of the policy; and*
- (c) *whether the Government has provided assistance to non-local media organizations and journalists in Hong Kong to gain a better understanding of the rapid development of the Pearl River Delta Region where Hong Kong is situated; if so, of the nature of that assistance?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President,

- (a) In line with our policy of freedom of press, overseas media organizations are free to conduct business in Hong Kong; if an overseas media organization wishes to establish an office, it only needs to set up a limited company under the Companies Ordinance and obtain a business registration certificate. Therefore, we do not have official statistics on the numbers of non-local media organizations and journalists based in Hong Kong. Nevertheless, according to the contact lists maintained by the Information Services Department (ISD), as of 1 January 2008, there were 314 overseas and mainland journalists working for 115 non-local media organizations based in Hong Kong, including 103 overseas and 12 mainland media organizations. The corresponding figures for the preceding year, that is, as of 1 January 2007, there were 314 overseas and mainland journalists working for 107 non-local media organizations based in Hong Kong, including 95 overseas and 12 mainland media organizations.
- (b) Hong Kong's role as an information centre is an important condition that goes hand in hand with Hong Kong's development as an international financial centre. Media and multi-media is one of the main sectors that InvestHK of the Government of the Hong Kong Special Administrative Region (HKSAR) targets in its efforts to attract foreign investment. For example, as a result of vigorous facilitation by InvestHK, two important and major media events in Asia, namely the Cable & Satellite Broadcasting Association of Asia (CSBAA) Convention and the Society of Publishers in Asia (SOPA) Awards, have been held in Hong Kong for many years in a row with InvestHK as their principal sponsor. The CSBAA Convention is an annual event of the media and telecommunication sectors in the Asia-Pacific Region and attracts the participation of more than a thousand practitioners. The SOPA Awards is an important activity for publishers in the region. InvestHK will continue to provide support and incentives for such representative events in the Asia-Pacific Region to be held in Hong Kong.

Overseas media organizations, like other overseas business organizations, will consider a number of important factors when



deciding to establish offices in Hong Kong, including Hong Kong's geographical location and global connectivity; the simple and low taxation regime; Hong Kong being an important international financial centre and a regional commercial hub, especially a gateway to China; and the free flow of information, press freedom and freedom of speech in Hong Kong. These are important and indispensable fundamentals for news reporting. All these favourable conditions work together to make Hong Kong a popular regional base for non-local media organizations and journalists.

- (c) One of the major duties of the ISD is to liaise with and assist Hong Kong-based non-local media and visiting journalists. With the rapid development of the Mainland, overseas media are becoming more interested in such issues as the role of the HKSAR as a gateway to the Mainland and a platform for the Mainland to go global, the economic integration between the HKSAR and the Mainland, and the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA). For journalists who are interested in knowing more about Hong Kong's co-operation with the Pearl River Delta (PRD) Region, the ISD will arrange for senior officials from relevant Policy Bureaux to be interviewed or to conduct briefings on related subjects. In response to media requests, the ISD will help journalists to visit the PRD Region by liaising with the parties concerned there and by lining up visit programmes for the journalists in accordance with their requests.

InvestHK has also been actively promoting Hong Kong as a gateway to the mainland market. In order to promote the advantages resulting from the economic integration between Hong Kong and the Mainland, it has been working with various mainland provinces and cities (including PRD cities) to co-organize seminars in major overseas markets since September 2002. In addition, InvestHK has published a report entitled "Greater Pearl River Delta (GPRD)", providing comprehensive information on the GPRD Region, including facts and figures about the economies of major cities, regional development trends and business opportunities. Through investment promotion activities jointly organized with Guangdong

Province and several other GPRD cities, InvestHK will continue to communicate directly to business executives based overseas the strengths of the GPRD, thus facilitating overseas companies in gaining a better understanding of the region.

As regards operational matters, InvestHK also provides overseas media organizations with all the support required to establish or expand operations in Hong Kong, which includes information provision, site visits to office premises and business matching.

In conclusion, the HKSAR Government will continue its efforts to maintain the free flow of information in Hong Kong. We will also continue the publicity efforts in major overseas markets and provide assistance to non-local media organizations and journalists to gain a better understanding of the rapid development of the PRD Region where Hong Kong is located, so as to attract more non-local media organizations and journalists to establish their bases in Hong Kong.

**DR DAVID LI:** *Madam President, noting that London and New York are at the same time both a leading financial centre and a leading media centre, will the Government step up our efforts to attract non-local media company to Hong Kong, as part of its efforts to establish Hong Kong as a leading financial centre?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, at present, Hong Kong has sufficient representative offices in London and New York. Establishing contacts with overseas media organizations is on their daily agenda.

**MRS ANSON CHAN** (in Cantonese): *Last year, the Central Government relaxed its regulation of overseas media organizations reporting news in the Mainland, thereby giving them more freedom. May I ask the Secretary whether the Government will consider securing the same treatment from the Central Government for overseas journalists based in Hong Kong? If not, what are the reasons?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, because of "one country, two systems", overseas journalists based in Hong Kong are required to complete a procedure when they enter the Mainland. We have indeed received requests from overseas journalists based in Hong Kong, indicating their wish for further relaxing the regulation of their mainland visits for news reporting. The HKSAR Government has relayed these requests to the office of Ministry of Foreign Affairs in Hong Kong as well as relevant authorities in Beijing. According to our understanding, at present, some overseas journalists in Hong Kong have been granted multiple mainland visit visas to cover news in the Mainland. If there are records of multiple mainland visits for the purpose of news coverage ..... I know individual journalists have been granted permission on several occasions to enter the Mainland for news coverage.

**PRESIDENT** (in Cantonese): Mrs Anson CHAN, has your supplementary question not been answered?

**MRS ANSON CHAN** (in Cantonese): *The Secretary has already answered it, but if I want to ask a follow-up, do I need to wait for my turn again?*

**PRESIDENT** (in Cantonese): Yes.

**MR ALBERT CHENG** (in Cantonese): *In fact, I wish to ask a follow-up on Dr David LI's supplementary question just now, which the Secretary has not answered. How more overseas media organizations can be attracted to Hong Kong? I used to be the Chairman of the Society of Hong Kong Publishers. President, before 1997, Hong Kong had been the overseas media centre, foreign magazines (such as the Time magazine) used to base themselves in Hong Kong. However, in the time around the return of sovereignty — in fact, this is irrelevant to the return of sovereignty — these media organizations began to withdraw their bases from Hong Kong. Apart from the well-known fact that the rents in Hong Kong are high, another major reason is the postage. Since they were based in Hong Kong, the magazines published here would have to be sent to the subscribers through the Post Office and the postage in Hong Kong was high.*

*Owing to this reason, many such organizations began to pull out of Hong Kong. Dr David LI asked just now whether the Government has any policy to attract overseas media organizations to Hong Kong, in fact this is not necessary. As long as improvement can be made on the postage rates, it will be able to attract more media organizations to Hong Kong. In this connection, may I ask the Secretary whether he plans to do this?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, as I mentioned just now, InvestHK is the principal department in the HKSAR Government responsible for attracting overseas trades and industries to Hong Kong. It has already listed media and multi-media as its priority industry, and it will conduct a comprehensive review to enhance Hong Kong's competitiveness, so as to attract such industry to Hong Kong. As to the problem of high postage rates mentioned by the Member just now, I believe InvestHK, having heard Mr CHENG's view today, will seriously consider this issue.

**PRESIDENT** (in Cantonese): Has your supplementary question not been answered?

**MR ALBERT CHENG** (in Cantonese): *The Secretary has in fact given a detailed answer, only that I have to correct one point. I have not only asked a question on postage just now, but also given my view on the postage.*

**PRESIDENT** (in Cantonese): You did mention postage just now, but which part of your supplementary question has not been answered?

**MR ALBERT CHENG** (in Cantonese): *The part that has not been answered is*  
.....

**PRESIDENT** (in Cantonese): You cannot correct your point. This is not allowed in Question Time .....

**MR ALBERT CHENG** (in Cantonese): *No. I mean he has not completely answered my supplementary question.*

**PRESIDENT** (in Cantonese): Which part?

**MR ALBERT CHENG** (in Cantonese): *Postage is in fact unrelated to InvestHK.*

**PRESIDENT** (in Cantonese): This is your opinion.

**MR SIN CHUNG-KAI** (in Cantonese): *President, may I ask the Secretary how many overseas journalists have been refused entry in the past three years? That is, how many overseas journalists who wished to come to Hong Kong have been refused entry? Moreover, how many of them, who had sought assistance from the ISD in making mainland visits for news coverage, have been refused entry?*

**PRESIDENT** (in Cantonese): Mr SIN Chung-kai, I am not very clear about your supplementary question. Are you asking about overseas journalists coming to Hong Kong have been refused entry, or they being refused entry to the Mainland?

**MR SIN CHUNG-KAI** (in Cantonese): *In fact, there are two supplementary questions ..... I mean, they are one supplementary question actually. (Laughter) My supplementary question is on the figures. Overseas journalists wishing to come to Hong Kong for news coverage will first have to enter the Hong Kong territory, so how many of them have been refused entry? After entering Hong Kong, apart from covering news here, they may also wish to cover news in the Mainland. How many of them, after entering Hong Kong, will then wish to go to the Mainland for news coverage but have been refused entry?*

**PRESIDENT** (in Cantonese): This makes two supplementary questions.

**MR SIN CHUNG-KAI** (in Cantonese): *This is only one supplementary question because it only involves figures .....*

**PRESIDENT** (in Cantonese): You cannot say that because your question is asking about figures, it should not be regarded as one supplementary question. You cannot put it that way.

**MR SIN CHUNG-KAI** (in Cantonese): *President, I will choose the first supplementary question then.*

**PRESIDENT** (in Cantonese): In other words, you wish to ask how many people coming to Hong Kong have been refused entry.

**MR SIN CHUNG-KAI** (in Cantonese): *How many of them have been refused entry to Hong Kong?*

**PRESIDENT** (in Cantonese): Secretary for Home Affairs, as the main question does not cover this point .....

**MR SIN CHUNG-KAI** (in Cantonese): *The point can be found in part (a) of the main reply. The Secretary said overseas journalists are welcomed to come to Hong Kong and he then listed the figures, informing us the number of overseas journalists working in Hong Kong. We know the number of overseas journalists who have entered Hong Kong because he has provided us the figures, but may I know the number of overseas journalists who have been refused entry to Hong Kong? This is my reason for asking this supplementary question.*

**PRESIDENT** (in Cantonese): Fine. Let me slightly rephrase your supplementary question according to your meaning. You may ask the Secretary, in view of the Secretary having stated in the main reply that many overseas journalists are employed in Hong Kong, whether there are overseas journalists who wished to come to Hong Kong had been refused entry.

**MR SIN CHUNG-KAI** (in Cantonese): *Thank you, President, for your help.*

**PRESIDENT** (in Cantonese): Secretary, you may not have such information now. If so, please see if you can obtain such information from the relevant departments. Please give your reply.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, I have not learnt of any case in which an overseas journalist who wished to come to Hong Kong had been refused entry because, just as I stated from the outset, we uphold the policy of freedom of press. If there are indeed overseas journalists who have been refused entry into the territory, I think the refusal is not due to their capacity as a journalist. I will enquire about this and if such cases do exist, I will give a reply in writing. (Appendix I)

**MR JAMES TO** (in Cantonese): *President, I wish to ask a follow-up on the crux of Dr David LI's question. Does the Government have any policy, or rather, does it hold that if Hong Kong being a financial centre can be used as a place to attract overseas media organizations to base themselves in Hong Kong, this will be able to benefit and will be conducive to Hong Kong on all fronts? Precisely because of this reason, the Government need to have a policy and find out the hindering factors, such that reviews and improvement can be made.*

*It is stated in part (a) of the main reply that in 2007, there were 314 overseas and mainland journalists, while in 2008, there were also 314 overseas and mainland journalists, indicating that although the number of media organizations has increased, the number of journalists has not. I believe Hong Kong and the Mainland ..... especially considering China has such huge development potential, Hong Kong should be able to play a certain role. Will the Government tell us whether it will conduct a comprehensive review to find out the factors hindering them from coming to Hong Kong, including the postage rates mentioned just now or other not easily identifiable reasons, so as to attract more overseas media organizations to base themselves in Hong Kong?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, as I pointed out in the main reply, attracting overseas investors or overseas journalists to Hong Kong mainly falls under the purview of InvestHK. I believe colleagues of InvestHK will frequently conduct comprehensive reviews of the business environment of Hong Kong and its appeal to different overseas industries. In their efforts to attract inward investment, they have already listed media and multi-media as a major target.

**MISS TAM HEUNG-MAN** (in Cantonese): *The Secretary has listed in the last paragraph of part (b) of the main reply many favourable conditions. Such important criteria include the free flow of information, press freedom and freedom of speech in Hong Kong. President, may I ask the Secretary, in relation to these important factors, in particular press freedom, what concrete measures does the Government have to render the free flow of different information, including some relatively sensitive information, in Hong Kong possible?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, the freedom of speech and free flow of information in Hong Kong have won worldwide recognition. I think I do not need to expound on this in detail.

**MISS TAM HEUNG-MAN** (in Cantonese): *May I ask what measures does the Government have to preserve these important conditions from disappearing and to assure these favourable conditions in Hong Kong?*

**PRESIDENT** (in Cantonese): Secretary, do you have anything to add?

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, we implement policies in accordance with the Basic Law.

**PRESIDENT** (in Cantonese): We have spent more than 16 minutes on this question. Last supplementary question.



**MRS ANSON CHAN** (in Cantonese): *Thanks to the Secretary for his reply just now. As far as I understand it, apart from making a visa application, a journalist needs the invitation letter from the organization or person to be interviewed. In this connection, can the Government request the authorities concerned to relax such a requirement?*

**PRESIDENT** (in Cantonese): Please sit down and let me ask the Secretary to rise and reply.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, regarding the invitation letter, if it is for an overseas journalist, I believe during the entire application process, once the Ministry of Foreign Affairs' endorsement is given, it should include the consent from the unit to be interviewed.

**PRESIDENT** (in Cantonese): Fourth question.

### **Mainland's Export Control and Tariff on Grain Flour**

4. **MR FREDERICK FUNG** (in Cantonese): *President, to stabilize grain supply and prices on the Mainland, the Ministry of Commerce (MOFCOM) has imposed quota control and a tariff up to 25% on the export of grain flour (such as wheat flour) with effect from the 1st of this month, causing a short supply and soaring prices of flour in Hong Kong early this month and, as a result, a rise in retail prices of foodstuffs of which the raw material is flour (such as bread and noodles). However, officials of the State Council clarified on the 8th of this month that the said tariff measure was not applicable to grain flour exported to Hong Kong, Macao and Taiwan. In this connection, will the Government inform this Council whether:*

- (a) *it knew the aforesaid export control and tariff measures before the relevant announcement by MOFCOM; if so, whether it has formulated measures to deal with the situation; if not, whether it has assessed if this reflects inadequate communication between the relevant authorities of the Mainland and Hong Kong, and if it is necessary to review the relevant communication mechanism;*

- (b) *it has assessed the impact of the aforesaid export control on the trades concerned and the people in Hong Kong; of the long-term measures to deal with the situation, such as whether it will consider implementing a system of keeping reserves of staple food; and*
- (c) *it knows what other measures which the mainland authorities will soon introduce to stabilize food supply and prices on the Mainland; if so, whether it has assessed the impact of such measures on inflation in Hong Kong?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Madam President, my reply to Mr FUNG's question is as follows:

- (a) To ensure the supplies in the domestic market and the stability of prices in the Mainland, the Central Government has introduced a series of measures, including:
  - (i) the Ministry of Finance and the State Administration of Taxation announced on 18 December 2007 that the export tax rebate (5% or 13%) for grains such as wheat, rice, corn and soybean, and their flour products would be abolished with effect from 20 December.
  - (ii) the Ministry of Commerce and the General Administration of Customs announced on 29 December 2007 that with effect from 1 January 2008, grain flour including wheat flour, corn flour and rice flour would be subjected to export quota licence administration.
  - (iii) the Ministry of Finance announced on 30 December 2007 that with effect from 1 January 2008, a temporary export tariff of 5% to 25% would be levied on grains such as wheat, corn, rice and soybean, and their flour products. But the tariff will not be applied to products supplied to Hong Kong, Macao and Taiwan.

The HKSAR Government was not informed of the contents of the above measures before their announcement by the mainland authorities. However, once the HKSAR Government was aware of the situation of grain flour supply from the Mainland to Hong Kong after the New Year, we promptly liaised with MOFCOM, other ministries of the Central Government and the trade, and reflected the situation to the relevant mainland authorities. Subsequently, MOFCOM issued export licences to individual enterprises to export grain flour to Hong Kong.

The HKSAR Government and the Central Government communicate from time to time on matters of mutual concern, and will review the effective functioning of the communications mechanism and make improvements.

- (b) MOFCOM has just announced this Monday (21 January) the implementation details of the quota system. The HKSAR Government has informed the trade, and will reflect their responses on these arrangements to the mainland authorities. We will continue to keep close liaison with the mainland authorities, and avoid shortage in the supply of grain flour. We will maintain liaison with the trade in respect of the new measures with a view to assessing and considering whether it is necessary to adopt measures to deal with the situation.
- (c) We have not been informed that the mainland authorities will soon introduce other measures to stabilize food supply and prices in the Mainland. We will continue to liaise closely with MOFCOM and other ministries of the Central Government. According to our past experience, the mainland authorities have placed much importance in maintaining a stable food supply to Hong Kong, and have taken care of the needs of Hong Kong. Both sides have established a good liaison mechanism, which has been functioning well for maintaining a stable food supply for Hong Kong — for example, the liaison mechanism has been working well in respect of the daily supply of live chickens, the increase in supply of live chickens in

important festive seasons, and the supply of live pigs and cattle, satisfying the needs of the public. When difficulties were encountered, upon requests raised by the HKSAR Government, the mainland authorities have responded proactively. For instance, in respect of the recent fluctuations in the price of live pigs supplied to Hong Kong, MOFCOM has promptly worked with us to formulate effective measures to raise the transparency of the market, thus restoring the stability of supply in the market of live pigs. In the incident of the supply of flour, the mainland authorities have acted promptly to address the problem upon knowing the situation in Hong Kong.

**MR FREDERICK FUNG** (in Cantonese): *President, I would like to follow up the preamble of my main question and part (c) of the Secretary's main reply. In my preamble, I said that officials of the State Council clarified on the 8th of this month that the tariff measure was not applicable to Hong Kong, Macao and Taiwan and in part (c) of the main reply, the Secretary also mentioned that the mainland authorities had adopted measures in response to the actual situation in Hong Kong. Thus, the problem should have been resolved.*

*However, I would like to tell the Secretary that even though the mainland authorities made an announcement on the 8th of this month, the prices of bread, flour and noodles have not come down after going up. In other words, the prices of bread and noodles for consumption have inflated already. Should the Government really do some work to lower prices which should not have inflated?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Insofar as I am aware, the price of flour has been adjusted upward because of the upward adjustment in taxes in the Mainland, thus leading to a rise in prices. Mr FUNG mentioned the increase in price of food such as bread. I believe this is not only because of the increased price of flour but also because of other factors which have led to a rise in price of such commodities. In the whole process of bread making — Mr FUNG mentioned bread in particular — a sack of 50 lb of flour can in fact make a lot of bread. So, from the perspective of the cost as a whole, the price of flour is not the most important component.

**MR FREDERICK FUNG** (in Cantonese): *The Secretary has not answered whether the Government will consider adopting some measures to deal with the problem of the price of bread not coming down after the price increase before the 8th of this month.*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): One of the merits of Hong Kong is keen competition. Take a walk in the street and we will see that there are a lot of bakeries of different cost structures and business practices. Take pineapple bun I eat every week as an example. I have checked that the bakery I often patronize has not increased its prices over the past few weeks because of the keen competition in the trade. So, if Members have noticed that a certain bakery has raised its price, I advise that smart consumers compare the prices of different shops and they may be able to buy bread at a lower price.

**PRESIDENT** (in Cantonese): There are altogether nine Members waiting to ask supplementary questions. Those who have the chance to do so will please be as concise as possible so that more Members can ask supplementary questions.

**MR LEUNG KWOK-HUNG** (in Cantonese): *The bakeries in the estate where I live have all raised their prices. Please come for a look. I have no other alternative. But this is not related to the question. Sorry.*

*As the Mainland is developing towards market economy, the supply of non-staple foods to Hong Kong ..... the practice of price subsidy on food supply will certainly become history. This is a trend. Have the authorities considered reviving the declining chicken farming, pig and cattle raising industries by means of preferential policies, tax or land concessions in order to address the problem that the people are consuming expensive foods and create more job opportunities? Has the Secretary considered this?*

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, the main question is about .....

**MR LEUNG KWOK-HUNG** (in Cantonese): *Flour.*

**PRESIDENT** (in Cantonese): Yes, flour. Can you link your supplementary with the main question?

**MR LEUNG KWOK-HUNG** (in Cantonese): *These are all food, having an impact on the people .....*

**PRESIDENT** (in Cantonese): They are all food. Then you can ask .....

**MR LEUNG KWOK-HUNG** (in Cantonese): *Their prices will rise and this is their substance. We all know that people emphasize the importance of food. Whenever food is mentioned, they will be eager to eat. So, price hikes are important issues. I in fact have a point. Every Member in this Chamber has to eat and we will go upstairs for food later.*

**PRESIDENT** (in Cantonese): Mr LEUNG, I know you think that you have a point. But in accordance with the Rules of Procedures, a supplementary question must be related to the main question. I have given you a chance. Would you please sit down and think about it again. As a smart person, you can think of how they can be linked together. Meanwhile, I would let other Members ask supplementary questions first. What do you think?

**MR LEUNG KWOK-HUNG** (in Cantonese): *Fine. Fine. All right, as long as the Government has heard it.*

**MR ANDREW LEUNG** (in Cantonese): *Several Members of the Liberal Party and the Federation of Hong Kong Industries have also followed up this matter. We are grateful to the Secretary for ....., up to yesterday, five major flour factories have promised to help resolve the problem of supply. As it is near the year end, none of these flour factories has produced gluten-free flour, corn flour*

*and rice flour, thus resulting in a serious shortage of supply. May I ask the Secretary what measures should be taken to follow up? As these kinds of flour are mostly produced by small-scale factories, what measures can be adopted to speed up the supply to Hong Kong even though the problem is being addressed at the moment?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Let me first explain that rice flour is mainly supplied by Thailand and the supply from the Mainland is indeed not large in proportion. We fully understand the appeals from the sector and the public. So, my colleagues in the Commerce and Economic Development Bureau and I will follow up Mr LEUNG's question in a proactive manner.

**MR JEFFREY LAM** (in Cantonese): *From his build, I can guess the Secretary is fond of pineapple buns. We really see that other bakeries have raised the price of pineapple buns. In fact, not only pineapple buns but also the price of cakes for the Chinese New Year has also been raised. May I ask the Secretary whether the rising prices of flour and other related foodstuffs such as pineapple buns are a result of an unstable supply of flour and other grain flour?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): In my reply to Mr FUNG's main question, I have explained the problem related to price. Generally speaking, we have a thorough understanding of the sector and full grasp of the market situation. There is largely no problem with the supply of flour and various kinds of grain flour. However, in terms of price, as I just explained, taxes and exchange rates may also have an impact leading to the price hike.

According to our understanding from the market, the hike of price in flour ranges from 5% to 15% in the past few weeks. As I said in my reply to Mr FUNG's main question just now, the Consumer Council has also mentioned the price of bread. Individual bakeries may have shifted the increase in cost to consumers on the pretext that the price of flour has risen. But I would like to emphasize that in the process of bread making, flour does not account for a very large part of the costs, according to our understanding from the trade. So, the

increase in other costs such as rents and wages may lead to the increase in price of bread. Whatever the reason, I do not wish to make any speculation. Most importantly, we should be smart consumers.

**PRESIDENT** (in Cantonese): Mr Jeffrey LAM, has your supplementary question not been answered?

**MR JEFFREY LAM** (in Cantonese): *No. President, the Secretary said that each and every importer is required to pay a different amount of tax. In my opinion, the tax on flour supplied to Hong Kong from the Mainland is uniform, can he .....*

**PRESIDENT** (in Cantonese): This is not part of your supplementary question just now.

**MR WONG KWOK-HING** (in Cantonese): *President, we can see that the current prices are rising. Fortunately, the Central Government announced that the quota system and tariffs on flour would not be applicable to those supplied to Hong Kong, Macao and Taiwan in their interests. We are really lucky this time around. Through the President, I would like to ask the Secretary a question, who acts on behalf of the SAR Government and is obliged to answer it. What corresponding measures should be adopted by the SAR Government if the Central Government's policy has changed such that the quota system or tariffs may be imposed on Hong Kong regardless of Macao and Taiwan? Take flour as an example. Will the SAR Government keep reserves of flour? Has the SAR Government designed any contingency measures?*

**PRESIDENT** (in Cantonese): Mr WONG, your supplementary question is entirely hypothetical. In accordance with the Rules of Procedure, I will not allow your question. I will let other Members ask questions first so that you can make use of the time to reconsider your question. I will then give you the chance to ask question again.



**MR WONG KWOK-HING** (in Cantonese): *President, my question is based on the Secretary's main reply, that the Central Government made the relevant announcement on 8th of this month. Hong Kong people really want to know the situation of Hong Kong if the Central Government has not adopted the measure. The Government should understand that .....*

**PRESIDENT** (in Cantonese): Mr WONG Kwok-hing, your supplementary question is really hypothetical. You should not argue with me. When you said "if", it is hypothetical. I cannot allow such a hypothetical supplementary question. Would you please think about how to rephrase your question?

**MR WONG KWOK-HING** (in Cantonese): *President, may I rephrase my supplementary question as follows: Will the SAR Government consider keeping reserves of flour, a commodity closely related to people's livelihood, as a contingency measure?*

**PRESIDENT** (in Cantonese): Your question is allowed.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Perhaps let me provide some background information. There is in fact a mechanism with the Government, meaning the legislation relating to the reserves of commodities. We do have reserves of imported rice but not flour. Why? Because of the high humidity in Hong Kong, flour cannot be stored for too long, not even two to three weeks. Otherwise, it will become rotten due to the humidity, not fit for sale. So, flour is not included in the legislation on the reserves of commodities. But regarding rice, we do have kept a reserve. Based on the inventory of the rice importers, we calculate how much should be put into our reserves in order to avoid shortage of supply. However, apart from rice, there is no reserve of other foodstuffs. Concerning the question asked by Mr WONG just now, we have to take into account the operation of the market. As I said just now, flour cannot be stored for long due to the humid weather in Hong Kong. We have to consider lots of problems before making a decision.

**PRESIDENT** (in Cantonese): We have spent more than 17 minutes on this question. Last supplementary question.

**MS MARGARET NG** (in Cantonese): *President, the Secretary said that he likes eating bread. But I like making bread. So, I fully understand that flour is the major ingredient for bread. But surprisingly, the Secretary for Commerce and Economic Development told us that the cost of a commodity would not be affected or the production cost would not be seriously affected even though the price of its major ingredient had inflated. I am really stunned and do not know what to say. Secretary, if this is your attitude ..... the small and medium enterprises need not raise the prices of their goods and services. The most serious problem is that they cannot raise the prices of their goods and services despite the increase in costs in view of the market situation. Obviously, they will encounter problems in their operation. My supplementary question is: Given this attitude of the Secretary, how can he convince the public that the Government will face up to the soaring prices of flour in a proactively manner?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Madam President, I think Ms NG just now did not listen to my reply clearly. Just now, I in fact said that despite the increase in the price of flour, it only accounts for a very small proportion in the costs of bread making and the operation of the bakeries. This is entirely different from the making of bread or cakes by Ms NG at home. If she buys flour at an original price of \$10 which has increased to \$11, then the price for home-made bread and cakes will be increased by 10%. But to the bakeries, flour only accounts for ..... let me explain it more clearly. A 50-lb sack of flour can make 600 buns. The retail price of a sack of top grade flour is around \$125. We can do the calculation by ourselves. Even though the price has gone up by 10%, the sum will not be too big. However, I also understand that other costs of a bakery such as wages and rentals have also inflated and will be transferred to consumers. So, my advice is that if a bakery has raised the price of its buns from \$5 each to \$6 each even though its neighbour is still charging \$5 each, smart consumers should patronize the shop which is still selling its buns at \$5 each, provided that the quality is the same.

I hope Ms NG can listen to my reply carefully. I did not say that the increase in price of flour would not affect the cost. I only said that in the whole process of bread making, flour does not account for a big proportion of the cost even though the price has gone up. According to media reports, the price of bread has increased within the range of \$0.5 to \$1, which is very high in proportion.

**MS MARGARET NG** (in Cantonese): *President, the Secretary has not answered my supplementary question because he did not listen to it carefully. I did not say that the cost of home-made bread has increased. My supplementary question is: When the price of the major ingredient of a commodity has increased, the production will be affected in any case. In the light of this problem, how can people be convinced that the Secretary is sincere in dealing with the problem given his attitude?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): If Ms NG had listened to my reply clearly, she would have noted that I have done a lot of work in relation to the problem concerning bread, including the costs, and so on. So, she should in fact listen to my reply carefully.

**PRESIDENT** (in Cantonese): Fifth question.

### **Toll Levels of Cross Harbour Tunnels**

5. **MR ALAN LEONG** (in Cantonese): *President, although the Government had urged the franchisee operating the Western Harbour Crossing (WHC) to take into account public affordability and acceptability in setting the tolls, the franchisee still decided to increase, with effect from the 6th of this month, the tolls under the guise of reduction in concessions. Moreover, in 1997 and 2004, the franchisee operating the Eastern Harbour Crossing (EHC) twice submitted the toll increase case to arbitration after the Government had rejected its applications on grounds of insufficient justifications. The EHC subsequently increased the tolls based on the outcomes of the arbitrations. In this connection, will the Government inform this Council whether:*

- (a) *it has assessed if the aforesaid situation indicates that the existing legislation and agreements pertaining to the WHC and the EHC have failed to make the franchisees to take into account factors such as the economic situation of Hong Kong and public interests in setting the tolls; if the assessment result is in the affirmative, whether it has formulated improvement measures; if it has, of their implementation schedules; if the assessment result is in the negative, of the justifications; and*
- (b) *it will draw up measures to set the tolls of the three road harbour crossings at appropriate levels (such as conducting short-term experiments with public funds to examine the impact of introducing standard tolls at the three tunnels on traffic flow), so as to relieve the traffic pressure on the Cross Harbour Tunnel (CHT) at Hung Hom and enhance the overall efficiency of cross harbour traffic; if it will, of the specific details and implementation dates of such measures; if not, the reasons for that?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, I wish to first explain the Government's policy and principles in constructing and operating tunnels. Based on the "small government, big market" principle, the Government should encourage private participation and optimize the use of public resources, and, where feasible, adopt appropriate modes of public-private partnership which include the Build-Operate-Transfer (BOT) mode usually adopted in the past. Under a public-private-partnership mode, the investor should be given the opportunity to make a reasonable return within the franchise period, although the investor should also be prepared to bear certain commercial risks.

On the two parts of the question, my reply is as follows:

- (a) Concerning the EHC, in order to cope with the increasing amount of cross harbour traffic, in 1984, the then Government decided that the next harbour crossing in Hong Kong should be a four-lane road tunnel between Cha Kwo Ling in East Kowloon and Tai Koo Shing on the Island, to be known as the EHC. It was to be financed, constructed and operated by the private sector on terms similar to those of the prevailing CHT.

The Eastern Harbour Crossing Ordinance (EHCO) (Cap. 215) was made in 1986. The EHCO provides that the tolls may be varied by agreement between the Chief Executive in Council and the tunnel company. If an agreement cannot be reached, either party may submit the question of the variation of tolls for arbitration. The EHCO has not set out the criteria for determining toll adjustments. It only stipulates that if the matter is submitted for arbitration, the arbitrators shall be guided by the need to ensure that the carrying out by the tunnel company of its obligations, or the exercise of its rights, under the EHCO is reasonably but not excessively remunerative to the tunnel company, having regard to, *inter alia*, any material change in the economic conditions of Hong Kong since the enactment of the EHCO or, as the case may be, since tolls were last determined.

As regards the WHC, during the planning stage, the WHC was intended to be a vital link between Hong Kong Island, West Kowloon, the new airport at Chek Lap Kok and the Northwest New Territories when Route 3 was fully completed. It would also provide much needed relief for the other two road harbour crossings, and would help meet long-term traffic demands.

The Western Harbour Crossing Ordinance (WHCO) (Cap. 436) was made in 1993. The WHCO stipulates that the franchisee may effect anticipated toll increases on six specified dates. However, if the franchisee's actual net revenue in any year falls short of the minimum estimated net revenue for that year specified in Schedule 5 to the WHCO, the franchisee may advance an anticipated toll increase or create an additional toll increase if all the anticipated toll increases have been effected. The maximum levels of increase in respect of different categories of vehicles are specified in Schedule 2 to the WHCO.

The toll adjustment mechanisms for the EHC and the WHC were made in the past against different historical background, such as the prevailing social climate, economic condition, interest rate and investment opportunities. The discussion with the relevant franchisees had been very complex and difficult. In the case of the

WHC, there was a prevailing view in the market at the time that a mechanism in the legislation stipulating the reasonable return that the franchisee might achieve was a prerequisite to attract private investment. The then Government therefore needed to quantify the reasonable return and stipulate it in the legislation. The relevant rate of reasonable return was drawn up having regard to the rate of return for similar projects in the Asia-Pacific Region as gathered by the consultants.

We need to point out that these mechanisms are enshrined in the relevant legislation and form part of the agreements between the Government and the concerned franchisees, which should be respected and followed by both parties and can be changed only by mutual agreement.

- (b) The Government agrees that the current traffic distribution among the three crossings is uneven, and there is room for improvement. We have always attached importance to resolving this problem. The uneven traffic distribution is mainly due to the differences in locations and toll levels of the three crossings. Various sectors of the community have put forward many suggestions on how to improve the distribution of traffic among the three road harbour crossings.

One of the suggestions is to establish a Tunnels and Bridges Authority. This is a suggestion for the Government to buy back the ownership of all BOT tunnels and bridges. A public authority, that is, the Tunnels and Bridges Authority (TBA) will then be entrusted with the co-ordination, operation and development of these facilities. It is also suggested that the TBA may issue bonds or have its shares listed on the stock market to fund its operations and development of new facilities. Buying back BOT tunnels and bridges will involve enormous capital spending, and we have to consider it carefully, including the need to ensure that the price of buying out will be reasonable and acceptable to the public. Also, the investment community will expect the TBA to have the autonomy to set tolls if it were to issue bonds or get listed, the implications of which will also require careful consideration.

Another suggestion is to build a fourth road harbour crossing or expand the capacity of the CHT. Building the fourth crossing or expanding the capacity of CHT are long-term options. However, we need to examine various technical issues, as well as the land requirements for the ingress and egress and connecting roads. Accordingly, these options would not help alleviate the traffic problem in the short to medium term.

There is also a suggestion that the Government should buy out the franchisees of the WHC and the EHC. This option would involve substantial funding from the public coffers. We have to consider its feasibility carefully based on the principle of "small government, big market", including the need to ensure that the price of buying out would be reasonable and acceptable to the public.

We also take note of the Honourable Alan LEONG's idea of conducting short-term experiments, but this idea involves the use of public funds, forecast of traffic flow, means of measuring effectiveness, calculation of tunnel companies' expected revenue and other technical problems. The two tunnel companies' agreement is also essential for the implementation of this idea. We therefore need to consider it in detail.

Despite the difficulties facing each option, we are keeping an open mind and will study them in earnest. We consider that no matter which option is to be adopted, it must be able to bring about overall benefit to the public, be fair to taxpayers and help to achieve reasonable distribution of traffic. We have also put forward to the Panel on Transport of the Legislative Council some options that may help improve the cross-harbour traffic conditions. We have pointed out that extending the franchisees of the EHC and the WHC in exchange for toll reduction by the relevant franchisees was a more feasible option. That said, we certainly need to consider carefully the period for extension, in order to ensure that the package would be fair to the franchisees, the tunnel users and the Government.

In the meantime, we need to consider whether the road network connecting the three crossings have sufficient capacity to absorb the

increased traffic flow arising from a reduction of tunnel toll. This is because insufficient capacity of these connecting roads would undermine the objective of rationalization of cross-harbour traffic flow by adjustment of tunnel tolls. In this connection, accelerating the construction of planned connecting roads, in particular the Central-Wanchai Bypass, is an important element in improving the distribution of traffic amongst the three crossings.

**MR ALAN LEONG** (in Cantonese): *President, my question is about the fourth paragraph of part (b) of the Secretary's main reply. The Secretary mentioned therein that regarding the buying out of the franchises of the WHC and the EHC, the Government must consider the feasibility of the option carefully, including the need to ensure that the price of buying out would be reasonable and acceptable to the public.*

*President, may I ask the Government what means and measures it will take to ensure that the price of buying out is reasonable and acceptable to the public, and will these include the experiment mentioned by me? For in the fifth paragraph, the Secretary added that she would consider my idea in depth. But will she just ponder it in her mind, or will she take action to try to implement it?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, I think the experiment itself may not necessarily facilitate the determination of whether the price of buying out is reasonable. Concerning the reasonableness of the price, we notice that the revenue generated from the tunnel is not complicated, which only involves the calculation of traffic flow and the toll charged. All we need to do is to multiply the number of vehicles using the tunnel by the toll charged, but of course, a reasonable level of return must be included.

The difficulty lies not in knowing the current traffic flow and the price but in making projection for the future. If we intend to extend or buy out the franchises, it means that we have to set a price for the remaining period of the franchises. In other words, we have to make an assumption on the future traffic flow and prices. Regarding the number of vehicles using the tunnel, it in fact depends on the economy, the growth rate of vehicles and a host of economic factors. When we have to fix the price, we have to consider whether the assumptions made are appropriate.



The experiment proposed by Mr Alan LEONG may demonstrate whether certain options are really conducive to the redistribution and streaming of traffic, but it may not necessarily help to confirm the reasonableness of the price, the assumptions made, and the reasonable rate of return we should use for the assessment.

**MR ALAN LEONG** (in Cantonese): *President, in my earlier supplementary question, I asked the Secretary of the means or methods she would use to ensure the price of buying out is reasonable and acceptable to the public. However, the Secretary only pointed out the impracticability, the incomprehensiveness and problems in many aspects. According to my understanding of the Secretary's reply, there is actually no way to confirm this, and thus she would not do it. Can I take her to mean that?*

**PRESIDENT** (in Cantonese): Secretary, please give your answer according to his original supplementary question.

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, I think I have already made it crystal clear, that we are keeping an open mind to all feasible options and we are willing to try them out. Actually, we have heard clearly the opinions voiced by the community. We certainly consider that the BOT option has a lot of merits, but we are also aware of its constraints. At present, we are prepared to examine all feasible options and have commenced studies in collaboration with different tunnel companies.

I think the primary method is to review the assumptions made by both parties and the factors to be considered in price determination in future. We have to examine each of these items, including the traffic flow, prices and rate of return mentioned by us earlier, and see whether they are reasonable.

**PRESIDENT** (in Cantonese): There are altogether 10 Members waiting for their turns to ask supplementary questions, so will Members who have the opportunity to ask questions be as concise as possible.

**MR LAU CHIN-SHEK** (in Cantonese): *President, in part (a) of the main reply, the Government mentioned certain construction criteria, but it stopped short of saying whether the operation of private tunnels should serve the important function of traffic streaming. If they have to perform such function, what measures will the Government take when these tunnels fail to serve this function? Just now, the Secretary mentioned a lot of issues, such as, buying out and extending the franchise, and so on. May I ask whether a specific time will be fixed? That is to say, a "cut-off" time will be set and certain measures will be taken after the "cut-off" time. If it will not do so, what will the situation be?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): *Madam President, it is difficult to set a specific time. I know that a number of former Secretaries dealing with transport have tried to tackle this problem. Why? For both the EHC and the WHC are subject to the regulation of their franchises and relevant ordinances, and we have to respect the spirit of contract. Therefore, if we set a date unilaterally and decide that we will carry out a certain arrangement after that date, it may not be appropriate.*

As for traffic streaming, this can be achieved through pricing arrangement. The most reasonable and logical approach is to increase the toll of the Cross-Harbour Tunnel at Hung Hom, the most congested and popular crossing, to a level higher than the toll of the EHC and the WHC. This may be the most reasonable option but it may not be acceptable to the public. Members may also notice that some other options, such as charging a standardized toll, are also available now. Therefore, we will discuss the different options with different tunnel companies.

**MS EMILY LAU** (in Cantonese): *President, in the main reply, the Secretary said that the Government agreed that the current traffic distribution among the three crossings was uneven and there was room for improvement. The problem is only mentioned casually, but I believe the public consider the present situation utterly unacceptable.*

*President, in part (a) of the main reply, the Secretary said that during the planning stage, the WHC was intended to provide relief for the serious congestion at the other two road harbour crossings. May I ask the Secretary*

*whether the policy objective set at the time has not been achieved? Moreover, regarding the congestion that occurs every day, how is it quantified and how much economic loss is incurred? What do the authorities have to do to improve the situation?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, we agree that this problem should be dealt with, and the Chief Executive also mentioned that at the last Question and Answer Session.

With regard to traffic streaming, the utilization rate of the Cross-Harbour Tunnel accounts for 52% of traffic using road harbour crossings, the EHC accounts for 57% and the WHC accounts for about 21%. We certainly think that improvement can be made to traffic streaming. Members know that the planning of the WHC was made in conjunction with the new airport at the time. We think we can now encourage more vehicles to use the WHC. Just now, I have put forth different options, for I wish to deal with the problem. Regarding the franchise period, at present, the franchise for the WHC has another 15 years or so and that for the EHC is some eight years. What should we do? We should deal with the issue cautiously. For whenever public money is involved, we will be subject to monitoring by the public. We must make good use of public money, so the prices set must be reasonable while the future streaming arrangement must be acceptable to the public. Therefore, we think the problems we will encounter will be rather complicated and hard to tackle, but we are prepared to keep trying.

**MS EMILY LAU** (in Cantonese): *My supplementary question is quite straightforward. Has not the policy objective been achieved now? Moreover, given the serious congestion at present, how will the Government measure the economic loss? How much money is lost on a daily, weekly and monthly basis?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, I do not wish to simplify the issue and say that the Cross-Harbour Tunnel or a certain tunnel is congested during rush hours. In fact, more often than not, the congestion does not only occur at tunnels, for the link roads may also be a problem.

In the last paragraph of the main reply, I have listed options that can facilitate the streaming of traffic of the three crossings. We do not only need to try out the various arrangements mentioned earlier, but also have to consider the connecting roads, particularly the Central-Wanchai Bypass. If the diversion of eastbound and westbound traffic is arranged, it will facilitate the traffic flow of the Cross-Harbour Tunnel. Therefore, we have to continue to work hard on every aspect.

**MS MIRIAM LAU** (in Cantonese): *President, I am glad to hear the Secretary say that the Government will examine this long-standing problem proactively. Actually, this problem has been discussed for years. All along, the Government has been saying that a proactive approach will be adopted, but we only hear the Government's remark of taking a proactive stance and see no action taken by the Government to tackle the problem proactively.*

*In the second last paragraph of the main reply, the Secretary said that the Government also considered an extension of the franchise a more feasible option. However, this option was proposed a few months ago. May I ask the Secretary of the present state of the study on this option which the Government considers more feasible? When will some concrete or specific proposals, at the very least, be made available to let the public know that the Government has really taken a proactive approach in dealing with this thorny issue?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, why do we consider that a more feasible option? For the public resources entailed by that option will only be used to extend the franchises, which the public may consider easier to accept. We are now discussing the issue with different tunnel companies. I think it is inappropriate to disclose the details here, for it may touch on the discussion concerned.

Actually, the most important point is that a consensus on the assumption of future traffic flow must be reached among all parties. It is not practicable for us to assume that tens of thousands of vehicles will use a certain tunnel while they work on a completely different assumption. Insofar as transport arrangement is concerned, we must stand on the same platform to take this forward. Therefore, concerning the so-called proactive discussions we are now holding

with them, we are actually engaging in discussions with each tunnel company about a fair level of pricing.

**MS MIRIAM LAU** (in Cantonese): *I asked the Secretary when some specific proposals would be made available. In the supplementary question put forth by me earlier, I stressed that a long time had passed and that we cannot just wait indefinitely.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, as this involves discussions with different companies, I think it will be irresponsible of me to set a deadline now. However, my colleagues and I will definitely exert our utmost to deal with the issue expeditiously.

**PRESIDENT** (in Cantonese): We have spent more than 19 minutes on this question. Last supplementary question.

**MR ALBERT CHAN** (in Cantonese): *President, the attitude adopted by the Government on this issue is indecisive, a criticism the Central leadership made against TUNG Chee-hwa in the past. President, some of the various options proposed for this problem have actually been discussed for years, where discussions were started in early 2000. However, the Government only expressed that the option will be implemented and examined cautiously. Do we have to wait until the Secretary or someone at a higher rank steps down before the Government will change this indecisive attitude?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, I think the Chief Executive made it very clear in the previous Question and Answer Session that he wishes to deal with this problem during his term. Therefore, I have already enjoined my colleagues and myself to complete the task. What we wish to achieve now is to discuss with various tunnel companies proactively, hoping to work out a good option.

**PRESIDENT** (in Cantonese): Last oral question.

## Usage of Shenzhen Bay Port

6. **MR JEFFREY LAM** (in Cantonese): *Madam President, people in the freight industry have pointed out that as the ancillary facilities in the vicinity of the Shenzhen port area of the Shenzhen Bay Port (SBP) are seriously inadequate, the number of vehicles crossing the boundary via SBP has been on the low side. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of different classes of vehicles crossing the boundary via the SBP since its commissioning in July last year; how such figures compare to those of other control points for the same period, and whether it has assessed if the SBP can achieve the function of diverting traffic flows;*
- (b) *given that the Government had advised in October last year that it would convey to the relevant Shenzhen authorities the trade's comments on the ancillary facilities and the road network, of the latest progress and the outcome of the relevant discussions, and the estimated time for completing the ancillary facilities and the road network concerned; and*
- (c) *of the new concrete measures to be implemented to enhance the utilization of the SBP, so as to alleviate the traffic congestion at other control points?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President,

- (a) The average daily two-way vehicular flow at all land boundary crossings before and after the commissioning of the SBP is at the Annex. The statistics show that the average daily two-way vehicular flow at the SBP is around 4 400 trips at present, which is lower than the original estimate of 29 800 trips. Some members of the freight trade have expressed to us that this is because the connecting traffic network and ancillary facilities in the vicinity of the Shenzhen port area require improvements. Nonetheless, if we compare the average daily vehicular flow at all land boundary crossings in December last year with the corresponding figures in July when the SBP was commissioned, we observe that the vehicular

flow at Lok Ma Chau, Man Kam To and Sha Tau Kok decreased by 9.4%, 11.2% and 4.3% respectively. The decrease in the volume of cross-boundary traffic at other land boundary crossings since the commissioning of the SBP gives an initial indication of the diversion effect of the SBP. As regards passenger traffic, the average daily passenger flow at the SBP is around 28 400, which is close to the original estimate.

- (b) We have conveyed to the relevant Shenzhen authorities the freight trade's comments on ancillary facilities at the control point and the road network for their consideration of implementing improvement measures as necessary. According to our understanding, the Shenzhen side is actively preparing for the construction of a temporary office building in the Shenzhen port area to allow freight companies to set up offices for providing support on customs declaration and clearance of goods. The Shenzhen authorities have also implemented some traffic management measures (for example, installing additional traffic signs, designating goods vehicles-only lanes at the Yueliangwan Avenue leading to the control point, and so on) to attract cross-boundary vehicles (in particular goods vehicles) to use the new control point. In addition, the Guangdong Government has indicated that it will expedite the construction works of the Guangshen Yanjiang Expressway with a view to commissioning the entire expressway by end 2010.
- (c) The Guangdong and Hong Kong Governments have already implemented a number of measures to encourage different types of cross-boundary vehicles to use the SBP since its commissioning to ease the traffic at other existing crossings. We have reached an agreement with the Guangdong Government to exempt goods vehicles of cross-boundary freight companies from the requirement of obtaining an additional SBP crossing endorsement in advance from the relevant authorities in Guangdong Province so as to allow most goods vehicles to use the SBP, and extended the arrangement for cross-boundary private cars to use the control point on a trial basis to 31 March this year. The two governments are also considering the feasibility of further extending the trial arrangement for cross-boundary private cars to use the SBP. We will inform quota holders of the relevant arrangements once consensus is reached by both sides.

The Guangdong and Hong Kong Governments will continue to closely monitor the operation and vehicular flow of the new control point, and will consider relevant measures to further encourage users of other land boundary crossings to switch to using the SBP as necessary.

## Annex

		<i>Average Daily Two-way Vehicular Flow (Trips)</i>			<i>Change</i>	
<i>Control Point</i>	<i>Vehicle Type</i>	<i>December 2006</i>	<i>July 2007</i>	<i>December 2007</i>	<i>December 2007 compared with December 2006</i>	<i>December 2007 compared with July 2007</i>
Shenzhen Bay	Coach	-	292	432	-	+47.9%
	Private Car	-	995	2 466	-	+147.8%
	Goods Vehicle	-	5	1 513	-	+30 160%
	Sub-total (a)	-	1 292	4 411	-	+241.4%
Lok Ma Chau	Coach	3 077	2 785	2 531	-17.7%	-9.1%
	Private Car	9 606	9 932	9 836	2.4%	-1.0%
	Goods Vehicle	18 378	19 386	16 713	-9.1%	-13.8%
	Sub-total (b)	31 061	32 103	29 080	-6.4%	-9.4%
Man Kam To	Coach	234	134	202	-13.7%	+50.7%
	Private Car	732	676	572	-21.9%	-15.4%
	Goods Vehicle	6 741	6 274	5 515	-18.2%	-12.1%
	Sub-total (c)	7 707	7 084	6 289	-18.4%	-11.2%
Sha Tau Kok	Coach	283	243	259	-8.5%	+6.6%
	Private Car	968	848	871	-10.0%	+2.7%
	Goods Vehicle	1 169	1 241	1 101	-5.8%	-11.3%
	Sub-total (d)	2 420	2 332	2 231	-7.8%	-4.3%
All control points	Total (a)+(b)+(c)+(d)	41 188	42 811	42 011	2.0%	-1.9%



**MR JEFFREY LAM** (in Cantonese): *Madam President, many people in the trade complained that the clearance procedures of the SBP are too cumbersome, and the Secretary mentioned in the main reply that the Shenzhen side was preparing to construct a temporary office building in the Shenzhen port area. May I know the number of offices of freight companies this temporary office building can accommodate? And, what is the saving in time required for customs declaration and clearance of goods after it has come into service?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): *Madam President, the present preliminary data show that the building can accommodate approximately 20 to 30 freight companies. With this support service, I hope that more people in the trade will be encouraged to use the SBP.*

**MR HOWARD YOUNG** (in Cantonese): *Madam President, I noticed from the Annex provided by the Secretary that vehicular flow at Lok Ma Chau, Man Kam To and Sha Tau Kok have dropped. Lok Ma Chau has recorded the smallest drop in private cars. Goods vehicles have also seen a drop there, but for just 1%. Nonetheless, the vehicular flow of coaches in Man Kam To and Sha Tau Kok has increased.*

*May I ask the Secretary whether she will, in the light of the situation, review the underlying concept of the construction of the Shenzhen-Hong Kong Western Corridor, which is supposed to serve goods vehicles primarily, to be followed by private cars, with a view to providing more incentives for private vehicles to switch to the Corridor? I think that if they use the Corridor, it may help relieve the pressure of clearance of good vehicles at other control points.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): *Madam President, the SBP has been commissioned for about half a year only, and we should not judge the effectiveness of an infrastructure by simply looking at the performance of the first few months.*

*When the Lok Ma Cha Control Point was commissioned in the 1990s, there was a daily throughput of a few thousand vehicle trips only. We think that it has already given play to its function both in terms of goods and passenger flow.*

Many goods vehicle drivers told us that if they use the Corridor, they will be connected to the original road network on entering Shenzhen, especially the Yueliangwan Avenue where traffic congestion is rather serious. The situation will only be improved upon completion of the Guangshen Yanjiang Expressway. This expressway is expected to be commissioned in around 2010, when the attractiveness of the Corridor will be greatly enhanced, hence diverting more goods vehicles to the new SBP.

**MR LAU KONG-WAH** (in Cantonese): *President, in order to attract more private vehicles to use the Corridor as an alternative, the Secretary stated in part (c) of the main reply that they are "considering the feasibility of further extending the trial arrangement .....". In the past, such extension arrangements generally lasted for just a few months and were pretty troublesome. Will the Administration consider extending the arrangement for a longer period this time around, say, for a few years, with a view to genuinely attracting private car users? The present situation is that many private car owners have no idea of when the trial period will end.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, we will discuss with the relevant mainland authorities about this. However, for the time being, we only consider extending the period by, say, six months.

We understand that private car owners certainly wish to use the Corridor for a longer period for want of certainty. But the existing trial arrangement is tantamount to allowing them to keep their crossing endorsement, which has given them greater convenience. For this reason, we consider the existing arrangement feasible.

**PRESIDENT** (in Cantonese): Has your supplementary question not been answered?

**MR LAU KONG-WAH** (in Cantonese): *No. I wish to raise another supplementary question.*

**MS MIRIAM LAU** (in Cantonese): *President, the Secretary mentioned in the main reply that, as learnt from some people in the freight trade, the connecting road network and ancillary facilities of the SBP are inadequate. This is one of the reasons. However, many front-line drivers also told me that there are a lot of rumors about this control point in the freight trade, such as a possible fee payment, or there is a higher chance of being spot checked at the SBP given the small number of goods vehicles using it, which often took them a few hours. Such rumors keep floating and have deterred many drivers from using it. May I ask if the Government will gain a better understanding of why the front-line drivers did not use that control point, and react to the rumors by getting the correct message across to the drivers and encouraging them to use the Corridor?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): *Madam President, I think Ms Miriam LAU was right in saying that most of the messages are indeed rumors.*

Insofar as the rate of spot checks is concerned, it is more or less the same for the Corridor and other control points. Furthermore, with the presence of a sound system, spot checks are only conducted, for example, following an assessment of risk management. This is what I wish to clarify here. We will continue to promote and encourage more frequent use of the Corridor by goods vehicles through the existing channels.

**MR WONG KWOK-HING** (in Cantonese): *President, according to the Secretary's main reply, the commissioning of the SBP will provide plenty of room for the flow of passengers, cargoes and vehicles, thereby reducing the vehicular flow at other control points. There are several hundred thousand residents in Kwai Tsing, Tsing Yi and Tung Chung, and they sincerely hope that the Government will enable the provision of cross-boundary direct bus services to them. In this connection, we have time and again collected signatures, arranged for meetings and staged demonstrations to relay their request to the Administration. Given that the vehicular flow of the SBP and other control points have dropped, may I ask if the Government will remove the unnecessary regulations and restrictions so as to enable the residents of Kwai Chung, Tsing Yi and Tung Chung to enjoy cross-boundary direct bus services via the SBP? This proposal will not only enable full utilization of the SBP, but also achieve an all-win situation.*

**PRESIDENT** (in Cantonese): I wonder if the Secretary has this kind of information on hand, but I will still ask the Secretary to try to tackle it. Although this supplementary question does relate to the main question, it is not so closely related.

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, it is understandable that people of all districts wish to have their transport services enhanced, either within Hong Kong or across the boundary. As for the possibility of providing cross-boundary services for such districts as Kwai Chung, Tsing Yi and Tung Chung, I will examine it with the colleagues of the Transport Department.

In fact, a new quota of 300 has been issued for coaches running to the SBP, among which 100 of them are brand new, 121 were transferred from other control points and 79 are trial quotas. As regard the routes of these coaches, I certainly do not have the details on hand, but I believe cross-boundary coach services have been enhanced on the whole. As for Mr WONG's proposal, we will look into it later on.

**MR LAU KONG-WAH** (in Cantonese): *President, as the Chinese New Year is fast approaching, a large number of mainland tour groups will enter Hong Kong through the Huanggang Control Point, which is really very crowded and also rather dangerous. Will the Secretary consider diverting all or the majority of mainland tour groups to the Corridor during next month's Chinese New Year holiday or other major festive occasions in the future to achieve diversion?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Madam President, in fact, there is a mechanism to deal with such festive occasions as the Chinese New Year when the passenger flow is comparatively higher, whereby mainland and Hong Kong travel agents will arrange for diversion in advance. For example, they are encouraged to use the Lo Wu Control Point instead of the Huanggang Control Point. With the commissioning of the SBP, more room is now available. Earlier planning together with the co-ordination of the Tourism Commission will help co-ordinate different local and mainland travel agents, as well as the staff working at different border control points.

As evident in the previous Chinese New Year holidays, tour groups often entered Hong Kong in an orderly manner. I believe the availability of additional room will provide them with more comfortable services and expedient clearance.

**MR JEFFREY LAM** (in Cantonese): *Madam President, some taxi groups have criticized that the queuing facilities at the new SBP are not good enough as they have to make a big detour before getting a chit. Sometimes, this may result in fights between drivers of "red taxis" and "green taxis", thereby undermining the connectivity of the control point. May I ask the Secretary what measures can be taken to improve the connectivity of this control point, including the connection provided by taxis or other modes of transport?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): *Madam President, I believe this is not a problem with the system design, but probably a matter of order and law enforcement. We will pay special attention to this.*

**MR LAU KONG-WAH** (in Cantonese): *President, fearing that the commissioning of the Corridor will cause traffic congestion on Tuen Mun Road, the Government has artificially controlled the quota of licences that permits travel in both places. However, hardly any vehicles can be found on the Corridor now. Can the Secretary tell us the number of people who have applied but have yet to receive the licences that permit travel in both places, and whether the quota restriction will be relaxed?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): *Madam President, all along goods vehicles are not subject to any quota system and are only required to obtain the appropriate permits issued by the Mainland and Hong Kong.*

The quota system for private cars has been implemented for many years. We have maintained communication with the relevant mainland authorities, which also consider that the quota system should be retained. Given that some control points have almost or already reached capacity, it is afraid that the removal of this quota system will cause more serious congestion, and thus undermine the effectiveness.

For this reason, we have reached a consensus on the issuance of new quota. Insofar as the SBP is concerned, a quota of 500 will be issued in each of the first nine months, while the existing control points will continue to have a total of 90. This is the outcome of our negotiation and co-ordination with the relevant mainland authorities. We consider that room is still available at the SBP.

**PRESIDENT** (in Cantonese): Oral questions end here.

## **WRITTEN ANSWERS TO QUESTIONS**

### **Functions of Smart Identity Cards**

7. **MR WONG KWOK-HING** (in Chinese): *President, in 2003, the Government issued Smart Identity (ID) Cards embedded with chips and introduced the concept of multi-function card, which enabled the public to use the card as a driving licence and a public library card. In this connection, will the Government inform this Council:*

- (a) *given that the government representatives who attended the meetings of the Council and of its Panel on Information Technology and Broadcasting had time and again said that the Government was studying the replacement of driving licences with Smart ID Cards, of the latest progress of the study and the funding required, whether the study will be completed by the end of this year as scheduled, and whether a timetable will be set for the implementation of the project;*
- (b) *of the current number of Smart ID Cards which are embedded with the public library card function and the number of person-times this function was used last year; and*
- (c) *apart from adding to the Smart ID Cards the functions of booking sports and leisure facilities, checking driving licence data, e-Certs and public library cards, whether the authorities have conducted any studies on the use of Smart ID Cards to support other functions; if they have, of the details of the study (including details of the additional functions under consideration)?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Chinese): President, regarding the question raised by the Honourable WONG Kwok-hing, my reply is as follows:

- (a) At the joint meeting of the Legislative Council Panel on Information Technology and Broadcasting and the Legislative Council Panel on Security on 20 December 2001, the Administration briefed Members on the proposal of using Smart ID Cards as driving licences. We pointed out at the meeting that after detailed scrutiny of the original idea of engraving driving licence data on Smart ID Cards or incorporating the data into the chips, we found that the proposal had various operational constraints (for example, there might be difficulty for the public and overseas authorities to access the data in the chip; there would be a need to re-issue Smart ID Cards with no driving licence data engraved on the card face to persons whose driving licence were temporarily suspended, and so on). Hence, we considered it not appropriate to include driving licence in the Smart ID Card. Instead, we proposed to consider allowing law-enforcement agencies and the public to access driving licence data directly through the backend computer system and providing the public with an option of not carrying driving licence while driving.

The driving licence data has now been stored in the backend computer system. The system enhancement and upgrade of the Vehicle and Driver Licensing Integrated Data System of the Transport Department and the Command and Control Communications System of the Hong Kong Police Force have been completed. Law-enforcement agencies can access driving licence data directly from the backend computer system to facilitate traffic enforcement actions.

As for the proposal of providing Smart ID Card holders with an option of not carrying driving licence while driving, the Transport Department is exploring the legal feasibility of the proposal with the Department of Justice and the legislative amendments involved. The study does not involve additional administrative expense. As the scope and details of the legislative amendments involved are very extensive and complex, we do not have a timetable for the completion of the study at this stage.

- (b) As at 31 December 2007, the number of library patrons who have registered to use library services with Smart ID Cards is about 530 000. In 2007, there were over 1.89 million checkouts of library materials using Smart ID Cards.
- (c) Besides adding to the Smart ID Cards the functions of booking sports facilities and recreation activities at the Leisure Link self-service kiosks of the Leisure and Cultural Services Department, digital certificate and library card, we have reserved capacity in Smart ID Cards for the development of e-purse as an option in the light of public demand and preference. After consulting the Hong Kong Monetary Authority and having regard to the current market situation, we do not have the timetable for the implementation of e-purse in Smart ID Cards at this stage. We have committed to consulting the relevant panel of the Legislative Council on any new applications to be put on the smart ID card. At the same time, the Office of the Government Chief Information Officer is implementing a pilot infrastructural authentication service using the secure personal identification number embodied in the Smart ID Cards and card face data for testing the authentication process of e-government services.

### **Importation of Chilled Pork**

8. **MR TOMMY CHEUNG** (in Chinese): *President, Hong Kong has been importing chilled pork from the Mainland since August 2006, but the prices of pork have continued to rise sharply since last year. In this connection, will the Government inform this Council:*

- (a) *in each month last year, of the average wholesale price of chilled pork, how the increases in such average wholesale prices compare with those in the average wholesale prices of fresh pork for the same period, the respective average quantities of pork imported from the Mainland and other regions, as well as the percentage of chilled pork in the total pork consumption in Hong Kong;*
- (b) *of the current number of chilled pork processing plants on the Mainland permitted to supply chilled pork to Hong Kong; and*



*whether the Food and Environmental Hygiene Department (FEHD) has deployed staff to inspect such processing plants since the importation of chilled pork from the Mainland; if so, the number and the outcome of the inspections conducted; and*

- (c) *whether the Government will shortly discuss increasing the number of the above processing plants and the supply of chilled pork with the State General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ); if so, of the relevant details and the expected increase in supply next year; if not, the reasons for that?*

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President,

- (a) The Administration does not keep statistics on the wholesale prices of chilled pork but we have information on the import prices of chilled pork.

The monthly import prices of chilled pork and the wholesale prices of fresh pork in 2007 are as follows:

	<i>Wholesale Prices of Live Pigs (\$/kg)</i>	<i>Import Prices of Chilled Pork</i>		
		<i>From All Origins (\$/kg)</i>	<i>From the Mainland (\$/kg)</i>	<i>From Other Origins (\$/kg)</i>
January 2007	15.2	17.3	16.0	25.1
February 2007	15.3	17.0	15.1	23.5
March 2007	15.3	16.5	15.7	21.4
April 2007	15.3	17.1	16.2	26.7
May 2007	15.4	18.1	16.3	33.6
June 2007	16.7	18.7	17.4	24.5
July 2007	17.9	19.5	18.4	22.9
August 2007	18.9	20.3	19.3	23.7
September 2007	18.9	21.0	18.8	28.0
October 2007	18.8	20.3	18.6	29.9
November 2007	19.1	21.4	18.9	35.9
December 2007	21.0	Data not yet available	Data not yet available	Data not yet available

A comparison of the monthly changes in the import prices of chilled pork and the wholesale prices of fresh pork in 2007 is shown in the following table:

	<i>Monthly Changes in the Wholesale Prices of Live Pigs (%)</i>	<i>Monthly Changes in the Import Prices of Chilled Pork</i>		
		<i>From All Origins (%)</i>	<i>From the Mainland (%)</i>	<i>From Other Origins (%)</i>
January 2007	-0.1	-1.1	+4.6	-1.2
February 2007	+0.3	-1.7	-5.6	-6.4
March 2007	+0.5	-2.9	+4.0	-8.9
April 2007	0.0	+3.6	+3.2	+24.8
May 2007	+0.5	+5.8	+0.6	+25.8
June 2007	+8.3	+3.3	+6.7	-27.1
July 2007	+7.4	+4.3	+5.7	-6.5
August 2007	+5.3	+4.1	+4.7	+3.7
September 2007	0.0	+3.4	-2.4	+17.9
October 2007	-0.4	-3.3	-1.1	+6.8
November 2007	+1.5	+5.4	+1.6	+20.1
December 2007	+9.9	Data not yet available	Data not yet available	Data not yet available
Cumulative Changes between January and November 2007	+25.7	+23.7	+18.1	+43.0

According to the Census and Statistics Department (C&SD), during the period January to November 2007, an average of about 1 000 tonnes of chilled pork were imported into Hong Kong from the Mainland and other regions each month, of which about 830 tonnes (83%) were from the Mainland, about 150 tonnes (15%) from Thailand, and the remaining 20 tonnes (2%) from countries including Australia, France, Canada, the United States, Italy, Japan and the Netherlands.

During the period January to November 2007, chilled pork accounted for an average monthly share of about 4% in the local pork market (including frozen, chilled and fresh pork).

- (b) Since August 2006 when importation of chilled pork from the Mainland started, a total of four mainland chilled pork processing plants in Guangdong and Shenzhen have obtained approval for

supplying chilled pork to Hong Kong. To ensure their compliance with health standards, officers of the FEHD have paid seven visits to these plants to inspect their facilities, modes of operation, production process and hygiene monitoring system. All hygiene assessment results were satisfactory.

- (c) The Administration and the AQSIQ have joined hands to work out a set of stringent inspection and quarantine requirements on chilled pork imported into Hong Kong. Slaughtering and processing plants in the Mainland must obtain a certificate of hygiene registration from the China National Regulatory Commission for Certification and Accreditation (CNCA) for export of processed chilled pork products. In addition, pig farms supplying live pigs for slaughtering are subject to the supervision of the local inspection and quarantine authorities where they are located.

On the supply front, the Administration has reached consensus with the AQSIQ that the supply of chilled pork to Hong Kong can be increased according to market needs. The number of processing plants for supplying chilled pork to Hong Kong can also be increased subject to their meeting the inspection and quarantine requirements, with a view to ensuring an adequate supply of chilled pork to Hong Kong.

### Prevention of Hill Fires

9. **MISS CHOY SO-YUK** (in Chinese): *President, it has been reported that the Number 3 alarm fire at Por Lo Shan in Tuen Mun early this month was suspected to have been caused by kindling materials left behind by people negligently. The hill fire burnt for two days and nights, destroying vegetation in an area of 800-hectare, which is equivalent to a total area of 42 Victoria Parks. It is estimated that at least 10 years are needed to restore the vegetation destroyed. In this connection, will the Government inform this Council:*

- (a) *last year, of the number of hill fires, the number and total area of trees destroyed, the economic losses involved, the respective numbers of hill fires the causes of which involved human negligence or were unknown, the number of people convicted because of those hill fires and their penalties, and how such figures compare to the relevant figures of 2006;*

- (b) *whether it will reconsider increasing the current maximum penalty (that is, a fine of \$25,000 and imprisonment for one year) for lighting a fire in or near any forest, plantation or area of open countryside so as to enhance the deterrent effect; if it will, of the details; if not, the reasons for that; and*
- (c) *whether it will consider specifying a fire emergency period to strictly prohibit the lighting of any fire in the area of certain designated country parks during a certain period of time each year or when the relative humidity is lower than the prescribed level; if it will, of the details; if not, the reasons for that?*

**SECRETARY FOR THE ENVIRONMENT** (in Chinese): President,

- (a) The number of hill fires and related statistics for the past two years are given below:

	2006	2007	Percentage change (%)
No. of hill fires	1 273	1 272	0
Area affected (hectare)	2 296	1 233	-46
No. of trees destroyed <sup>1</sup>	75 400	20 600	-73

<sup>1</sup> The figures only include the trees destroyed by hill fires within country parks. No statistics have been compiled for the number of trees destroyed in hill fires outside country parks.

<i>Prosecution figures</i>	2006	2007
No. of cases	15	9*
Fine (\$)	250 to 1,000	250 to 2,500

\* including five prosecution cases which are pending trial

We believe that the great majority of hill fires in the territory are caused by human negligence and kindling materials carelessly left behind by visitors. Among the hill fires of 2006 and 2007, 83 and 70 cases respectively were classified as due to "unknown causes", while the rest was related to human negligence.

Hill fires spoil the ecological environment and countryside scenery, they also cause various degrees of harm and destruction to animals and their habitats. Furthermore, the burning away of vegetation will result in soil erosion, which may lead to long-term impact.

Therefore, hill fires could bring significant damages to the overall ecological environment. However, as the vegetation destroyed by fire involves a wide variety of species and the tree ages vary, we cannot provide the total value of economic loss.

- (b) Under the Forests and Countryside Ordinance (Cap. 96), the maximum penalty for illegal lighting of any fire in any forest or country park is a fine of \$25,000 and one-year imprisonment. We consider that these penalties already have deterrent effect. Besides, the annual number of hill fires had dropped from about 3 300 in 1999 to about 1 200 in recent years. This illustrates that the public awareness of hill fire prevention had been generally enhanced. We will continue with the civic education and publicity in hill fire prevention, and will review from time to time the need for increasing the maximum penalty.
- (c) At present, lighting or use of fire are controlled in all areas of country parks, except for domestic premises, designated barbecue or camping sites. Barbecue or camping sites are mostly located on the periphery of country parks, and are unlikely to cause hill fire. Besides, hill fires occurred in country parks in the past did not take place in these areas. Therefore, it will not be effective in preventing hill fires by further prohibiting the lighting of any fire on certain specified days in the few sites where lighting of fire is allowed.

### **Default Repayment of Student Loans**

10. **MR JASPER TSANG** (in Chinese): *President, it has been reported that information from the Student Financial Assistance Agency (SFAA) indicates that there were more than 6 300 cases of post-secondary students defaulting loan repayment in the 2006-2007 academic year, almost 10% more than those in the 2005-2006 academic year, and the amount involved was \$117 million; at the same time, the number of graduates filing for bankruptcy to evade repayment of loans had rapidly increased by 40%. Moreover, since the 2005-2006 academic year, the SFAA has referred to the police 67 cases involving deception in loan application for investigation. A study also found that nearly 10% of university students used loans, which were obtained from the SFAA's Non-means Tested Loan Scheme, to speculate in stocks. In this connection, will the Government inform this Council whether it has:*

- (a) *analysed the reasons for the increase in cases of students defaulting loan repayment; if it has, of the outcome; if not, the reasons for that;*
- (b) *plans to take proactive measures to minimize cases of default in loan repayment; if it has, of the details of such plans; and*
- (c) *plans to co-operate with various post-secondary institutions to step up publicity and education in respect of student financial assistance and loan schemes in order to curb the misuse of loans or default in loan repayment?*

**SECRETARY FOR EDUCATION (in Chinese):** President,

- (a) It is the Government's student finance policy to ensure that no student is deprived of education for lack of means. Students of post-secondary institutions may, depending on their situations, apply to the SFAA for financial assistance to pay for their tuition fees, academic expenses and/or living expenses. Upon completion or cessation of their studies, loan borrowers are required to repay their loans in quarterly instalments within five or 10 years, in accordance with the terms for the loans.

The SFAA appreciates that individual loan borrowers may have difficulties in repaying their loans and therefore has put in place an effective mechanism for handling such situations. If loan borrowers are unable to repay their loans owing to financial hardship, further studies or serious illness, they may apply to the SFAA for assistance with support of documentary proofs. To help the loan borrowers tide over the difficulties, the SFAA will, on the basis of individual merits, approve deferment of loan repayment, temporary adjustment of the quarterly repayment amount or extension of the repayment period. We encourage loan borrowers with difficulties in repayment to approach the SFAA for assistance.

Statistically, the SFAA classifies loan borrowers who have failed to repay two or more consecutive quarterly instalments as defaulters. This does not include those who have been allowed to defer repayment. In the 2006-2007 academic year, there were about

6 300 default cases under the Tertiary Student Finance Scheme — Publicly-funded Programmes, the Financial Assistance Scheme for Post-secondary Students, and relevant non-means-tested loan schemes, involving an amount of about \$117 million.

Since most defaulters had not approached the SFAA to resolve their outstanding instalments of loan, nor had they disclosed to the SFAA their reasons for the default or sought assistance from it, we are unable to come up with an analysis of the specific reasons for the increase in default cases. As the SFAA already has a mechanism to assist loan borrowers with difficulties in repayment on financial, study and health grounds, we believe that the increase in default cases should not be due to the abovementioned reasons.

- (b) We are concerned about the default problem, and will endeavour to ensure public money is not misused. The SFAA has reviewed the debt collection process and streamlined the workflow, and will deploy more staffing resources to expedite debt recovery through legal means.

The SFAA has enhanced the publicity in relation to prudent financial management. As set out in the application guidance notes, students are reminded to assess their financial needs and repayment ability before applying for loans. They are also reminded that failure to make repayment is subject to surcharge or higher interests, and may lead to legal proceedings against them. In the letters of notification of commencement of loan repayment, the SFAA also reiterates the importance of repaying the loans on time, and encourage loan borrowers with repayment difficulties to approach it for assistance.

The SFAA is aware that some loan borrowers have changed their correspondence address without notifying the Agency, and hence may not have received the demand notes and subsequent reminders. These loan borrowers have not on their own accord made repayment on the respective due dates. The SFAA will check the latest correspondence addresses of these loan borrowers with other government departments as permitted under law.

In addition, the SFAA has sought the advice of the Joint Committee on Student Finance on measures to reduce the number of default cases. In order to deter loan borrowers from defaulting without reasons, there was a suggestion that the SFAA should provide the information of the defaulters to relevant credit reference agencies. The SFAA is considering the suggestion and will actively pursue it with a view to improving the default situation.

- (c) The SFAA has been working closely with the post-secondary institutions to curb the abusive use of loans or default in loan repayment. Through various channels (including briefing sessions, production and distribution of compact discs and promotion leaflets), it has briefed students on various loan schemes and the corresponding repayment arrangements, reminded them to seriously consider their financial needs and repayment ability before applying for loans, and stressed the importance of prudent financial management and making repayment on time. Relevant promotion leaflets have been uploaded to the SFAA's website for loan borrowers' reference. To enhance the publicity and education in relation to various loan schemes, the SFAA is considering providing the number of graduates found to be in default to respective institutions, so as to facilitate the institutions in drawing up corresponding publicity and education measures.

### **Support Scheme to Schools in Using Putonghua as Medium of Instruction for Chinese Language**

11. **MS EMILY LAU** (in Chinese): *President, the Standing Committee on Language Education and Research (SCOLAR) announced in October last year that \$200 million would be allocated from the Language Fund to implement a four-year scheme to assist primary and secondary schools in using Putonghua to teach the Chinese Language subject (CLS). The scheme is now open to applications, and the annual numbers of primary and secondary schools that can join the scheme are limited to 30 and 10 respectively. In this connection, will the executive authorities inform this Council whether they know:*



- (a) *how the authorities help those schools which have not reached the standard required for using Putonghua to teach CLS to raise their competence in this respect;*
- (b) *the current number of primary and secondary school teachers in the territory whose Putonghua proficiency is already up to the standard required for participating in the aforesaid scheme; whether the authorities will provide additional resources for teachers to learn Putonghua; if so, of the details; if not, the reasons for that; and*
- (c) *the reasons why, before launching the aforesaid scheme, the SCOLAR had spent three years to carry out studies to keep track of the effectiveness of using Putonghua to teach CLS in 20 primary and secondary schools, and yet it had not consulted the education sector extensively on this scheme?*

**SECRETARY FOR EDUCATION** (in Chinese): President, in 2000, the Curriculum Development Council (CDC) stated in its Chinese Language curriculum document that the use of Putonghua to teach CLS is a long-term goal. The CDC also recommended, in the interim, a school-based approach for those schools that are ready to use Putonghua to teach CLS. In 2004, the SCOLAR launched a three-year longitudinal study to examine the factors conducive to using Putonghua to teach CLS in primary and secondary schools. In September 2005, the SCOLAR and Primary Chinese Language Education Research Association jointly conducted a territory-wide survey to find out the extent to which schools were using Putonghua to teach CLS. In January 2006, the Legislative Council Finance Committee approved to inject \$200 million into the Language Fund to support interested primary and secondary schools to try out using Putonghua to teach CLS. Taking into account the findings of the 2005 study as well as the preliminary findings of the longitudinal study, and after consulting the education sector, the SCOLAR finalized in October 2007 the details of the scheme to support schools to use Putonghua to teach CLS. My replies to the questions raised are as follows:

- (a) The aim of the support scheme is to assist schools which are interested in using Putonghua to teach CLS in launching or further implementing the use of Putonghua in teaching CLS. The SCOLAR has not set any required standard for using Putonghua to

teach CLS for the purpose of the scheme. Interested schools are only required to plan for a minimum increase of five classes using Putonghua to teach CLS (across three forms) in the coming three years, as well as to continue to use Putonghua to teach CLS upon completion of the scheme. However, the SCOLAR considers that teachers using Putonghua to teach CLS must satisfy the Language Proficiency Requirement for Putonghua teachers in Speaking, or attain Grade B, Level 2 or above in the Test of Proficiency in Putonghua conducted by the State Language Work Committee.

In addition to the SCOLAR's support scheme, the Language Learning Support Section of the Education Bureau also provides support to schools in the teaching of CLS, including on-site visits by professionals from the Mainland to assist schools in planning and implementing their school-based programme of using Putonghua to teach CLS.

- (b) As at 1 December 2007, 6 958 teachers have satisfied the Language Proficiency Requirement for Putonghua teachers in Speaking. It should however be noted that these teachers are not necessarily Chinese Language teachers. We do not have the number of teachers who have attained Grade B, Level 2 or above in the Test of Proficiency in Putonghua conducted by the State Language Work Committee. In order to enhance the Putonghua proficiency of Chinese Language teachers, the SCOLAR has sponsored serving Chinese Language teachers to take part in a four-week Putonghua summer immersion programme in the Mainland since 2004. The programme seeks to improve the Putonghua listening and speaking ability of the participants. As at the end of 2006, more than 1 100 teachers had been sponsored and the subsidies amounted to about \$7.1 million. The SCOLAR will review the effectiveness of the Putonghua immersion programme and may allocate additional resources to sponsor more teachers to take part in the programme.
- (c) The SCOLAR has extensively consulted the education sector before launching the support scheme. A preliminary consultation with principals of 11 primary and secondary schools was conducted in September 2007. Among the schools consulted, some have fully implemented the using of Putonghua to teach CLS, whereas the

others have just started to implement or have not implemented at all. Full consultation was carried out in October 2007. Representatives of 23 school councils/associations and school sponsoring bodies attended two consultation sessions held by the SCOLAR.

### **Smuggling Activities**

12. **MR LAU KONG-WAH** (in Chinese): *President, on combating the smuggling of goods into and out of Hong Kong by law-breakers, will the Government inform this Council of:*

- (a) *the respective types and values of goods, seized by the authorities over the past two years, which were being smuggled into and out of Hong Kong via sea, land and air;*
- (b) *the types of goods the smuggling of which is increasingly serious and the channels more and more commonly used for smuggling by law-breakers, as revealed from the figures above; and whether the authorities have looked into the relevant causes; and*
- (c) *the new smuggling methods employed by law-breakers as detected by the authorities in recent years, and whether it has assessed if the employment of such smuggling methods has made it more difficult to combat such smuggling activities?*

**SECRETARY FOR SECURITY** (in Chinese): President,

- (a) In 2006 and 2007, the Customs and Excise Department (C&ED) detected 499 and 611 smuggling cases respectively. The total seizure values were \$309 million and \$518 million respectively. The types and values of the major seizures are set out at the Annex.
- (b) In the past two years, smuggling activities detected by the C&ED were mainly carried out between Hong Kong and the Mainland by sea and by land. The major items smuggled from Hong Kong to the Mainland included computers, computer accessories, optical discs, electronic products, electrical appliances and foodstuff (for

example, high-price Chinese medicine and dried seafood, and so on). The major items smuggled from the Mainland to Hong Kong included cigarettes, foodstuff (for example, freshwater fish, meat and poultry, and so on) and counterfeit goods (for example, electronic products, clothing and footwear, leather goods, and so on). As a result of the rapid economic growth in the Mainland, there is an increasing demand for high-value and high-technology products from mainland residents. In recent years, there has been an upward trend of law-breakers smuggling high-value goods to the Mainland by sea and by land.

- (c) The C&ED and other law-enforcement agencies are committed to combating smuggling activities. In order to evade enforcement actions, smugglers frequently change their smuggling practices. For example, they frequently change the locations and time for loading and unloading as well as the methods of concealing smuggled goods. In response to the constantly changing smuggling practices, the C&ED will continue to step up their intelligence gathering efforts, enhance liaison and co-operation with relevant departments as well as law-enforcement agencies outside Hong Kong, and adopt flexible anti-smuggling tactics and operations in order to bring smugglers to justice.

Annex

Major Types of Goods Smuggled out of and into Hong Kong  
by Sea, Land and Air and Their Values

- (I) Major items smuggled out of Hong Kong and their values

<i>Goods</i>	<i>Value (\$000)</i>	
	<i>2006</i>	<i>2007</i>
By sea		
Optical discs	48,760	89,200
Computer and accessories	29,030	60,180
Electrical and electronic products	35,470	42,960
Watches and accessories	3,330	31,390
Animals and plants (including furs)	-	24,210

<i>Goods</i>	<i>Value (\$000)</i>	
	<i>2006</i>	<i>2007</i>
By land		
Electrical and electronic products	6,900	35,840
Foodstuff	40	20,740
Computer and accessories	6,900	4,710
Precious metals	9,140	3,010
Clothing and leather goods	500	590
By air		
Counterfeit goods	12,810	16,990
Cigarettes	1,920	2,310
Total:	154,800	332,130

## (II) Major items smuggled into Hong Kong and their values

<i>Goods</i>	<i>Value (\$000)</i>	
	<i>2006</i>	<i>2007</i>
By sea		
Cigarettes	2,340	50,640
Foodstuff	3.4	1,100
Counterfeit goods	30	950
Animals and plants	4,860	540
Fuel	6.3	20
By land		
Counterfeit goods	3,390	35,090
Cigarettes	13,800	15,830
Chemical and pharmaceutical products	740	8,030
By air		
Pharmaceutical products	390	1,630
Counterfeit goods	-	610
Total :	25,560	114,440

**Migration to Internet Protocol Version 6**

13. **MR SIN CHUNG-KAI** (in Chinese): *President, according to the 2008 Digital 21 Strategy announced by the Government earlier, the Government will migrate to the Internet Protocol version 6 (IPv6) in its internal network in 2008*

to replace the existing version 4 (IPv4). In this connection, will the Government inform this Council:

- (a) *of the timetable and public funds needed for implementing the above plan;*
- (b) *whether it has drawn up a work plan to co-ordinate various government departments in migrating to the new protocol smoothly; if it has, of the details of the work plan; if not, the reasons for that;*
- (c) *whether it has assessed if the Government's migration to the new protocol will affect access to e-government services by the general public; if the assessment result is in the affirmative, of the relevant details; and*
- (d) *whether it will, by way of the Government's migration to the new protocol, motivate the local science and technology sector to research on and develop more services and products for supporting the new protocol; if it will, of the details of the specific plan and the estimated resources to be injected?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Chinese): President, the IPv4 was designed a long time ago and has a limited address space. With the rapid growth of Internet usage, industry indications are that the address space of IPv4 will run out eventually. IPv6 has an immense address space and will provide the solution to the sustainable growth of the Internet. As the transition between the Internet Protocol versions involves changes to the supporting systems and infrastructure on a global scale, it is expected that IPv4 will not be replaced instantaneously but IPv4 and IPv6 are going to co-exist on the Internet for some time.

Regarding the questions raised by the Honourable SIN Chung-kai, my reply is as follows:

- (a) The Government is enhancing its Government Backbone Network, which will support the IPv6 protocol in the middle of 2008. No additional expenditure is incurred, as IPv6 support capability was bundled in the recent equipment upgrades to the network.

Separately, the Government will be enhancing the external access interfaces of its Central Internet Gateway to support IPv6. The project will be completed in 2008-2009, at an estimated one-off expenditure of \$3 million.

- (b) The Office of the Government Chief Information Officer (OGCIO) has drawn up the work plan in facilitating government departments to migrate to IPv6. The work involves the development of guidelines and setting up an IPv6 thematic knowledgebase for reference by departments, and providing ongoing technical support services to them in working out their migration plans.
- (c) The migration of Government Backbone Network and the Central Internet Gateway as mentioned in (a) above will be transparent to the general public in accessing e-government services. Our assessment is that it will enable more effective and seamless access by virtue of enabling connections to the IPv6 Internet community directly.
- (d) The Government will also facilitate departments' procurement of equipment supporting IPv6 through enhancing the relevant Standing Offer Agreements. This will give incentives for the local science and technology sector to research on and develop more services and products for supporting IPv6. Back in 2003, the Government has supported academic research in IPv6 by providing funding for setting up an IPv6 connection between the Hong Kong Academic and Research Network (HARNET) and North America. In 2006, Cyberport has also set up the Hong Kong Chapter of the IPv6 Forum to facilitate local research and development work. The OGCIO is also considering to organize an event through its industry partnership forum to exchange views on IPv6 with the information and communications technology industry. The resources for this event will be met by the OGCIO's ongoing budget.

### **Car Parks in Public Housing Estates in New Territories**

14. **MR DANIEL LAM** (in Chinese): *President, regarding the car parks in the public housing estates in the New Territories, will the Government inform this Council:*

- (a) *of a breakdown by District Council districts of the current average vacancy rates of the parking spaces in the car parks mentioned above;*
- (b) *of the public housing estates in which there are a lot of vacant parking spaces in their car parks, and whether it has studied the causes of this situation; if it has, of the outcome;*
- (c) *whether it has studied changing the use of the car parks mentioned in part (b); if so, of the outcome of the study; and*
- (d) *whether the car parks mentioned in part (b) will be made available to social enterprises free of charge to support and promote the setting up of social enterprises in the neighbourhood of residential areas and create employment opportunities in the community?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Chinese): President, most of the car parks in public housing estates are the properties of The Link Real Estate Investment Trust (The Link). As The Link is a private entity, we do not have information on the utilization of its car parks. My reply to the four-part question, which concerns only the car parks managed by the Hong Kong Housing Authority (HA), is as follows:

- (a) The average vacancy rates of the monthly parking spaces in the car parks in the HA's public housing estates in the New Territories, broken down by District Council districts, are as follows:

<i>District Council Districts*</i>	<i>Number of Monthly Parking Spaces</i>	<i>Vacancy Rate (%)</i>
Kwai Tsing	3 314	23
Tsuen Wan	1 104	30
Tuen Mun	1 875	41
Yuen Long	2 268	25
North	370	34
Sha Tin	1 627	25

\* The HA has only a small number of monthly parking spaces in Tai Po, Sai Kung and Islands Districts.



- (b) The over-provision of parking spaces in public housing estates is mainly attributable to the provision of a relatively large number of parking spaces in the early years of public housing planning. In recent years, due to the ageing population in older estates, the improvement of the mass public transport system in Hong Kong and the rising fuel prices, many public housing residents have given up the use of private cars, resulting in the shrinking demand for carparking spaces in public housing estates. Moreover, after the HA's divestment of most of its car-parking facilities in November 2005, most of the remaining car parks are located relatively far away from town centres, hence the relatively low utilization rate. At present, car parks with more vacant monthly parking spaces are mainly located in Tuen Mun and Yuen Long Districts.
- (c) The HA would from time to time adjust the number of monthly parking spaces having regard to the demand. Since 2007-2008, the study of converting surplus car-parking facilities into other community uses has been made a major item in the annual work plan of the HA's Commercial Properties Committee.

In the past two years, the HA has converted the sixth floor of the carpark in Tin Heng Estate and leased it to a welfare organization for use as a "Tin Shui Wai Integrated Services Centre". Floor 5B of the car park is also being converted into a "multimedia workshop" to provide a venue for youngsters to develop multimedia creative skills. Moreover, the HA will join hands with the Hong Kong Jockey Club to convert the first, second and part of the fifth floors of the car park into a "telephone betting centre cum volunteer and training centre", which is expected to provide about 2 500 job opportunities.

For better utilization of resources, apart from the conversion of the car park in Tin Heng Estate, the HA is exploring the possibility of conversion of other car parks with relatively high vacancy rates. The HA plans to convert the first floor of the carpark in Choi Hung Estate into a "continuing education and community college" and some floors of the carpark in Nam Shan Estate into an "art education institute". The HA is discussing with the relevant organizations the leasing details.

- (d) While the HA would explore the possibility of converting its car parks with relatively high vacancy rates into suitable community uses, the leasing of these car parks to social enterprises may not be the best way to help the social enterprises, as most of these car parks are situated away from the main pedestrian traffic in the public housing estates.

Social enterprises interested in operating on the HA's commercial premises may apply to the HD if they have policy support from the relevant government departments or are receiving subsidies under the community partnership scheme "Enhancing Self-Reliance Through District Partnership Programme". The HD would consider whether there are suitable premises in the estate and whether the nature of business of the applicant is compatible with that of the existing operators. If considered suitable, the applicant may rent the premises at market rent without the need to go through the open tendering process.

### **Hazards Posed by Pools in Public Parks**

15. **MR JASPER TSANG** (in Chinese): *President, it has been reported that the water in some pools inside the leisure parks managed by the Housing Department or the Leisure and Cultural Services Department (LCSD) is over 50 cm deep and the water in one pool is even 90 cm deep. It has also been reported that there are hidden corners, lighting facilities are insufficient and there are no fences around some of the pools. In this connection, will the Government inform this Council:*

- (a) *in the past three years, of the number of cases of members of the public accidentally falling into the pools of the above leisure parks and the number of casualties involved;*
- (b) *whether it has measures to prevent members of the public (especially children) from falling into such pools accidentally; if it has, of the details of the relevant measures; if not, whether it will review if it is necessary to take measures to prevent such accidents; and*

- (c) *of the criteria and guidelines for designing such pools adopted by government departments or contractors responsible for building them; and whether the Government will, focusing on the hazards posed by such pools to members of the public, review the relevant standards and guidelines?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Chinese): President, my reply is as follows:

- (a) In November 2007, an accident occurred in the Hong Kong Housing Authority (HA)'s Butterfly Estate where a child fell into a pool. The child was hospitalized but subsequently pronounced death. The Coroner has been provided with the relevant information of the case and is considering whether an inquest is required. According to the HA's records, there have been no other accidents of this type in the HA's housing estates in the past.

In the past three years, there has been one case of injury occurring in the pools in the LCSD's parks. The incident occurred in Tuen Mun Park in January 2005 when a visitor disregarded the warning sign, went past the kerbs and flower beds of the ornamental lake to wash his hands at the lakeside, and fell into the water accidentally. He sustained a minor injury.

- (b) To prevent accidents, the HA has installed sufficient lighting facilities and put up safety warning signs at conspicuous spots near the pools in its public rental housing estates for residents' attention. After the accident in Butterfly Estate, the Housing Department suspended the operation of all the pools in its public rental housing estates immediately and drained away the water to review whether the safety measures for the pools were adequate. The Housing Department has completed the review and found all the pools safe. Most of the pools have now been reopened. We are also taking this opportunity to consult the Estate Management Advisory Committees on whether some of these pools should be converted into other more suitable estate facilities. In addition, the Housing Department has reminded its management staff to pay increased attention to the surrounding environment of the pools during patrols in order to prevent accidents.

The LCSD will also put up pool-side fences where necessary to prevent visitors from accidentally falling into the pools, as well as safety warning signs for visitors' attention.

- (c) The HA has in place a set of internal guidelines on the design of new pools. The guidelines set out the requirements on the depth of pools, pool-side lighting, and the provision of pool-side fences where necessary. The HA will review the design guidelines regularly to keep up with the times to ensure that the facilities will not pose any danger to residents.

Park facilities (including pools) under the LCSD are planned having regard to the overall design of the parks. The Architectural Services Department designs such facilities with reference to the LCSD's project scope and the prevailing building-related legislation. The departments concerned will carefully design all the facilities, in particular the depth and the shape of pools, to ensure that they would not pose any danger to park visitors. The LCSD will adopt shallow-water design for new ornamental pools as far as possible.

### **Implementation of Universal Suffrage for Chief Executive and Legislative Council in 2012**

16. **MS EMILY LAU** (in Chinese): *President, at its Session on 29 December last year, the Standing Committee of the National People's Congress (NPCSC) decided that the selection of the fourth Chief Executive in 2012 shall not be implemented by the method of universal suffrage, and the election of the fifth term Legislative Council in 2012 shall not be implemented by the method of electing all the Members by universal suffrage. The NPCSC Session is of the view that the fifth Chief Executive may be selected by universal suffrage in 2017, and that after the Chief Executive is selected by universal suffrage, all Legislative Council Members may be elected by universal suffrage. Furthermore, the Chief Executive has affirmed in his report to the NPCSC that more than half of the public support the implementation of dual universal suffrage for the Chief Executive and the Legislative Council ("dual universal suffrage") in 2012. In this connection, will the executive authorities inform this Council:*

- (a) *although the NPCSC has ruled out the implementation of dual universal suffrage in 2012, there are still more than four years between now and 2012, whether the Chief Executive will submit a report to the NPCSC again to reiterate that the implementation of dual universal suffrage in 2012 is supported by more than half of the public, and to urge the Central Authorities to respect the wish of the people of Hong Kong and allow the implementation of dual universal suffrage in 2012 in Hong Kong;*
- (b) *how they ensure that the fifth Chief Executive will be selected by universal suffrage in 2017 and all Legislative Council Members will be elected by universal suffrage in 2020; and*
- (c) *how they ensure that the future models for selecting the Chief Executive and electing all Legislative Council Members by universal suffrage will comply with the principle of universal and equal suffrage enshrined in international treaties on human rights?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Chinese): President, the ultimate aim of electing the Chief Executive and all Members of the Legislative Council by universal suffrage is prescribed by the Basic Law and must be attained. Our reply to the three parts of the question is as follows.

- (a) On 12 December 2007, the Chief Executive submitted the report to the NPCSC, which had reflected faithfully the views of the Hong Kong community on the issue of universal suffrage to the Central Authorities. The Chief Executive stated clearly in the report that opinion polls had indicated that more than half of the respondents support implementation of universal suffrage for the Chief Executive and Legislative Council in 2012. The Chief Executive also made it clear to the Central Authorities that these views should be taken seriously and given consideration.

However, in the Legislative Council, less than half of the Members support the implementation of universal suffrage for the Chief Executive and the Legislative Council in 2012; half of all

Legislative Council Members support that universal suffrage for the Chief Executive should be implemented first by no later than 2017, in 2017 or after 2017, and that universal suffrage for the Legislative Council should follow thereafter. Also, motions have been passed in more than two-thirds of all District Councils, supporting that universal suffrage for the Chief Executive should be implemented first by no later than 2017 or in 2017, and that universal suffrage for the Legislative Council should follow thereafter. Different opinion polls have indicated that about 60% of the respondents accept the implementation of universal suffrage for the Chief Executive in 2017, if this cannot be attained in 2012. Therefore, the Chief Executive stated in the report that implementing universal suffrage for the Chief Executive first by no later than 2017 will stand a better chance of being accepted by the majority in the community.

After considering the Chief Executive's report, the NPCSC made the Decision on 29 December 2007 making it clear that the Chief Executive may be elected by universal suffrage in 2017, and that after the Chief Executive is elected by universal suffrage, all Members of the Legislative Council may also be elected by universal suffrage. By making clear the universal suffrage timetable for the Government of the Hong Kong Special Administrative Region (SAR), the NPCSC has responded positively to the aspiration of the Hong Kong people for early implementation of universal suffrage. According to the poll conducted by The Chinese University of Hong Kong in January, 70% of the public accept the NPCSC's Decision. The Hong Kong community should now roll forward the SAR Government's constitutional development in accordance with the NPCSC's Decision. It is not necessary for the Chief Executive to submit another report to the NPCSC.

- (b) The NPCSC's Decision has made it clear that the Chief Executive may be elected by universal suffrage in 2017, and that after the Chief Executive has been elected by universal suffrage, all Members of the Legislative Council may also be elected by universal suffrage. In other words, after the Chief Executive has been elected by universal suffrage in 2017, all Members of the Legislative Council may be elected by universal suffrage in 2020.

In attaining universal suffrage, we should first deal with the issue of how to amend the two electoral methods for 2012. In this regard, we will set up a task group on constitutional development under the Commission on Strategic Development to focus on studying the relevant issues. The task group will be formed after the Chinese New Year this year to discuss the two electoral methods for 2012 under the framework set out by the NPCSC's Decision. We hope that the task group will conclude discussions around the middle of this year, so that the SAR Government may consolidate options which may be considered for amending the two electoral methods for 2012 in the fourth quarter of this year, and conduct another round of public consultation as early as possible. Our aim is to settle the two electoral methods for 2012 within the tenure of the current-term SAR Government. We hope that this will lay a solid foundation for attaining universal suffrage for the Chief Executive in 2017 and for the Legislative Council in 2020.

Now that the NPCSC's Decision has made clear the timetable for universal suffrage, we believe that this will motivate different political parties and independent Members in the Legislative Council, as well as different sectors within the community to adopt a rational, pragmatic and accommodating attitude and to work together with the SAR Government towards securing a consensus for implementing universal suffrage for the Chief Executive in 2017 and for the Legislative Council in 2020.

- (c) Hong Kong will attain universal suffrage because of the Basic Law, not the International Covenant on Civil and Political Rights (ICCPR). This is because in 1976 when the ICCPR was applied to Hong Kong, a reservation was made by the United Kingdom Government reserving the right not to apply sub-paragraph (b) of Article 25 to Hong Kong. In accordance with the notification given by the Central People's Government to the United Nations Secretary-General in June 1997 and Article 39 of the Basic Law, this reservation continues to apply to the SAR Government.

We have made it clear in the Report on Public Consultation on Green Paper on Constitutional Development that any universal

suffrage model should comply with the principles of universal and equal suffrage. As pointed out by the United Nations Human Rights Committee in its General Comments on Article 25, the ICCPR does not seek to impose any specific electoral system. The Handbook of the United Nations has also stated that the system for each jurisdiction should be shaped by the particular needs, aspirations and historical realities of the people involved.

### **Use of Octopus Cards**

17. **MR LAU KONG-WAH** (in Chinese): *President, will the Government inform this Council whether it knows:*

- (a) *the total number of Octopus cards issued by the Octopus Cards Limited (OCL) so far, and the percentage of such cards returned;*
- (b) *the respective numbers of reports of defective Octopus cards and faulty deduction, the causes for such cases, and the time normally taken by OCL to complete the handling of such cases; and*
- (c) *the progress of OCL's plans to promote the use of Octopus cards on the Mainland (such as for fare payment on the Shenzhen Metro), and whether technical difficulties are involved?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Chinese): *President, our responses to the questions raised by the Honourable LAU Kong-wah are as follows:*

- (a) According to the statistics provided by the OCL, as at end December 2007, there were over 16 million Octopus cards in circulation. The Company indicates that the number of cards returned represents a small proportion of the cards issued and the number has been quite stable. The majority of the cards returned to OCL came from departing overseas tourists and mainland visitors. Due to commercial reasons, OCL will not provide the actual number of the returned cards.



- (b) According to information provided by OCL, there were 837 cases of erroneous deduction in the last two years. This is a very small number when compared to the 10 million transactions handled daily by Octopus. Most of the cases of erroneous deduction were caused by mishandling of the deduction process by either the cardholders or the cashier of the service providers. On average, it takes OCL seven working days to conduct investigation, and where appropriate, to make refund to the affected cardholders.

On the other hand, the number of defective Octopus cards also accounts for a very small percentage of the number of Octopus cards issued. Improper storage or handling by the cardholders which caused physical damage to the cards is the main reason for defect. Normally OCL would take five working days to conduct investigation and replace defective cards. Due to commercial reasons, OCL will not provide information about the number of defective Octopus cards.

- (c) Since 2006, Octopus cards have been in use in certain retail outlets in Shenzhen. We understand from OCL that it will continue to explore the feasibility of making the Octopus and Shenzhen Tong cards interoperable, subject to commercial, operational and technical considerations.

### **Government's Assets Operated on Commercial Principles**

18. **MR FREDERICK FUNG** (in Chinese): *President, in his policy address delivered last year, the Chief Executive said that the Financial Secretary would "undertake a study to clarify the Government's role, and its level of participation as a shareholder, in the management of its assets operated on commercial principles". In this connection, will the Government inform this Council:*

- (a) *of the government assets covered in the study, as well as the details, objectives and timetable of the study;*
- (b) *whether the study will include public consultation; and*

- (c) *in order to support the Chief Executive's appeal in his policy address that enterprises should also shoulder social responsibility, whether the Government will consider taking the lead by incorporating the fulfillment of social responsibility in the operating principles of such government assets?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Chinese): President,

- (a) and (b)

When investing in the development of large-scale infrastructure projects, the Government has set up some organizations operating on commercial principles, such as the railway corporations and the Airport Authority. We will review the Government's relationship with these organizations and consider how to achieve a higher return on our assets, strengthen corporate governance, and clarify the Government's role and its level of participation as a shareholder. As the scope of the review is extensive and complex issues such as long-term policies on government asset management and legal issues are involved, the subject requires careful consideration. No decision has been made at this stage on the details of the study, including the timetable of the review and whether public consultation will be conducted.

- (c) The purpose of the study is to clarify the Government's role and its level of participation as a shareholder with the aim of achieving higher returns and better governance. Corporate social responsibility will be examined in the context of overall governance.

### **Projects to Expand Campus Space of UGC-funded Institutions**

19. **MR CHEUNG MAN-KWONG** (in Chinese): *President, it has been reported that the Government allocated \$3.4 billion to assist University Grants Committee (UGC)-funded institutions in expanding their campus space for supporting the implementation of the normative four-year undergraduate programme under the new academic structure for senior secondary education*

*and higher education (the "3-3-4" academic structure). It has also been reported that due to the rise in construction costs, the costs of such projects have continued to increase. In this connection, will the Government inform this Council:*

- (a) of the progress and expenditure of the above projects as at the end of last year, and the progress and expenditure anticipated for the coming year;*
- (b) whether it knows the factors causing the increase or decrease of the project costs last year, and of the factors it anticipates will affect those costs this year, and the respective expenditure items which had been and will be affected and the percentage of the changes;*
- (c) given the rise in construction costs, whether the Government has assessed if the above provision of \$3.4 billion is still sufficient for various institutions to carry out the above projects; if such an assessment has been made, of the results; if the assessment results indicate that the provision is insufficient to cover the project costs, of the difference in the amounts concerned; if such an assessment has not been made, the reasons for that;*
- (d) whether the Government will bear the expenditure which exceeds the project estimates; if not, how the Government will assist the institutions concerned in meeting the additional expenditure; and*
- (e) of the monitoring measures to ensure that the above projects can be completed on schedule, in order to facilitate the smooth implementation of the "3-3-4" academic structure?*

**SECRETARY FOR EDUCATION** (in Chinese): President, the implementation of the new four-year normative undergraduate programme under the "3-3-4" academic structure will result in an increase in overall undergraduate enrolment at the UGC-funded institutions. As a result, institutions will need to expand their campus facilities to provide a suitable teaching and learning environment in support of the new academic programmes. The UGC has been working closely with the institutions, with a common goal to ensure that new facilities for implementation of "3-3-4" will be ready for occupation by September 2012. Our reply to the questions raised is set out below.

(a) and (b)

The UGC-funded institutions have drawn up plans for new buildings and facilities (such as classrooms, teaching laboratories, student amenities, and so on) required for the purpose of the implementation of "3-3-4". The Administration has earmarked funding for a total of 12 capital works projects (at Annex). Amongst these projects, funding for the project "Extension to the Existing Academic Building" of The Hong Kong University of Science and Technology at an estimated cost of \$90.8 million (in money-of-the-day (MOD) prices) was approved by the Finance Committee (FC) of the Legislative Council on 11 January 2008. As for the other 11 projects, institutions are now working on the detailed design with a view to seeking funding approval from the Public Works Subcommittee (PWSC) and FC of the Legislative Council within the 2007-2008 and 2008-2009 Legislative Sessions. As such, detailed cost estimates of individual projects have yet to be finalized at this stage.

(c) and (d)

In general, the UGC considers the institutions' capital works projects with reference to the advice of the Director of Architectural Services (the Director) who serves as its Technical Adviser in respect of the technical and costing issues of the capital works projects of the UGC-funded institutions. The Director will examine, *inter alia*, the contractual and financial conditions of the projects to ensure that they represent good professional practice and are in line with the principles and practices adopted in government building projects.

The Administration recognizes the importance of the "3-3-4" reform and is committed to earmarking adequate resources to take forward the reform, including funding for construction of additional academic buildings. While the Administration is mindful of the need for the UGC-funded sector to try to adhere to the original estimate of \$3.4 billion to ensure the best use of public resources, we appreciate that it was the best estimate drawn up in 2004. Under the established practice, before submission of funding

proposals to the PWSC, the Administration would update the cost estimate of capital works projects to MOD prices on the basis of the Government's latest forecast of trend rate of change in the prices of public sector building and construction output. In examining the detailed cost requirements of individual capital works projects, we will consider the practical needs of the institutions and professional advice from the Director. Throughout the process, we will maintain close liaison with the institutions.

The UGC's Notes on Procedures provide guidance on the general principles and procedures governing capital works projects wholly or partly funded by the UGC. In the event that the anticipated final expenditure of a project may exceed the approved project estimate, the concerned institution may apply for exceptional and justifiable additional funds before acceptance of tender. The UGC and the Director will examine the revised expenditure of the project estimates submitted by the institution and consider the need for seeking approval of additional funds from the Administration or the FC as appropriate.

- (e) The UGC has set up a "3-3-4" Group to examine matters associated with the implementation of "3-3-4" by the UGC-funded institutions, including the planning and implementation progress of capital works projects. The UGC will maintain close liaison with the UGC-funded institutions to ensure the timely completion of the "3-3-4"-related capital works projects by the institutions.

Annex

List of "3-3-4"-related Capital Works Projects  
of UGC-funded Institutions

1. Academic and Administration Building (City University of Hong Kong)
2. Baptist University Road Campus Development, Phase 1 (Hong Kong Baptist University)
3. New academic block (Lingnan University)
4. New student hostel (Lingnan University)

5. An integrated teaching building (The Chinese University of Hong Kong)
6. Centralized general research lab complex (block 1) (The Chinese University of Hong Kong)
7. Extension to the existing University Library (The Chinese University of Hong Kong)
8. Student amenity centre (The Chinese University of Hong Kong)
9. Phase 8 development (The Hong Kong Polytechnic University)
10. Extension to the existing academic building (The Hong Kong University of Science and Technology)
11. New academic building (The Hong Kong University of Science and Technology)
12. Centennial Campus — phase 1 (University of Hong Kong)

### **Preservation of Nursing Quarter — Block A in Queen Mary Hospital**

20. **DR KWOK KA-KI** (in Chinese): *President, I have learnt that the Hospital Authority plans to demolish Nursing Quarter — Block A in Queen Mary Hospital (QMH) this year for the construction of an integrated centre to provide acute trauma and cardiac care. Quite a number of staff from the hospital and conservationists consider that the 70-year-old building should be preserved. In this connection, will the Government inform this Council:*

- (a) *whether it has fully assessed the historic and conservation value of the building; if it has, of the results; and*
- (b) *given that the Chief Executive indicated in last year's policy address that the Government "will require all public works projects involving historic and built heritage to undergo heritage impact assessment (HIA) so that the conservation of historic sites and buildings will be given due consideration in the project planning stage", how this measure is being implemented by the Government in the above project, so that the building can be preserved?*

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, QMH is a regional acute general hospital in the Hong Kong West (HKW) Hospital Cluster as well as a teaching hospital of the Faculty of Medicine of the University of Hong Kong. To meet the service needs and to cater for its long-term development, in 2007 QMH made a proposal for the construction of an accident and emergency, trauma and cardiac care centre with a view to improving the existing facilities and enhancing its services. The proposed project mainly involves the demolition of the Hospital's Nursing Quarter — Block A to make way for the construction of a complex for accident and emergency, trauma and cardiac care services. Upon completion, the new complex will be provided with comprehensive state of the art facilities. It is expected that services of the accident and emergency, trauma, cardiac and cardiovascular care in the HKW Cluster can be expanded and enhanced so as to meet the overall strong demand of the public for specialized tertiary services in Hong Kong.

- (a) The Nursing Quarter — Block A of QMH is not a graded historic building at the moment. The Antiquities and Monuments Office (AMO) is planning to conduct an assessment on the heritage value of the subject site and has required the relevant works department to carry out a HIA at the planning stage of the works.
- (b) In the 2007-2008 policy address, the Chief Executive announced a package of initiatives on heritage conservation. Since then, the Government has further developed the implementation arrangements, including the mechanism for carrying out HIAs on works projects. Under the relevant arrangements, the works department responsible for a capital works project is required to consider whether the project will affect sites or buildings of historic and archaeological significance (hereinafter referred to as "heritage sites") and consult the AMO on its findings. If the project will affect heritage sites, the AMO will require the relevant department to carry out a HIA. If some impact on the heritage sites can really not be avoided, the works department must devise mitigation measures to the satisfaction of the AMO. Any submission to the Public Works Subcommittee (PWSC) and Finance Committee for funding to carry out construction works must include a paragraph in the PWSC paper stating clearly whether the project will affect any

heritage site and if it does, their implications, the mitigation measures to be taken, and whether the public is in support of the project.

Following the above mechanism, we will carry out a HIA and then review and consider the feasibility of the works project.

## **MEMBERS' BILLS**

### **Second Reading of Members' Bills**

#### **Resumption of Second Reading Debate on Members' Bills**

**PRESIDENT** (in Cantonese): Members' Bill: Second Reading. We now resume the Second Reading debate on The Chinese University of Hong Kong (Declaration of C. W. Chu College, Wu Yee Sun College and Lee Woo Sing College as Constituent Colleges) Bill.

#### **THE CHINESE UNIVERSITY OF HONG KONG (DECLARATION OF C. W. CHU COLLEGE, WU YEE SUN COLLEGE AND LEE WOO SING COLLEGE AS CONSTITUENT COLLEGES) BILL**

#### **Resumption of debate on Second Reading which was moved on 9 January 2008**

**PRESIDENT** (in Cantonese): Does any Member wish to speak?

**DR YEUNG SUM** (in Cantonese): Madam President, I am a member of the Panel on Education. I have risen to speak in support of the declaration of C. W. Chu College, Wu Yee Sun College and Lee Woo Sing College as constituent Colleges of The Chinese University of Hong Kong (CUHK). After the passage of the Bill, CUHK will have nine constituent Colleges to cater for the specific needs of an increase in students arising from the "3-3-4" academic structure. The main objective of this Bill is to declare these three Colleges as constituent Colleges of CUHK.



I also notice that many alumni and present students are very concerned about the composition of the CUHK Council, but this Bill does not deal with its composition. CUHK has promised the Panel on Education that after the passage of the Bill, it will expeditiously proceed to consider the composition of its Council, and it hopes to introduce a bill to the Legislative Council for examination. In this light, I support the passage of the Bill. Thank you, Madam President.

**MR LI KWOK-YING** (in Cantonese): President, I am a member of the CUHK Council elected from among Members of the Legislative Council. I speak in support of the Bill to include C. W. Chu College, Wu Yee Sun College and Lee Woo Sing College as constituent Colleges of the CUHK Council.

Just as Dr YEUNG Sum has said, we notice that people in CUHK, including the student union or some alumni, have expressed strong views on the composition of the future CUHK Council. The University and its Council are aware of and have gained an understanding of the issue, and the Colleges are aware of the issue, too. The Colleges have promised the CUHK Council and the Legislative Council that the Senate and the CUHK Council would be reorganized upon completion of the legal procedures required for adding nine Colleges to CUHK. They will also make legislative amendments regarding the CUHK Council to the effect that, *inter alia*, matters relating to the representation of Colleges in the CUHK Council will be dealt with in a fair and reasonable manner, and the CUHK Council will be downsized.

The Vice-Chancellor also made an undertaking at yesterday's CUHK Council meeting, just as Dr YEUNG Sum has said, an undertaking to the Panel. I hope Members will first support this Bill, and then move on to amending the legislation concerning the composition of the CUHK Council, with a view to addressing the aspirations of the community, alumni, students and Colleges.

President, I so submit. Thank you.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

**MS AUDREY EU** (in Cantonese): President, in July last year, this Council resumed the Second Reading of the Bill to declare the Morningside College and S. H. Ho College as constituent Colleges of The Chinese University of Hong Kong (CUHK). At that time, an alumni concern group (the Concern Group) initiated to meet with members of the Legislative Council Panel on Education to express their strong opposition to the Second and Third Readings of the Bill concerned. The reason was the provisions of the Bill did not simply deal with the establishment of the Morningside College and S. H. Ho College, but certain definitions contained in it might relate to the future status of these two Colleges.

The Concern Group pointed out specifically that not only these two Colleges were not represented in the CUHK Council, the heads of the new Colleges would be called Master of College rather than Head of College. Therefore, they would not become ex-officio members of the CUHK Council, and their status would be slightly different from their counterparts in the existing Colleges. The Concern Group was gravely concerned that the newly established Colleges would not be included in the college system and would therefore be deprived of their political rights, thereby destroying CUHK's long-standing federal system.

However, when the Concern Group came here to express views, the deadline for forming a Bills Committee had lapsed. I had explained this point to them. For this reason, a number of Members, including me, had spoken during the resumption of the Second and Third Reading debate of the Bill. We said that next time — we knew that there would be another chance for new Colleges to be established — when new Colleges were to be established, the Administration has to liaise and consult the alumni, who are very concerned about CUHK, more frequently to avoid recurrence of similar problems before the relevant bill was submitted to this Council.

When this Bill to declare C. W. Chu College, Wu Yee Sun College and Lee Woo Sing College as Constituent Colleges of CUHK was tabled at this Council, one of the discussion items of the House Committee was certainly whether or not a Bills Committee should be formed for the Bill. At that time, I suggested that a Bills Committee be formed because I thought that the issue really warrants discussion. I also fully understand the background of the Bill as explained by Mr CHEUNG Man-kwong, which he has already elaborated many times. I believe when Mr CHEUNG Man-kwong speaks later on, he will probably reiterate that the membership of the CUHK Council is too large and

must be downsized. If representatives of the newly established Colleges immediately join the CUHK Council, it will expand rather than shrink. Hence, any future downsizing will cause a lot of trouble. For this reason, he suggested passing the Bill first and addressing the issue later on.

President, I also suggested forming a Bills Committee at that time. However, being a minority, no Bills Committee was formed in the end. I suggested forming a Bills Committee mainly because I held that the Legislative Council has a long-standing tradition of listening to different voices, particularly because the Concern Group pointed out that this Bill was exactly the same as the last one in that some of the wordings are rather worrying. I think that this Council is duty-bound to listen to different voices, and this will not in any way delay the establishment of the Colleges. If the issue can be resolved easily, we can have frank exchanges of views and communication, in the presence of CUHK representatives, face to face or in the limelight of the media. This is also good.

After all, this issue has dragged on for some time and interested alumni said that they had had fewer contact since then. They found that although the restructuring of the CUHK Council and the establishment of a new framework have been discussed for so long, neither is there a timetable nor a roadmap so far. While it is said that the issue would be resolved, it has been shelved for a long time during which no genuine communication had been made with them. They are therefore gravely concerned about this. After considering this point, I held that a Bills Committee should be formed. But just as I said earlier, no Bills Committee was formed in the end as the majority of colleagues did not support it. So, the Bill is submitted to this Council today.

I have risen to speak in the hope of putting this on record. On behalf of the Civic Party, I certainly agree that CUHK should have new Colleges and it is necessary to establish these Colleges under the "3-3-4" academic system. I also support the restructuring of the CUHK Council, but I hope that the University will discuss with the interested alumni as early as possible. It is a very good tradition of CUHK to have its alumni so concerned about its development. However, as evident in the recent spate of incidents, from the appointment of various deans who used to be elected, the governance of the new Colleges, to the recent hiccup in medium of instruction which has been taken to the Court, there is indeed a pressing need for the restructuring of the CUHK Council with a view to achieving balanced participation of the old and new Colleges.

President, I speak in the hope of putting this on the official record of the Legislative Council.

Thank you, President.

**MR LEE CHEUK-YAN** (in Cantonese): President, I received a phone call from our affiliate — The Chinese University of Hong Kong (CUHK) Employees General Union this morning, which I think should be put on record. Coincidentally, just like what Ms Audrey EU said just now about the complaints lodged by some alumni of CUHK, the Union has also expressed grave dissatisfaction with CUHK's consultation on its governance.

The Union considered that there had been inadequate consultation by the management of CUHK on both the establishment of Colleges and the future composition of the CUHK Council. Even if consultations had been conducted, they were merely bogus consultations. For this reason, I also wish to put on record my dissatisfaction. How were the bogus consultations conducted? It has been the practice of the University to consult only those people whom it likes, and the Union was gravely dissatisfied with such a practice as this is not extensive consultation at all. Therefore, a particular request has been made by the Union for me to speak and put this on record.

They pointed out that the overall governance of CUHK warrants improvement, which includes how the students, teachers, staff and alumni could be consulted. If not, any reforms to be undertaken will be considered as work done behind the doors, or bogus consultations where the respondents are handpicked. This will create a very bad atmosphere at the University, that it does not bother to listen to its staff at all. I wish to put on record — which I believe Mr CHEUNG Man-kwong will relay to the Vice-Chancellor — that the Union expressed dissatisfaction with the long-standing consultation method that has all along been adopted by the University, and hope that the CUHK Council will rectify the old practice in its future consultation exercises so as to conduct genuine and extensive consultations. Thank you, President.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): If not, I now call upon Mr CHEUNG Man-kwong to reply.

**MR CHEUNG MAN-KWONG** (in Cantonese): President, I am one of the three members of the Council of The Chinese University of Hong Kong (CUHK) elected by the Legislative Council. Entrusted by CUHK, I am duty-bound to propose the resumption of the Second Reading debate of The Chinese University of Hong Kong (Declaration of C. W. Chu College, Wu Yee Sun College and Lee Woo Sing College as Constituent Colleges) Bill (the Bill). The Bill has been certified by the Law Draftsman of the Department of Justice as conforming to the requirements of Rule 50 of the Rules of Procedure and the general form of Hong Kong legislation. It has also been recognized by the authorities that it is not related to such areas as public expenditure or political structure or the operation of the Government or government policies. The Bill had been submitted to the Legislative Council Panel on Education on 12 November 2007 for scrutiny, and was subsequently supported and passed by the Panel.

The Bill has been published on two successive publications of the Gazette dated 21 and 28 December 2007 respectively, and notice of the Bill has been given by two advertisements in each of two daily newspapers in Hong Kong, one being a Chinese language newspaper and another being an English language newspaper.

The First Reading of the Bill was completed in the Legislative Council on 9 January 2008. After the House Committee of Legislative Council had examined the Bill on 11 January 2008, it was decided that there was no need to set up a Bills Committee for the Bill. The House Committee also agreed to resume the Second Reading debate of the Bill.

President, although the House Committee agreed to resume the Second Reading debate of the Bill, Members of this Council, alumni and the student union of CUHK still strongly requested the Council of CUHK to expeditiously introduce a new Bill on restructuring. I fully support their concern and voices, and appreciate that their concern and voices are actually requests made out of their love for it. On the one hand, the CUHK Council already has a membership of 57 people, which has far exceeded the number endorsed by this Council and also outnumbered the memberships of their counterparts in other

universities, which are about 25 to 30. Despite that CUHK adopted a college system where all colleges are represented and hence resulted in a Council having more representatives than other universities, it should not continue to operate under such a large membership of 57 people. On the other hand, CUHK has proposed a total of two bills over the past two years in response to the significant increase in student number, thereby adding five more Colleges to the college system. CUHK presently has a total of nine Colleges and the number of Colleges has an impact on the structure of the CUHK Council.

Since the existing legislation does not deal with the representation of the five additional Colleges in the CUHK Council, the University has made the following undertaking openly in the Legislative Council. "According to the established policy requirements of both the Government and the Legislative Council, CUHK should drastically reduce the number of members in its Council and Senate to a level comparable to that of other universities. CUHK will first reduce the number of members in its Senate. In the meeting of the Legislative Council Panel on Education, representatives of CUHK had promised Members that they hope to expeditiously deal with the issue. And in downsizing its Council and Senate, CUHK will definitely adopt a fair and reasonable principle in handling the issue of how the existing and new Colleges should communicate with the Council and the Senate of CUHK, as well as the issue of representation."

The three members of the CUHK Council elected by Legislative Council Members from among themselves attended the Council meeting of CUHK yesterday, during which the University and Vice-Chancellor promised its Council to reform the Senate and the Council. Once the Bill is passed, when all the Colleges are legally included in CUHK, an internal consultation and review would be immediately conducted with a view to developing a fair and reasonable way of returning Council representatives from respective Colleges to form a new Council. Furthermore, a Bill on the restructuring of the CUHK Council should also be introduced to the Legislative Council. As the public consultation process of the Bill involves the interests of all stakeholders, a committee will certainly be formed by the Legislative Council to listen to the views of alumni and the student union, so as to ensure that the CUHK Council will streamline its structure, while broadly representing the interests of the stakeholders of the University, which include the Colleges, alumni, students and even the trade union.

While the Legislative Council Panel on Education and the House Committee attach great importance to the open pledge made by CUHK, its alumni, student union and the relevant trade union are also very concerned about the composition of the new CUHK Council, and are eagerly looking forward to the future consultation to be conducted internally in an open, transparent and targeted manner — I highlight in particular the need to specifically attach importance to the views of various parties of the University, including normal opposition from within. I hope that through internal consultation, the University will look squarely at both the voices of support and objection, and unite different forces to expeditiously honour the pledge made to the Legislative Council and the community. I strongly believe that a streamlined CUHK Council that is powerful, representative, accommodating, fair and reasonable will bring the united CUHK into a new era. Not only the college system will thrive, but the alumni and students of CUHK will also have a stronger sense of belonging, and will repay their Alma Mater and contribute to society.

President, in accordance with Rule 54(5) of the Rules of Procedure and after discussion with the Chairman of the House Committee, I gave notice to resume the Second Reading debate of the Bill in the Legislative Council meeting on 23 January 2008.

The objective of the Bill is to declare C. W. Chu College, Wu Yee Sun College and Lee Woo Sing College as Constituent Colleges of CUHK according to section 3 of The Chinese University of Hong Kong Ordinance (Cap. 1109) (principal ordinance), and to make consequential amendments to the principal ordinance.

The Legislative Council endorsed The Chinese University of Hong Kong (Declaration of Morningside College and S. H. Ho College as Constituent Colleges) Bill in July 2007, to add the names of the Morningside College and S. H. Ho College to the long title and preamble of the principal ordinance, and provide for the organization and structure of the additional CUHK Colleges. The Bill presented this time will only involve the declaration of C. W. Chu College, Wu Yee Sun College and Lee Woo Sing College as Constituent Colleges of CUHK, and the addition of the names of these three new colleges to the long title and preamble of the principal ordinance. The organization and structure of the three new Colleges will follow those adopted by the Legislative Council in July 2007 for the Morningside College and S. H. Ho College.

President, the college system is a time-honoured tradition cherished by CUHK since its establishment. It has contributed to providing a congenial environment for whole-person education of students and enrichment of their learning experience. The college system is a well-preserved tradition unique to CUHK. The existing constituent colleges have all along been striving to provide students with a congenial college life and learning environment to allow interaction and exchanges between teachers and students as well as providing pastoral care, whole-person education and liberal studies and, through a wide range of formal and informal education activities, broaden students' horizons.

CUHK will restore the four-year curriculum in 2012. In order to accommodate over 3 000 additional undergraduates, it is necessary to establish new Colleges. The Council of CUHK has received a number of personal donations since May 2006 to sponsor the establishment of the Morningside College, S. H. Ho College, C. W. Chu College, Wu Yee Sun College and Lee Woo Sing College. With the addition of five new Colleges, CUHK will then have sufficient places and facilities to cater for the need of the additional undergraduates in 2012. Students will have more alternatives such that they may choose the College so wished, and experience university life. Thank you, President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That The Chinese University of Hong Kong (Declaration of C. W. Chu College, Wu Yee Sun College and Lee Woo Sing College as Constituent Colleges) Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by



functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

**CLERK** (in Cantonese): The Chinese University of Hong Kong (Declaration of C. W. Chu College, Wu Yee Sun College and Lee Woo Sing College as Constituent Colleges) Bill.

Council went into Committee.

### **Committee Stage**

**CHAIRMAN** (in Cantonese): Committee stage. Council is now in Committee.

### **THE CHINESE UNIVERSITY OF HONG KONG (DECLARATION OF C. W. CHU COLLEGE, WU YEE SUN COLLEGE AND LEE WOO SING COLLEGE AS CONSTITUENT COLLEGES) BILL**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of The Chinese University of Hong Kong (Declaration of C. W. Chu College, Wu Yee Sun College and Lee Woo Sing College as Constituent Colleges) Bill.

**CLERK** (in Cantonese): Clauses 1 to 5.

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clauses 1 to 5 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

**CLERK** (in Cantonese): Schedule.

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That schedule stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

**Third Reading of Members' Bills**

**PRESIDENT** (in Cantonese): Members' Bill: Third Reading.

**THE CHINESE UNIVERSITY OF HONG KONG (DECLARATION OF C. W. CHU COLLEGE, WU YEE SUN COLLEGE AND LEE WOO SING COLLEGE AS CONSTITUENT COLLEGES) BILL**

**MR CHEUNG MAN-KWONG** (in Cantonese): President,

The Chinese University of Hong Kong (Declaration of C. W. Chu College, Wu Yee Sun College and Lee Woo Sing College as Constituent Colleges) Bill

has passed through Committee without amendment. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That The Chinese University of Hong Kong (Declaration of C. W. Chu College, Wu Yee Sun College and Lee Woo Sing College as Constituent Colleges) Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

**CLERK** (in Cantonese): The Chinese University of Hong Kong (Declaration of C. W. Chu College, Wu Yee Sun College and Lee Woo Sing College as Constituent Colleges) Bill.

## **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Two motions with no legislative effect. First motion: Ensuring the conduct of fair elections.

I now call upon Ms Audrey EU to speak and move her motion.

## **ENSURING THE CONDUCT OF FAIR ELECTIONS**

**MS AUDREY EU** (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

Fair elections are one of the cornerstones of a democratic system. Only through fair elections can the aspirations of electors be reflected in the election results, and the spirit of democracy be realized. Although universal suffrage has yet been implemented in Hong Kong so far, since the beginning of the Urban Council election in the early 1970s of the last century, direct elections at various levels have generally been conducted in a fair manner in the absence of any serious and large-scale electoral bribery, corruption and violence, in which Hong Kong people should take pride.

The credit should go to the Electoral Affairs Commission (EAC), the police and the Independent Commission Against Corruption (ICAC) as a great deal of their efforts were put into this area in the past. However, as the electioneering work has undergone rapid changes, various manoeuvres commonly known as "walking the line/playing edge ball" have frequently occurred. Therefore, the departments concerned should keep abreast of the times to deal with newly-emerged situations, in order to uphold the reputation and fairness of elections in Hong Kong.

Two large-scale elections, the District Council Election and the Legislative Council Hong Kong Island By-election, were conducted in Hong Kong at the end

of last year. The Civic Party has received a lot of complaints related to these two elections, alluding to grey areas or unfairness in the existing legislation, electoral guidelines and even law enforcement. As a result, there have been public queries about the fairness of the elections. I have proposed this motion debate today in the hope to give Members an opportunity to voice their experiences of unfairness during the above two elections. And I also hope the Administration or the Registration and Electoral Office will pay due attention to this issue.

Other Members of the Civic Party and I will elaborate on various aspects such as incidents of violence and intimidation in elections, exit polls, controversies concerning the employment of electoral staff and the provision of community services during the period of elections.

During the two elections last year, there were a number of incidents of violence and intimidation related to elections, involving candidates or electioneering team members. The bloodiest incident was the attack of Mr KO Keung-wah, the Resident Representative of Shung Ching San Tsuen in Shap Pat Heung on the eve of the election. Mr KO suffered from stab wounds in his stomach, back and arm. And his right forefinger was even chopped off. As Mr KO was then the campaign manager of Mr LAM Tim-fok, a candidate of Shap Pat Heung (North) in the District Council Election, and the attack was near the election, suspicions about the attack being election-related were raised. We have learned from the press that it was not the first time Resident Representative KO was attacked. He was actually bruised and battered from previous incidents. According to the press, the attacker has yet been apprehended and brought to justice by the police.

President, a glance at the calendar tells us that 27 November last year is the day when the District Council Election was just over and the Legislative Council Hong Kong Island By-election was vigorously under way. A press conference was called by the Civic Party on that day, at which a list of 11 incidents was released, including an incident still developing on that day, that is, on the afternoon of 27 November. We thought it was necessary to give the Government a clear picture of the issue. And the authorities should deliver a clear message to the public. Regarding this issue, the attitude of "going into politics is your own choice" or the view of "as I do not support your political party as well as your candidate and electioneering team, and I enjoy freedom of

speech to express my view, I can use every intimidating and threatening word and even violence" are absolutely intolerable. Such an attitude is absolutely unacceptable. And it is not a matter of freedom of speech. And the attitude of "since one can eat salty fish, one must be able to stand thirst", thinking as one steps into the kitchen, one should prepare himself for such consequences, is also intolerable.

Once this issue is raised, in my view, major government officials, particularly the Secretary for Security, the Commissioner of Police, Secretary Stephen LAM or "Justice PANG" of the Registration and Electoral Office should immediately come forward and convey the message of "zero tolerance" to the Hong Kong people, stating such incidents and attitudes are not tolerated in Hong Kong, and offenders and related parties will be apprehended and severely punished as soon as possible. If they do not immediately come forward and convey such a message, not only the fairness of elections will be affected, the aspirants will also be discouraged, the quality of some candidates and electioneering team members will also be encouraged to change, and the reputation of Hong Kong will certainly suffer.

President, I wish to talk about another issue, the exit polls. There were a total of 97 polling stations in the Legislative Council Hong Kong Island By-election. And four organizations were given approval to conduct exit polls. One of them was called the Hong Kong Investigation and Research Centre. Exit polls were conducted by this Centre at 96 of 97 polling stations, with only one polling station skipped. In fact, this exercise was no longer the conduct of exit polls but rather the collection of statistics where the votes of electors were counted in order to get hold of the latest polling situation in every hour. In the District Council Election in November last year, 13 organizations and individuals were given approval to conduct exit polls. Among the five major organizations, one was called the Social Affairs Research Association. Exit polls were conducted by this Association at 112 of the total of 119 polling stations in the four constituencies it was responsible for exit polls. The Association of Community in Hong Kong was even more aggressive. Exit polls were conducted by this Association at 99 of the total of 100 polling stations in the three constituencies it was responsible for exit polls, with only one polling station skipped. As to the Hong Kong Investigation and Research Centre, the one involved in the Legislative Council Hong Kong Island By-election I mentioned earlier, it was responsible for exit polls in four District Council Election

constituencies. Exit polls were conducted at 76 of the total of 89 polling stations. Moreover, exit polls were conducted by the Hong Kong Development Research Association at 53 of 121 polling stations in five constituencies. And exit polls were conducted by the Community Research Association at 35 of the total of 52 polling stations in two constituencies.

One special feature can be distinguished and that is, there was no overlap of the districts and polling stations chosen by these five major organizations for exit polls. These organizations were like gold, wood, water, fire and earth, river-water did not offend well-water. Each of them chose its own district to conduct extensive polls. In my view, this can be called the collection of statistics at polling stations to reveal the hourly situation of the stations.

Such large-scale exit polls thoroughly conducted in various districts like a comprehensive survey actually emerged as early as in the Legislative Council Election in 2004. For instance, there were the Hong Kong Social and Economic Research Centre on Hong Kong Island, the Hong Kong Youths Unified Association in Kowloon and the Public Affairs Research Society in the New Territories. In an article of Dr Robert CHUNG of the HKU, it was pointed out that according to his counting, there were a total of almost 2 000 interviewers in these three organizations.

In reply to an oral question of the Legislative Council last week, Secretary Stephen LAM told us that no one was appointed by the Government to conduct exit polls on the day of the District Council Election. And the background of such organizations and their purposes of data collection were not a matter of concern to the Government. However, we have received a lot of complaints, saying that when people left the polling station, they were approached by interviewers claiming to be appointed by the Government to conduct exit polls. Why were there such cases? We can take a look at the badge of the interviewer. It is specified in the electoral guidelines that interviewers must wear a badge with the stamp of the Registration and Electoral Office. As a result, they claimed they were appointed by the Government. When the name of another organization was identified on the badge, they claimed they were commissioned by the Government. Complaints of this nature have been numerous.

However, the Government has not given a categorical reply telling us how this will be regulated. I once asked Secretary Stephen LAM: As it was

stipulated in the guidelines that the release or broadcast of the data gathered from exit polls was not permitted before polling results were available, was it a violation of the guidelines if such data were used to plan the canvassing activities on that day, the deployment of manpower among various districts and the equalizing of votes among different lists (in the case of a Legislative Council election)? The Secretary did not give a reply at the time, only saying that the Registration and Electoral Office would give an explanation.

President, I do not oppose such a practice. And I do not say exit polls should not be allowed. But they must be fair. First, is the conduct of exit polls allowed by the regulation? If so, it should be stipulated that the purpose of the conduct of such polls must be declared in the application. Moreover, in the course of conducting the exit polls, interviewees must be clearly informed by interviewers of the organization they represent. If such polls are used to render assistance to the successful election and canvassing activities of candidates, declaration as campaign expenses must be made. Therefore, regulatory measures in this area are necessary.

Moreover, in this last District Council Election, controversies also arose from the conduct and employment of electoral staff. For instance, in the Shun Tin constituency in Kwun Tong and the Ka Wai constituency in Kowloon City, there were allegations accusing polling station staff of "coaching" electors how to vote and giving polling station staff permits to the electioneering team of a candidate. Afterwards, the defeated candidate of the Ka Wai constituency held a press conference to reveal that he had called in the police on that day, and the police did arrive and found some temporary staff permits on a particular candidate and his electioneering team. These incidents must be seriously dealt with and properly accounted for.

In addition, we have also received complaints from kaifongs accusing some organizations of organizing one-day tour for kaifongs on the day of the election. They questioned whether they would be driven to the polling station to vote after the tour. In fact, it is stipulated in the Elections (Corrupt and Illegal Conduct) Ordinance that the provision of transport is counted as an "advantage". And the canvassing of votes in a vehicle, such as the putting up of propaganda posters, actually constitutes an offence. However, if someone "walks the line", instead of putting up posters, using colour cards or some explicit means to indicate clearly the preferable candidate, how should this be



handled? Will the law be enforced? These issues have fallen into the grey areas I mentioned earlier. The Registration and Electoral Office or Secretary Stephen LAM should give us a proper account and a detailed explanation.

On the day of the Legislative Council Hong Kong Island By-election, the scenes of obvious non-compliant canvassing activities such as shoulder tapping, whispering and even raising four fingers in the No Canvassing Zone, as well as the disruption of such activities by electoral staff only after complaint in the Southern District were shot by the television. Some candidates of the Civic Party lodged another complaint — We heard other candidates also voice the same complaint — that is, while we acted by the rules and applied a certain number of days in advance for the "erection of banners" in a particular constituency, and did so after approval had been granted, the other party had already "erected banners" there in the absence of any approval. We lodged a complaint by phone. But no one came to enforce the law after a long time, making law-abiding people like us choke with pent-up frustration. What is the meaning of our obeying the law? If the rules are only for the regulation of those abiding by the law, and not enforced on those non-compliant, and instead turning a blind eye to them, is it not teaching us not to obey the law? This is very confusing indeed.

Regarding incidents in which the law can be enforced, law-enforcement actions must be taken in a fair manner. In case where the law cannot be enforced and there is no way out, consideration should be given to the implementation of a cooling-off period on polling day to have all canvassing activities banned. The tolerance of such violation of the law will only make the law-abiding party think that the rule of law is no longer in place in Hong Kong. On the other hand, this is also unfair. As I said earlier, this will encourage lawless elements to do whatever they want. Therefore, President, I have proposed this motion in the hope that the Government will give a response to this issue in a serious and earnest manner, not one based on affinity difference.

(THE PRESIDENT'S DEPUTY, MS MIRIAM LAU, took the Chair)

Thank you, Deputy President.

**Ms Audrey EU moved the following motion: (Translation)**

"That, as there were a number of incidents of violence and intimidation which were allegedly related to elections during the District Council Election and the Legislative Council Hong Kong Island Geographical Constituency By-election at the end of last year, and there were controversies arising from grey areas in various aspects such as the use of exit poll results, the employment of electoral staff and the provision of community services, and so on, causing the public to query whether the election results might have been affected; this Council urges the Government to review existing legislation and guidelines, and take appropriate measures to improve the regulation of various acts related to elections, so as to ensure that the various levels of election are conducted fairly."

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Audrey EU be passed.

**DEPUTY PRESIDENT** (in Cantonese): Mr TAM Yiu-chung will move an amendment to this motion. The motion and the amendment will now be debated together in a joint debate.

I now call upon Mr TAM Yiu-chung to speak and move his amendment.

**MR TAM YIU-CHUNG** (in Cantonese): Deputy President, I move that Ms Audrey EU's motion be amended.

The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) strongly supports the motion of "ensuring the conduct of fair elections" proposed by Ms Audrey EU today. And we will do our best for this. It is mentioned in the original motion that there were a number of incidents of violence and intimidation during the District Council Election and the Legislative Council Hong Kong Island By-election at the end of last year. The DAB has also received a lot of such complaints. To give evidence to such complaints, I have specially brought some pictures here today to show them to Members.

First of all, this picture concerns one of our candidates. His poster was torn. Another picture is the same. He is one of our candidates in the Central and Western District. His poster was also torn off from the part of his eyes. Of course, you may think that such incidents are very common and frequent. But some of them are not so simple. In this picture, one voluntary worker of the DAB was attacked. It shows one of the moves of the attacker at the time. Our voluntary worker was subsequently pushed onto the ground. This incident happened at Chung On Estate, Ma On Shan, at 4 pm on 15 November. Moreover, there was another incident on Hong Kong Island. At 2 pm on 18 November, in the Tsui Wan constituency off the Chai Wan Park — it is two electioneering team members of the rival candidate in the picture — our electioneering team member was pushed onto the roadside and even attacked by a crowd after this scene in the picture. He was later sent to the hospital for examination, and the case was reported to the police.

There is another picture showing a beaten elderly man with bruised eyes like a panda. He is "Uncle YUEN", a voluntary worker of the DAB. He was hit by an electioneering team member of the rival candidate. Another picture shows an electioneering team member of the Democratic Party making a very provocative gesture. Since it is offensive, I have covered it up with some stickers as it is inappropriate to show it in the Chamber of this Council. Therefore, the DAB strongly opposes incidents of violence, intimidation and provocation of any nature.

Apart from condemning these wrongdoings, the amendment proposed by me today also targets at some recent incidents, particularly those happened during the Legislative Council By-election, which in our view will lead to unfair elections. We wish to raise two points: First, around 5 pm on the polling day of the Legislative Council By-election, the free distribution of *Election Express*, similar to an ad hoc edition, by the *Apple Daily* was found in 50 districts on Hong Kong Island. We described it as a free ad hoc edition. Its headline was "Mrs CHAN in peril as iron leftist votes pour in". I believe many of our friends got such an ad hoc edition. I have no idea whether the newspaper had it issued after gaining this piece of information in its exit polls.

As far as we know, it was reported that members of a number of political parties and groupings assisted in the electioneering work of Mrs CHAN. Regarding the ad hoc edition, I believe everyone knew at a glance which candidate it was canvassing votes for and giving support to. It is only natural

that some people disagreed, arguing that other candidates were also covered in the contents of the ad hoc edition. However, please take a look. Its wordings were very explicit, saying "choose IP LAU and you have to jump off a building". The description was most vivid and salient, giving a very clear message. Of course, some may say that other candidates were also covered in its contents. But I think the message in its contents and front cover came through loud and clear. For instance, it wrote, "Mrs IP employed the human sea tactics. Backed by large crowds and loud voices, she canvassed votes with a target." After reading the whole so-called ad hoc edition, it is easy to understand and realize the effect it intended to achieve. The function of such publication has been identical to the so-called "emergency appeal pamphlet" frequently issued during elections.

At the Panel on Constitutional Affairs, Mrs CHAN claimed that these incidents had nothing to do with her. But will the issue of a newspaper by a third party not give an impression of exploiting the grey area or the so-called legal loophole? If such a practice is given the green light in future, I believe in the Legislative Council Election this year, it is possible that a number of ad hoc editions will be issued because everyone can do the same. Such a practice will certainly benefit some of the candidates as they may have connections with many wealthy and influential media syndicates. Would these syndicates not play such a role? However, to candidates having no such connections, it will be unfair. Therefore, we have been concerned about the fairness of such a practice. In view of this, we think it is a matter of grave concern.

Perhaps it is a newly-emerged issue as there was no such precedent in the past. Although some may say that as every newspaper has its own stance, its favourite candidate will certainly get more coverage, more praises and even more blow-ups, they are reports on ordinary days. The ad hoc edition mentioned above was a rather special case. It was distributed by all the electioneering teams of the candidate at 50 venues in the constituency on the polling day to build up a momentum, claiming the candidate concerned was in peril. Is it not a seamless strategy? Is a review of such a practice necessary? In this regard, I will leave it to serious examination by the Secretary.

Moreover, we found another move really quite clever. Throughout this Legislative Council By-election, the Chinese campaign slogan of Mrs Anson CHAN was "Sincerity, Conscience, Anson CHAN". And the words "A vote

for conscience" were also printed on her campaign publicity materials. During the election, there were a lot of advertisements with the theme of "My date with better nature" released by the *Apple Daily* at MTR stations. Such publicity was not only found at MTR stations, but also on television. This apparently echoed the Chinese campaign slogan of Mrs CHAN, achieving a propaganda effect for the candidate. Of course, some may say that there was a slight difference between "conscience" and "better nature", but their meaning was basically the same, giving recipients a link between the two. A look at the advertisement made an association with the campaign slogan of one of the candidates.

Moreover, it was found that an article titled "A date between better nature and you" was published in a magazine (*The buzzer sounded*) ..... This article also .....

**DEPUTY PRESIDENT** (in Cantonese): Your speaking time is up.

**MR TAM YIU-CHUNG** (in Cantonese): ..... called on people .....

**DEPUTY PRESIDENT** (in Cantonese): Mr TAM Yiu-chung, your speaking time is up.

**Mr TAM Yiu-chung moved the following amendment: (Translation)**

"To delete "and" after "incidents of violence" and substitute with ","; to add "and provocation" after "intimidation"; and to add "distributing ad hoc election news in the constituencies by media syndicates on the polling day, and releasing television and MTR advertisements by media syndicates echoing the campaign slogans of individual candidates," after "the use of exit poll results, "."

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr TAM Yiu-chung to Ms Audrey EU's motion, be passed.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, I will speak after listening to the views of Honourable Members.

**DEPUTY PRESIDENT** (in Cantonese): Does any Member wish to speak?

**DR YEUNG SUM** (in Cantonese): Deputy President, although we are a long way from universal suffrage, our elections over the years have basically been conducted under the principle of fairness and impartiality. Occasional clashes may have occurred during elections due to intense competition. However, on the whole, such clashes have been settled quickly.

However, the District Council Election of this term and the Legislative Council By-election have seen the first sign of erosion of the fairness of elections. It is inevitable that it was the goal of the parties with standing candidates to win in the election. However, some parties solicited the involvement of the Central People's Government's Liaison Office at the back for manpower deployment and even co-ordination of the entire electioneering work, which can be regarded as the tragic side of the politics of Hong Kong. In addition, I have learnt of some news from a number of channels. For instance, many fishermen in Aberdeen told me that they could do nothing but giving up their support for me this time as local officials of the Mainland had directly asked them to support the rival candidate. If they did not do so, they would face a lot of problems when they go fishing in the Mainland next time. Moreover, many members of the party committees at the provincial, municipal and even town levels had asked some mainlanders to tell their friends in Hong Kong to give their support to candidates with a certain background. Deputy President, I wish to ask: As the pledge of "high degree of autonomy" and "Hong Kong people ruling Hong Kong" has often been given by the Central Authorities, why has the entire State machinery given its support to the pro-government camp, and even its assurance of winning the election to the Hong Kong people they trust? Is it not ironic?

Deputy President, I have placed special emphasis on this incident this time because in the elections over the years, I have sensed the involvement of the

Liaison Office as well as members of the party committees at the provincial, municipal and town levels. They even used vehicles to bring people living along the coast to the polling stations to vote. Is this not going too far? Is this not too much? Compared to the issue of exit polls mentioned by some colleagues earlier, I think these incidents are even more serious. I wish to question here once again officially and publicly: Why have officials of the Liaison Office and the Mainland been repeatedly, unscrupulously and practically involved in the promotion of the candidates supported by them, in order to ensure the victory of those candidates? Their connection through the business and industrial sectors of Hong Kong is nothing new. But such blatant involvement is unacceptable to me at all. I also hope the public will understand this point. If they have complaints in this regard, it is hoped that they will bring them up.

Deputy President, it is the responsibility of the SAR Government to ensure fairness in elections. It is a pity that the Government obviously has been biased in favour of certain candidates whether in the District Council Election or the Legislative Council Hong Kong Island By-election. Government resources were deployed to render them assistance, casting a shadow over the impartiality of the elections. The most obvious example was the meeting of Mrs Regina IP with a string of Directors of Bureaux. The Government then hastened to give the excuse that it was a one-off measure only after public censure — The Secretary is now sitting opposite me. He repeatedly said it was a "one-off measure" — To avoid possible embarrassment at the Legislative Council in 2008, he said it would never happen again. When the Government has taken the lead to create unfairness, how can we expect it to conduct fair elections?

In fact, the incident this time has really been most ridiculous. I wrote to the Electoral Affairs Commission to complain about Financial Secretary Henry TANG instructing other directors by e-mails to render assistance to certain people. The subsequent reply from the Electoral Affairs Commission claimed that my complaint had no grounds, in an attempt to dismiss the whole issue. But I believe this shadow has made a lasting impression in the mind of Hong Kong people. I wish to stress again that it is the responsibility of the Liaison Office, mainland government officials, the Central Government and our SAR Government to ensure fairness in elections. No matter who wins, in no case should one win by foul means. It is generally accepted that "let those are able hold the post". Those satisfying public aspirations will win. And those are

competent will be given support. The question is: Is it necessary to mobilize the huge State machinery including the SAR Government to provide all-round support? I think this is unacceptable. I think Members in this Chamber, belonging to whichever political party and grouping, should stand by me and discourage the involvement of the entire State machinery in these issues through the SAR Government.

Deputy President, as far as I can tell, as the Legislative Council Election in 2008 will involve the scrutiny of bills concerning constitutional proposals, I am not sure whether the democratic camp will be able to keep the 20 seats. Or it is the intention of some people to cause the democratic camp's failure to do so. Therefore, I believe competition will be much more intense in this election. I warn the SAR Government and the Central Government once again against meddling in the electioneering work. Otherwise, the merits of Hong Kong being an open and sophisticated civil society will practically go down the drain.

Regarding the level of Mr TAM Yiu-chung's amendment, we have to make it clear that this is not an issue concerning individual media group, but the entire media environment. Over the years, certain media have reported one-sided news about individual candidates. Mr TAM mentioned "on ordinary days" earlier. We have exactly gained an impression on ordinary days that certain newspapers have had extensive negative coverage of candidates unacceptable to them, and even no coverage of these candidates at all. Even when candidates being criticized or neglected reflected to such media their wish of a higher degree of impartiality, the results were always like a stone dropped into sea. Such media simply ignored these candidates. If these scores have to be settled, I think it is very different from what Mr TAM said, that it was just an individual case.

The Democratic Party holds that to reduce clashes during the election, the best way is — Deputy President, I wish to stress — the best way is the implementation of a cooling-off period on the polling day. I believe this is a better arrangement.

With these remarks, I support the motion.

**DEPUTY PRESIDENT** (in Cantonese): Your speaking time is up.



**MISS TAM HEUNG-MAN** (in Cantonese): Deputy President, I believe there can be no denying that Hong Kong people have great expectation of dual universal suffrage. In the discussion on when and how to implement dual universal suffrage, the issue of whether elections of Hong Kong can be conducted in a fair, impartial and violence-free environment should not be ignored. If our elections are so unfair and violent that candidates have to dress like "Robocop" when canvassing votes and the police have to beef up manpower deployment to keep the emotions of the electioneering teams under control, what is the point of having universal suffrage? Therefore, we really have to thank Ms Audrey EU for proposing this motion today.

Perhaps some may say, "Is TAM Heung-man exaggerating here and raising alarmist talk?" However, during the two recent elections, when candidates attended some public events or joint debates, we could see candidates "do battle of words" on stage while their electioneering teams "fighting for real, pushing and shoving each other" off stage. An element of violence has found its way into the election culture of Hong Kong.

I believe no one here, except Mr Alan LEONG, has had the first-hand experience of mine of being sieged, intimidated and interfered in the course of an election. On 18 November last year, Mr Alan LEONG and I were closed in by over 10 rival electioneering team members outside my District Council Member Office for 45 minutes. At the time, those people yelled and shouted at the top of their voices. And some of them even shook their fists with intents of intimidation, demonstrating a pose about to strike. I was actually very scared and angry, questioning why the election culture of Hong Kong had come to such a state.

I really found it difficult to understand why Hong Kong people, who have always respected the rule of law and prided themselves in being rational and practical, would have behaved like this. At the time, the rival electioneering team threw insults at me and Mr Alan LEONG in the No Canvassing Zone, which was actually in contravention of the electoral law. Why did the SAR Government just sit by and remain indifferent? Neither the polling station staff nor even the police could do anything about it. Moreover, the subsequent investigation was conducted neither in a thorough nor active manner. Have these meant the tolerance of electoral violence? I hope Secretary Stephen LAM will answer these questions later.

Coming back to the events on that day, when Mr Alan LEONG and I were closed in outside my office, polling station staff once tried to restore order. However, it was impossible for just the few of them to rein in those with their emotions running high. The main passage of the polling station remained blocked. And the polling station staff were at their wits' end like "a rat trying to catch a tortoise".

Subsequently, police reinforcements had to be sent in. At the time, only one police officer was outside the polling station trying to maintain order. However, two fists could not defend against four hands, let alone dozens of people on the scene then. How could one police officer deal with the situation? After my repeated requests, police reinforcements were again sent in. Despite the reinforcements, the crowd refused to disperse. They kept an eye on the clock as they kept the commotion going. And they only left at the end of the polling session. They actually did it on purpose, with the aim of blocking our way at the critical moment just before the end of the poll. How could this be a fair election?

I do not easily submit to intimidation. And such an unfair and violent election is utterly unacceptable. I wrote to the Electoral Affairs Commission (EAC) to request a follow-up. The reply from the EAC clearly admitted that the Presiding Officer then was incapable of bringing the situation under control. Secretary, if electoral violence is tolerated, what is going to happen to the future elections in Hong Kong? I hope the Secretary will not just tell us "the spirit is willing but the body weak" with a sigh, suggesting that every candidate should seek blessings himself in future and wear an extra suit of armour.

Besides the EAC, the Home Affairs Department (HAD) should also be criticized for its handling of complaints related to elections. I wrote to the HAD to complain of unfairness in the election. And its reply was the case would not be followed up due to inadequate evidence. Did the authorities ask the polling station staff and law-enforcement officers present on that day for details? Did the authorities request the media to help provide information?

This incident is a *fait accompli*. To ensure fairness in future elections, I will file a petition to the Court tomorrow with the one and only one aim: To air my grievances against trouble-makers paying no heed to the fairness and disrupting the order in the election, as well as the SAR Government of having no control over the chaos in the election.

Deputy President, a fair and impartial election is crucial to the democratic development of Hong Kong. I hope there will be no more interference, intimidation, siege and even violence and bloodshed in any elections in future. "Putting on a suit of armour to battle" describes the protective gear for warriors in the past. I hope it is not necessary for candidates running in elections in future to go backwards and pick up this old practice. With these remarks, Deputy President, I support the motion. Thank you, Deputy President.

**MR LEUNG YIU-CHUNG** (in Cantonese): Deputy President, I personally think that the motion proposed by Ms Audrey EU is somewhat unnecessary. Excuse me, Ms Audrey EU — But why am I saying this?

An election must be fair and impartial. The request for the conduct of fair and impartial elections by Ms Audrey EU today has given an impression of superfluity. Moreover, is it an insult to the SAR Government? The conduct of elections in a fair and impartial manner must be the stance and principle upheld by the SAR Government from day one. Her sponsoring of this motion today is like trampling on the Government, criticizing that it has simply not done its necessary duty.

However, Deputy President, like Miss TAM Heung-man, I also wish to thank Ms Audrey EU for proposing this motion. Why?

In fact, we can see that the present electoral environment has been very different from that in the past. It has really deteriorated to such an extent that we have no choice now but to sound a serious warning to wake up the SAR Government, particularly Secretary Stephen LAM. Otherwise, no matter whether dual universal suffrage is implemented in 2012, 2017 or 2020, I am afraid the situation will continue to deteriorate. Therefore, the moving of the original motion today is perfect and the timing opportune. However, the question is: How should it be dealt with?

During the discussion on related issues at the meeting of the Legislative Council Panel on Constitutional Affairs last Monday, Secretary Stephen LAM seemed to be indifferent, showing not much interest, which made me feel quite concerned. I hope the debate today will really alert the Government, particularly the Secretary to the need to curb such unjust and unfair conduct.

Mr TAM Yiu-chung cited a lot of facts earlier. I think those were not deliberate fabrications of his but real facts because many pictures and evidence were shown. However, he only showed some evidence favourable to him but not those displaying the same treatment received by the opposite party. He did not do so.

Insofar as some newspapers are concerned, it is common knowledge that *Sing Tao Daily*, *Wen Wei Po* and *Ta Kung Po* have only promoted candidates with a certain background or certain candidates, and have totally ignored the rest of the candidates. It is also common knowledge that *Sing Tao Daily* is almost a quasi-official newspaper. It can report whatever it likes.

Then comes the problem. If the remarks made by Members are not unfounded, for instance, Dr YEUNG Sum earlier raised some actual cases, indicating the support of the SAR Government and even the Liaison Office for certain candidates at the back, how do you take such pervasive involvement? In fact, everybody has a clear idea of what is going on.

If this situation continues, I really worry that the pace of democratization will be hindered and some very unfair and unjust results will be produced. I think this will not only tarnish the image of the entire SAR Government, most importantly, the running of Hong Kong as a whole will be affected. If universal suffrage is to be implemented in future to elect a credible and accountable regime to govern Hong Kong, but it turns out that the regime is elected in an unfair and impartial manner, do you not think this is really frightening?

Therefore, I think the Secretary should no longer act like "a soft-skin snake", showing indifference and turning a deaf ear to everything without seriously dealing with it. This issue should be dealt with seriously instead of indifferently like today because the impartiality of an election really cannot be ignored and neglected.

However, Deputy President, how can we do better? Of course, apart from improving the system and serious attention by the Government, other measures can be considered such as the implementation of a cooling-off period long in place in other countries.

Some colleagues cited earlier a number of incidents, particularly the examples cited by Mr TAM Yiu-chung. As far as I can recall, the majority of

these incidents happened on the polling day — I say the majority, not all of them, that is, a greater number of these incidents happened on the polling day. Take Taiwan as an example. The cooling-off period is not only confined to the polling day, but also the day before, so as to reduce unnecessary conflicts, which has been of greater benefit to the electors. What exactly has been the benefit? On the one hand, electors can enter the polling station freely to cast a vote of his own choice without any interference; on the other hand, electors can avoid unnecessary conflicts or clashes with electioneering teams of different political parties and different candidates. Moreover, the community will also stand to benefit. Why is such a measure not adopted here?

In fact, Hong Kong has a history of election of two to three decades. Hong Kong people have established a good practice and an understanding of polling. Therefore, it is no longer necessary for them to rely on the promotion of electioneering teams to choose the candidate. In fact, a number of surveys have found the majority of electors had a preferred candidate in mind before they went to the polling station, and their decision was not made spontaneously at the polling station. Of course, some electors were the latter. But there were not many of them.

Therefore, under the circumstances, why is a cooling-off period not put in place to allow people to choose their preferred candidate in a favourable environment so as to reduce clashes? Therefore, I hope Secretary Stephen LAM will be more serious in doing some concrete work, so as to give us a chance to praise him for doing something constructive for Hong Kong. Deputy President, I so submit.

**DEPUTY PRESIDENT** (in Cantonese): Your speaking time is up.

**MR FREDERICK FUNG** (in Cantonese): Deputy President, talking about the fairness of elections in Hong Kong, like the majority of Hong Kong people, I believe our elections have generally been conducted in a fair and impartial manner. Although there has been occasional cases of non-compliance, follow-up investigations and prosecutions have been carried out. Our electoral culture appears to be more civilized compared to that of our neighbouring Taiwan.

However, during the recent District Council Election and the Legislative Council By-election, some incidents have given me serious cause for concern. For instance, at certain electoral forums, electioneering team members intimidated opponents by threats and even resorted to violence. Such conduct is unacceptable to Hong Kong people. And I hope the police will find out the truth as soon as possible. Of course, what makes it more terrible is that such cases of intimidation and violence have happened in the lime light. Some unknown electoral or hidden manoeuvres have been eroding our foundation and damaging our culture of fair election, in which we have always taken pride.

I wish to quote some examples I know. Some government departments have practically deviated from the principle of political neutrality regarding district affairs, giving different treatment to political groups of different backgrounds. For instance, when the Hong Kong Association for Democracy and People's Livelihood (ADPL) and the pro-establishment camp pursued for the same thing, generous treatment was always given to the pro-establishment camp by government officials. When they asked for a meeting, they immediately got one. And group photos were taken for printing of posters and pamphlets. However, when the ADPL made the same request, government officials claimed they were not free with various excuses. I believe Members may recall an example quoted in an oral question raised two months ago. A candidate from the pro-establishment camp could take a photo together with a government official and carried the banner everywhere for promotion. But when a member of the ADPL took a photo on his visit to the district, he received a complaint from an official who happened to appear at a distance behind him. And the ADPL was asked to withdraw that campaign poster. How could this happen?

What the Food and Environmental Hygiene Department (FEHD) did in the Tai Kok Tsui constituency even made me hot with anger. I still recall that during the District Council Election, the front-line staff of the FEHD slandered the candidate of the ADPL, accusing us of complaining against the traders. As a result, the business of the traders was seriously affected and our candidate was cursed by the whole market. Even if the complaint was really lodged by the member of the ADPL, the name of the complainant should not be disclosed, let alone the complainant was actually not — I must stress "was not" — our candidate. Civil servants served as hitman for the pro-establishment camp to sow discord, intending to damage the long-standing good relationship between us and the traders, in order to take away our votes. Why did they do that?

Deputy President, regarding constituency demarcation, it has even gone much too far. Take Sham Shui Po as an example. In our view, as the population of the district saw an increase of 50 000, an additional seat should be allocated to it. However, our proposal was rejected by the Government. Instead, the constituency boundaries were revised. Let me cite two constituencies as examples. One of them was the Nam Cheong Central constituency, which was sub-divided into four by the Government. Any local District Council member running in those constituencies had to accept that only one quarter of the electors were residents he had served for three to four years.

The Lung Ping constituency was at the top of the hill of Sham Shui Po, where half of it was covered by Chak On Estate, and the other half by high-end residential properties. Those high-end residential properties were separated from the constituency by the Government, resulting in the merging of Chak On Estate, cutting across the Pak Tin constituency, with another district at the foot of the hill to form a new constituency. If electors living at the foot of the hill wished to go to the District Council Member Office originally located in Chak On Estate, it would take them a half-hour uphill walk or a seven-minute ride. The strangest thing was that even the electors of those high-end residential properties had asked the Government not to separate them from the constituency and indicated their wish of staying with Chak On Estate. However, the Government insisted on its decision. Incidentally, these two constituencies have been the base of the ADPL. Has the Government unscrupulously suppressed the "non-buddy" even from the start of constituency demarcation? The Government's practice of sub-dividing a complete constituency into four is totally unacceptable to me.

Moreover, there is a first-hand example found in my own constituency. Someone started to give away gifts to one of my supporters (an elderly lady) in the name of a group eight months before the election. We called those gifts the "Lai Kok three treasures" which included rice, cooking oil and soy sauce. Two months before the election, someone of that group asked my supporter whether she was willing to join their electioneering team. My supporter said no. Subsequently, she was asked whether she was willing to vote for them because it was a secret ballot. However, the elderly lady who was my supporter still said no. Afterwards, she did not receive any "Lai Kok three treasures" again.

Of course, gifts have been given away to the elderly in every district. It is all right as long as it has aimed at poverty alleviation. However, if gifts are given away only because the elderly are the rival's supporters; or gifts are given only because of their votes, and no gifts for those refuse, such a practice should not be regarded as poverty alleviation but alleged inducement to vote by offering material gains. And it is possible that the electoral laws have been violated.

Moreover, exit polls were conducted by a number of organizations outside the polling stations. However, it was apparent that after the interviews, a lot of deployments and activities were made, particularly those of the ADPL's rivals. Regarding the exit polls released by the Government, what has it meant by release? I asked the Secretary about this last time. And he said there was no violation of the related guidelines. However, if the release of the results of exit polls was only confined to some organizations but not the other, did it mean no release after all? As the results of exit polls will influence the manpower deployment of some organizations, the election has practically been affected. Therefore, should the issue of exit polls be also dealt with? And should reconsideration be given to the use of such exit polls?

The various examples cited by me earlier have made us quite worried. I have been particularly concerned about the incident of inducing people to vote by offering material gains. Have civil servants claiming neutrality been really neutral? Why did the two incidents mentioned earlier occur?

Deputy President, the Legislative Council Election is around the corner. I hope similar incidents will not repeat. I hope a careful review will be undertaken by the Government to see how to ensure the elections in Hong Kong are fair, open and honest.

Thank you, Deputy President.

**DEPUTY PRESIDENT** (in Cantonese): Does any other Member wish to speak?

**MR RONNY TONG** (in Cantonese): Deputy President, although Hong Kong has always been censured for the absence of democracy, at least we can be proud of two facts: First, we still have the rule of law; and second, we still have a fair electoral system.



However, the Government and the pro-establishment force have recently raised their hopes of gaining stronger control in these two areas, and even turning into a leading figure or an overlord of a dictatorship. Therefore, we have recently been facing the undermining and erosion of these two cornerstones of the success of Hong Kong.

The subject of our discussion today is some corrupt, violent and unacceptable conduct related to elections. However, we must pay due attention to one of the issues which has escaped the regulation of the existing ordinances or guidelines, that is, exit polls. Therefore, I wish to talk about the exit polls today. In fact, during the various elections in the past, we have seen different kinds of exit polls. Exactly whom have they served? What purposes have the exit poll results served? The answers have always remained unknown. However, information gathered from the last two elections (including the District Council Election and the Hong Kong Island By-election) has caused us growing concern about the deliberate destruction of our fair system.

To put it simply, in the recent District Council Election, information of the Government shows that there were 13 organizations and individuals conducting exit polls. We have no idea what the first five major organizations are or of their background. And these five organizations have covered the exit polls of almost 500 polling stations. When compared to some academic institutes, for example, the largest-scale exit poll conducted by the University of Hong Kong has covered only 17 polling stations. By comparison, we can see the huge resources of these five organizations. And it is impossible for any academic institute to rival the huge manpower they mobilized.

In addition, another strange phenomenon can be observed, and that is, in the districts covered by these five colossal machines of exit polls, there was surprisingly no overlap of one single polling station. In other words, it gives an impression that the areas of exit polls covered by these five major organizations were drawn up by some mutual understanding or agreement. They covered every region of Hong Kong. But there was no overlap of any polling stations.

Moreover, the names of these five organizations are most similar. Let me read out their names: Social Affairs Research Association, Association of Community in Hong Kong, Hong Kong Investigation and Research Centre, Hong Kong Development Research Association and Community Research

Association. To look into the background of these organizations, I tried to search on the Internet to learn something about their background and operators but to no avail. It is fortunate that the Internet is a quite useful tool these days. We then randomly selected some names of the interviewers and looked them up at Google to see if their background could be found.

The results we found were quite interesting. For instance, the names of some interviewers frequently present at the polling station were incidentally exactly the same as those working in some pro-establishment organizations. For instance, the name of an interviewer surnamed TAM frequently present in Kwun Tong was exactly the same as that of a teacher of Heung To Middle School. Moreover, this teacher incidentally is the vice-chairman of a pro-Beijing youth organization, who frequently received the Communist Youth League of the Mainland during its visits to Hong Kong.

There was also another coincidence. The name of a very active interviewer surnamed POON in the Wong Tai Sin District Council Election was at least on four of the lists of exit poll interviewers. His name was incidentally exactly the same as that of the assistant of Mr KAN Chi-ho, the chairman of the Wong Tai Sin branch of the DAB. And Mr KAN himself was a candidate in this Wong Tai Sin District Council Election. If this interviewer and Mr KAN's assistant are one and the same, queries will be raised about whether this Mr KAN of the DAB has made use of the exit poll results for purposes of helping electioneering, and the expenses incurred have been included in the campaign expenditure. Exactly has the fairness and impartiality of this Wong Tai Sin District Council Election been influenced by the exit poll conducted by this organization called Hong Kong Society Monitor? This has remained a considerable doubt.

Moreover, as far as we can recall, apart from the usual practice of the University of Hong Kong to release its exit poll results after elections, as well as the publishing of exit poll results on the Internet by an organization called Hong Kong Investigation and Research Centre, the exit poll results of the rest of the organizations in this Election have never been released. Exactly where have all these results gone? And who have been the users they served?

In fact, there is absolutely no mechanism and legislation currently in place to prevent political parties or candidates from making use of the exit polls to

influence the conduct of a fair and impartial election. In the electoral guidelines, the Government has only urged organizations to discipline themselves, act honestly and maintain a co-operative attitude of their own accord. But it is impossible for the Government to regulate, investigate or even punish the dishonest act of the corrupted in influencing the fairness of an election in the name of conducting exit polls.

I think the Government should pay due attention to this issue as the effect of such exit poll results can be maximized in the proportional representative system. From the results in the past, we can see that, for example, the equalizing of votes by the DAB was really a big success. However, we can also see that the equalizing of votes between Mr Martin LEE and Dr YEUNG Sum in the 2004 election suffered a crushing defeat, which was a great pity felt by all Hong Kong people (*The buzzer sounded*) .....

**DEPUTY PRESIDENT** (in Cantonese): Your speaking time is up.

**DR KWOK KA-KI** (in Cantonese): Deputy President, I support Ms Audrey EU's motion.

Deputy President, the discussion at the Panel on Constitutional Affairs a couple of days ago was very interesting. As far as I can recall, Mr LAU Kong-wah raised the issue that there was something seriously wrong with the election, criticizing a newspaper for publishing an ad hoc edition and allegedly releasing advertisements. At the time, I made a most saddening remark, saying that colleagues of the pan-democratic camp had been actually "pursued and attacked" round the clock every day by the "pro-government", "pro-establishment" newspapers and media. I was getting used to it. And I was "beaten within an inch of my life".

Whenever we read newspapers, how can we once avoid specious reports reversing cause and effect in super large print? We have already got used to it. However, this time — I dare not say. Perhaps a certain newspaper did do something .....

Of course, it is now being under investigation by the EAC — Relative to the huge "pro-establishment" force, it was a drop in the ocean, and a bit like "giving officials full licence to commit arson". What we see and what

we must face now is an enormous State machinery. Some joked that in this election, our opponent was actually the Communist Party or the Liaison Office. Perhaps they were right. However, of course, it is never possible for us to tell.

I remember when Mr DENG Xiaoping was still alive, he mentioned a very important principle: "one country, two systems; river-water not offending well-water". I believe there is a most profound meaning in it. Frankly speaking, relative to the entire Communist Party and the "pro-establishment" force, even a merging of all the forces, all the democratic forces of Hong Kong is only like "a mantis trying to stop a chariot", which is doomed to defeat. However, the pan-democratic force happens to be the aspiration of Hong Kong people despite such aspiration or opinion has been faint. In fact, at present, the "pro-government" media have prevailed, influencing the opinions and commentaries in the media every day. Pick up any newspaper, and you will know there is very little space for fair remarks.

However, the major problem now lies in elections. We have seen live examples. What Mr Frederick FUNG said earlier is true. And Miss TAM Heung-man beside me and Mr Alan LEONG saw real violence in the election. If the Government maintains its present attitude, burying its head in the sand to deny anything happening, it is really irresponsible. They might think this has been of help to Hong Kong; to some "pro-government", "pro-establishment" organizations or individuals to win in the election. But this has actually injured some of the core values of Hong Kong. They have been damaging the fair and impartial system of Hong Kong that badly warrants preservation. It is unacceptable that a candidate running in an election was sieged by some deliberately provocative and violent electioneering team members for 45 minutes.

I also witnessed an incident when I was in the Central and Western District. On one occasion, when Mrs Anson CHAN was "canvassing votes" in the district, she was also sieged by some candidates and electioneering teams of the "pro-government", "pro-establishment" camp on Hill Road. Eventually the police had to be called in. I think they should not act like this. Everyone should observe the rules of the game. In these elections, if only manpower, material resources and money are taken into account, we are sure to lose. How can we rival the wealthy and influential DAB? Apart from the DAB, how can we rival the wealthy and influential "pro-government" organizations behind the

scene? Tens of millions of dollars have not been declared as the amount has not been spent on the campaign. They possess endless resources and endless manpower. The pan-democratic camp can never rival them. They are practically unrivalled.

However, we have set a "bottomline", which is a fair, impartial and violent-free election with no sophistries and fabrications. Just like the so-called exit polls we mentioned earlier — in fact, Mr TONG did not have to waste time searching as he should have an idea of the origin of these "weird" organizations. Some so-called study and research centres and associations we have heard of have actually been organizations concocted to help equalize votes or "canvass votes". However, if we continue to tolerate these incidents; if we continue to accept these incidents, fair and impartial elections will disappear from Hong Kong gradually. If the Chief Executive claims he welcomes the implementation of universal suffrage in Hong Kong, universal suffrage will definitely be implemented in 2017 — Hong Kong is set to embark on the road to democracy in 2017, 2020, but these practices are obviously affecting the fairness and impartiality of elections.

I believe even without resorting to these means, our "pro-government" friends will win any way because they really have a distinct edge in resources. The employment of such means has, instead, smeared their good name. Therefore, I earnestly advise them not to use such unorthodox means because it will not help Hong Kong get onto the right track.

Although Hong Kong is a small place, it is possible that the change here will be seen as a pioneer, becoming a model that can be adopted by the Asian region (particularly China) for some of their development. We do not wish to see it wasted or damaged. As a Chinese, I believe most importantly (just as my hope) — It is also my hope that China is fine, our country is fine — our country can build up a system that will bring credit to us; the Chinese nation will eventually have a fair and impartial system; a people-oriented system in place. And we Chinese can finally enjoy the fruits of democracy. We see Hong Kong in this light, thinking we must hold our heads even higher. If the Government — particularly officials responsible for constitutional development turns a blind eye to the development of such unhealthy practices, I believe not only Hong Kong will suffer, but the whole nation will also be harmed.

I so submit. Thank you, Deputy President.

**MR JASPER TSANG** (in Cantonese): Deputy President, my mastery is not strong. After hearing some remarks, I cannot help rising to speak before Mr Martin LEE's turn.

Deputy President, I cannot restrain myself because I think it is most unfair that colleagues have capitalized on their capacity as a Legislative Council Member to speak in this Chamber, making accusations without proof of their electoral opponents while those accused practically have no chance to make a response in this Chamber. I particularly wish to mention two Members. One of them is Mr Frederick FUNG. He accused his opponent of giving away gifts in Lai Kok Estate, aiming to induce and even force people to vote for them by material gains. This is a very serious accusation, amounting to electoral bribery. It is a pity that I cannot make it to speak before he left. He should report these incidents, right? We have very clearly defined laws. And these electoral laws were enacted by this Council. I have no idea whether he has reported these incidents. But how can he not deal with them through the proper legal channel and instead, make accusations without proof here? Everything Mr TAM Yiu-chung said has got proof. Not only the part of his eyes in the poster was torn, he got a swollen eye himself. These incidents have been supported by photos which can be produced anytime. Moreover, we got the names of those involved and reported to the police. That is why Mr TAM quoted them as examples here.

However, Mr Frederick FUNG did not do it this way. What he said is supposed to be the facts. It is unreasonable to accuse his opponent this way. I originally intend to talk to Mr Frederick FUNG face to face about how the ADPL gave away gifts during elections at the district level. It is a pity that he has left. Therefore, I will not go on talking about it here. Instead, I will talk to him later. I think it is not right to act in this way. We have electoral laws, the Electoral Affairs Commission, and all the guidelines. There are certainly loopholes and grey areas in them, which should be subject to examination. But he should not take this opportunity to capitalize on our special capacity to make accusations that are obviously impossible to ascertain. And I think this is unreasonable.

On the other hand, frankly, it does not do any good to the speaker himself because Frederick FUNG has long been the king of Sham Shui Po and the head of the ADPL. But he only won by a margin of 80-odd votes against a candidate no one gave a thought to his winning. In fact, he narrowly escaped defeat by

his opponent. As he accused his opponent of totally relying on the distribution of the "Lai Kok three treasures", I will certainly go back and encourage this opponent of Frederick FUNG to continue to run in elections because he will definitely win next time. As long as Frederick FUNG keeps believing his opponent narrowed the margin by only 80-odd votes solely by reliance on the distribution of the "Lai Kok three treasures", his opponent will definitely win next time .....

**MR FREDERICK FUNG** (in Cantonese): Deputy President.

**DEPUTY PRESIDENT** (in Cantonese): Mr Frederick FUNG, is it a point of order?

**MR FREDERICK FUNG** (in Cantonese): I wish to clarify my remarks.

**DEPUTY PRESIDENT** (in Cantonese): Do you wish to clarify what you said in your speech?

**MR FREDERICK FUNG** (in Cantonese): Yes, I have to clarify my speech earlier.

**DEPUTY PRESIDENT** (in Cantonese): You have to wait until Mr Jasper TSANG has finished his speech.

**MR JASPER TSANG** (in Cantonese): Deputy President, I am very happy that Ms Audrey EU has proposed this motion today. I said this not out of courtesy, like everyone saying he is very happy that she has proposed this motion. I am really happy from the bottom of my heart. In particular, she is the party leader of the Civic Party. When the so-called pro-establishment camp won a large number of seats in this District Council Election and all the media reported it was a crushing defeat of the pan-democratic camp, what exactly has her sponsoring of this motion in these circumstances meant?

I have mentioned in one of my articles that the DAB has met a number of defeats since it was founded. We suffered a crushing defeat in the 2003 election. But we blamed neither anyone nor any system. We only focused on self-examination and remedial actions. When we first ran in elections — TAM Heung-man said we had never met certain situations. But she was wrong — we were even slapped across the face and sieged by a crowd hurling some very insulting remarks at us, making us stuck in the street. I came across these situations when I first ran in an election. Even someone driving a luxurious Benz pursued us for several blocks. We have met all these situations, and we know them only too well. But we did not blame others. We just focused on self-examination to see how to do better, to gain more public support and to understand the faults of the opponents. These were all we did.

When we first met defeat, our candidate, a buddy of the DAB complained that although we had done our utmost, the media totally ignored us. But the Democratic Party was highly praised when it had done little. However, I told him he was wrong. I quoted the example of Albert HO many a time. Albert HO lost when he first ran in an election. He ran again but he lost again. Then he ran once again. And he scored a landslide win in New Territories West and was finally elected to the Regional Council. He was interviewed by a radio programme the day after his landslide victory. After listening to this programme, I came to realize why he won because he could even locate where the rubbish bins were, and explained why they should be open or closed. I said this was his way of doing things. And he did not rely on propaganda alone. If we always think that other candidates solely rely on the help of propaganda and the media, we will never win in this election.

Frankly, what we are targeting now is the issue of the so-called ad hoc edition raised by TAM Yiu-chung of the DAB, and not the bias in favour of certain candidates by the media. KWOK Ka-ki, please look at it fairly. You only have to search the WiseNews to know mostly who have been the targets of criticism by the media every day: Those from the pan-democratic camp or the so-called pro-establishment camp or the royalists? Mostly who have been on the receiving end of scathing remarks? We have not been resentful as a result. However, it is a different matter when some newspapers with a particular stance have given positive or negative coverage to certain candidates. It is common knowledge that painstaking efforts have to be spent on examining how to distribute pamphlets and to calculate the related expenses on the polling day.



Every pamphlet has to be counted. And the larger ones even have to be numbered. Careful consideration must be given to the contents of the pamphlet, as well as the timing and the manner of their distribution. On this occasion, it turned out that it was colour-printed by a major media free of charge. And its contents were subject to no monitoring. Moreover, the message was issued at an opportune timing everywhere in the streets. It is entirely different from the extensive coverage by the press biased in favour of a particular candidate. How can these be confused? How can these incidents be confused? Therefore, grey areas do exist. Secretary, we must have them clarified. And they must be thoroughly clarified. Moreover, the conduct of a fair election must be ensured to pre-empt the fairness of elections being affected by today's speeches. Thank you, Deputy President.

**MR FREDERICK FUNG** (in Cantonese): Deputy President, I wish to repeat my remarks earlier. I made it very clearly. And it was an incident concerning an elderly lady. I said she had received the "Lai Kok three treasures" eight months before the election. And around two months before the election, the gift-sender asked her whether she would give him her support. As she was always my supporter, she said no. Subsequently, the gift-sender asked her whether she would vote for him. And she said no again. Then the elderly lady received no more gifts. Therefore, I said if gifts were given to the elderly for the purpose of poverty alleviation, I totally agreed and welcomed. Even the ADPL and I were doing the same. However, if gifts were given away induce her to make a volte face, asking her to transfer her loyalty from one camp to another; to transfer her support from one candidate to another, or no gifts were sent to her upon her refusal to vote for him, I was afraid inducement by offering material gains was involved and corruption-related legislation was then violated.

This is what I said earlier. Although I lost to a candidate new to us, or I only won by a margin of 80-odd votes, I admitted defeat and therefore resigned from chairmanship. I have cited this incident in the hope of clarifying the motive of giving away gifts. We have done it for the purpose of poverty alleviation.

**MR ALBERT HO** (in Cantonese): Deputy President, I am surprised that Mr Jasper TSANG has sung me praises. I also cannot help rising to speak.

First of all, I wish to raise one point. If Mr Jasper TSANG's speech earlier has aimed at indicating that the democratic camp has taken the opportunity of Ms Audrey EU's motion to air our grievances to blame many of our candidates' defeat on the loophole and unfairness of the electoral system, he has got the wrong end of the stick. Sorry, this is really not our intention. And I believe what Ms Audrey EU said earlier has made it very clear.

In fact, this debate today should be one that involves cross-party interests. Deputy President, you are also aware that there is not a complete democratic system in place in Hong Kong. Generally speaking, it is impossible to have democratic electoral results in an incomplete democratic system. However, part of the election is still fair. We hope that fair and impartial electoral guidelines will be in place for elections so that the goal and spirit of a fair election will be achieved. In our view, this is what should be achieved. However, it has been found that a lot of problems have emerged in reality. Some of them have been caused by the imperfect system. I have to point out that no matter how the system is tightened up, these problems are impossible to be handled properly. Some of them are related to the electoral culture. In this regard, I believe if different political parties and groupings respect the spirit of democracy, efforts must be made to improve the situation by instructing party members not to do something "walking the line"; not to do something not unlawful but immoral. I believe we share the responsibility to have this effectively put into practice. I think we should not accuse each other of gaining all the advantages; accuse the opposite party of always behaving in an unfair way. This should not be the point of departure of this debate today.

Returning to the point raised earlier, I share the view that we should not take the opportunity of this debate to make accusations of people who are not here. We can declare our stance at other places. And we have the opportunity to lodge complaints with the departments concerned. We should provide sufficient evidence for their investigation and allow the accused a chance of defence. However, this is exactly the reason why I have to tell Mr Jasper TSANG to tap Mr TAM Yiu-chung on the shoulder, asking him not to show those two photos because both of them are photos of members of the Democratic Party. He said one of the photos showed a woman hitting someone. But there was actually only someone holding a notebook in that photo. He can show us the photo once more. How can we see the act of hitting someone? I have no idea. Perhaps he has another photo. Otherwise, I do not see how that someone holding a notebook is hitting another person. He may request an elucidation.

**MR TAM YIU-CHUNG** (in Cantonese): May I clarify the photo I showed you earlier .....

**MR ALBERT HO** (in Cantonese): I will let him clarify.

**DEPUTY PRESIDENT** (in Cantonese): Mr TAM Yiu-chung, if you wish to clarify what you said earlier, you have to wait until Mr Albert HO has finished his speech. Mr Albert HO, please continue.

**MR ALBERT HO** (in Cantonese): This is the first point. As to the second point, he said a member of the Democratic Party had made some sort of a gesture. But he had it covered with tape. In fact, he should finish what he starts. He should tell us what the gesture was at the time. However, he had that part covered and then said the person made an indecent gesture. In that case, what is the point of showing us the photo?

(THE PRESIDENT resumed the Chair)

However, I have to tell Members that I must admit, during elections, there would invariably be frequent excesses committed by members of both parties. Let us disregard who was in the wrong more or who was less, what we can do is when our members are found in such situation, we should first stop them from taking those actions, rather than saying as our opponent always does them to us, we already make an allowance for them this time when they are treated like this. Such remarks are meaningless. Madam President, in fact, we all know that the building up of a good electoral culture and tradition depends on the concerted efforts of different political parties and groupings. And we should act by this spirit.

Regarding the rules, we think it is important that our decision to give them support or not should not depend on who will stand to benefit from such rules. Exactly due to this reason, we have looked at the issue from different angles, leading to our identification of some major problems. Regarding the involvement of the Liaison Office mentioned by YEUNG Sum earlier, frankly speaking, it is definitely something to which the Secretary is unwilling to give a

response today, but something we should pay due attention to. Although it is not something the EAC can deal with, I think we have the responsibility to point out the fact that the entire State machinery has given all-pervasive support to the electioneering work of certain political parties and groupings. And we did point out this fact.

Second, another major problem concerns the exit polls — the conduct of polls is not allowed inside the polling station. Regarding exit polls, one thing is very clear. Ms Audrey EU and Mr Ronny TONG presented all the relevant data earlier. How could such exit polls be academic in nature? They were obviously part of the electioneering work, and the co-ordination was ingenious. Those young people had a device called iPod in their hands — I am no expert in this area. I have little knowledge of such advanced devices — once they pressed a button, the information was immediately sent to the central computer system. Therefore, it was real time information which enabled them to get hold of the voting situation of every polling station. Madam President, who will have such financial resources? There are a lot of political parties and groupings. But the Democratic Party really cannot afford such financial resources. However, Madam President, I can tell you that even if we can secure a loan, we will not do this. This subject was discussed within the Democratic Party in 2004. And we were aware of the critical function of the equalizing of votes. However, I can tell you today that we decided among ourselves then that we could not do this due to the violation of electoral guidelines. In our view, even if others could be deceived, we could not deceive ourselves. As mentioned by Mr Ronny TONG, our equalizing of votes on Hong Kong Island suffered a crushing defeat, unfortunately causing widespread accusations against our two candidates.

Therefore, we should face these problems. Regarding details such as constituency demarcation and polling station allocation, I will not elaborate. But I think there are a lot of issues awaiting discussion. Moreover, a lot of accusations should be followed up and investigated. However, I have to state the reason why we have reservation about the amendment proposed by TAM Yiu-chung today. In our view, to examine the ways to properly regulate electoral activities, we should start from the rules and not just an individual incident, saying there must be problems due to this incident. Frankly speaking, reports of this nature were a frequent feature throughout the election. I think the implementation of a cooling-off period is the only solution. If this proposal is turned down, I cannot think of any other solutions.

**PRESIDENT** (in Cantonese): Mr TAM Yiu-chung, do you wish to elucidate?

**MR TAM YIU-CHUNG** (in Cantonese): Yes, Madam President. Mr Albert HO said earlier in his speech that the two photos shown by me were a bit unclear. And I wish to give him an explanation. I said at the time that this photo was taken at the Kam To constituency in Chung On district, Ma On Shan, at 4 pm on 15 November last year. At the time, a voluntary worker of the DAB was attacked. And it was a candidate of the Democratic Party in the photo. Although there is nothing wrong in this photo, afterwards .....

**MR ALBERT HO** (in Cantonese): A point of regulation.

**PRESIDENT** (in Cantonese): It should be a point of "order".

**MR ALBERT HO** (in Cantonese): Yes, a point of order. In fact, can a Member capitalize on his privilege to attack a person not present here in this Chamber? These remarks are obviously slanderous in nature. But the accused cannot defend himself due to his absence. Is a Member allowed to do this?

**PRESIDENT** (in Cantonese): First of all, I have to give an explanation of a situation. Members in this Chamber, including those of different political parties and groupings, have criticized in this Chamber persons not present in this Chamber. Therefore, it is impossible for me to agree to the first point of Mr Albert HO's.

Second, regarding whether the remarks concerned are slanderous in nature, as I am not a Judge, I will not hand down a verdict.

Mr TAM Yiu-chung, please clarify the part of your speech that has been misunderstood.

**MR TAM YIU-CHUNG** (in Cantonese): I have not slandered anyone because I have treated people with kindness and consideration. I did not disclose the

name of that person. And I even covered up his eyes in the photo. However, as he asked me to clarify, I had no choice but to speak up. In fact, after making the earlier remarks, I thought of letting the matter drop. The action of that person pushing our voluntary worker onto the ground was not shown in this photo. But our voluntary worker was actually pushed onto the ground after the taking of photo. And the case was also reported to the police.

Moreover, Mr Albert HO said earlier that I had the indecent gesture covered up. Madam President, if you do not object, I will uncover the part covered. And the indecent gesture will then be shown more clearly. I do not mind if he wishes to have a closer look at this photo. This is it. This is the indecent gesture. If he cannot see it clearly, I am prepared to let him have a closer look.

**PRESIDENT** (in Cantonese): I think he has seen it.

**MR TAM YIU-CHUNG** (in Cantonese): He has seen it. Thank you, Madam President.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, though I have had the experience of standing in elections, I have seldom got into trouble with my opponents, because I was simply not considered to stand any chance of winning and therefore they would not get me into trouble. Actually, I had once bumped into Mr LAU Kong-wah in New Territories East when both of us were shouting through a loudhailer. Later, I told him that it would not do us any good for both of us to shout together because the people would feel annoyed. Consequently, we both stopped shouting. Actually, people will be surprised to find that I have seldom shouted through a loudhailer during election campaigns. But actually, I have seldom or almost never shouted through a loudhailer.

I certainly find the acts related to elections being discussed today very important. Incidents of violence arising from elections can actually be found all over the world. The situation in Hong Kong is not very serious. However, if we connive at violence, the situation will worsen. I do not entirely disapprove of violence; it is permissible to eradicate tyranny with violence. However, why

would it be necessary to resort to violence if we are merely talking about elections? Actually, I have personally experienced a lot of incidents of violence. In The Link REIT incident, initiated by the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) and the Hong Kong Federation of Trade Unions, an "elderly at the Victoria Park" threatened to hack me to death, and openly declared that I would be tortured to death by various merciless means. While this incident might have nothing to do with electioneering, it was not only a mud-slinging campaign against political rivals, it also involved direct political intimidation and physical destruction. These tactics, similar to what the Schutzstaffel (SS) or Red Guards did, would constitute a serious problem. I was attacked without any justifications day and night at that time.

When it comes to election culture, why did those people behave in that manner at that time? It was because they were instigated. What is the election process? Elections must be conducted according to a fixed schedule, at fixed places, and according to fixed regulations, and members of the public will be called upon to cast their votes. However, people are only given one chance to vote every four years. Under the influence of the political culture over the past four years, and the claimed demonization of the opposition, we have come to the present situation. I used to be scolded by an uncle who was a member of either the DAB or the pro-Communist party. On one occasion, I met him downstairs and he started to condemn me, I then told him, "Uncle, it was TUNG Chee-hwa who made you suffer. You are now sitting here with nothing to do and no money to pay for air-conditioning expenses. It is really miserable that you consider even enjoying the cool air from an electric fan a waste of money. This is why you are sitting here. Why are you scolding me?" It was only then that he realized the truth. This is why I personally feel that it is meaningful for the Civic Party to propose this motion, though we have yet to come to the essence of the issue.

We can also see that the "two microphones"<sup>1</sup> had to go off the air because of the clear stance that "two newspapers, one magazine and two microphones" must keep their mouths shut for the sake of the election in 2004. The Central People's Government Liaison Office (Liaison Office) had once openly declared that it had decided which candidates to win or lose the election. Of course, the

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<sup>1</sup> "Two microphones" refer to the two radio programme hosts

Liaison Office is not a local institution, and so our jurisdiction has no power to control it. As Members have already known, it is a representative of the State. It can dictate whom should be and whom should not be elected. It has also made planning for regulations and eligibility. I was once criticized by others: "It is Hong Kong's misfortune for such a person to be elected."

Honourable Members, while we should resent stupid acts of brutality, we should all the more resent those people who induce stupid acts of brutality or make gains by instigating others at their back. I was once assaulted by supporters of the DAB. This is my usual response: I will immediately stop pursuing the case as long as the assailant apologizes either to me or to the police because I understand that he does not really know what he is doing. As I know what I am doing, I will not be mad at people like him.

Honourable Members, what sort of system are we discussing today? This system is inherently and intrinsically unfair. The constitution of this Council itself is already an international laughing stock. It is an international laughing stock that our rights to introduce bills and enact legislation are restricted by the functional constituencies. Furthermore, the gaining of profits by violence, vote buying and illegal means is also involved. President, I have repeatedly cited examples to demonstrate that at the start of the election campaign, I as a non-affiliated candidate could see the vigorous publicity launched by all political parties and groupings when I walked up the escalators in New Territories East, saying that a certain political party (I am not afraid of naming that political party — it was the Liberal Party) would bring this and that benefit. The DAB was also making the same claim. However, the pledges were made on behalf of a certain political party, not a certain candidate. Political parties are not required to assume responsibility. They only need to pay for the expenses, and rows of publicity panels will then appear there. However, I did not follow suit. Although this is not fair, I will not complain because I understand that this is the reality of elections.

During our discussion here today, I was infuriated by the speech made by Mr Jasper TSANG because the elections are grossly unfair. In other words, the relationship between the legislature and the executive is not fair. The Legislative Council is not fair. Most importantly, let me tell Honourable Members why those people would have been so desperate. Because they are accountable to the Beijing government, and they must win in the election. This is why this situation has arisen, and they stop at nothing to achieve their goal.



Honourable Members, violence is not fearful. People stirring up violence or labelling others as traitors or collaborators with foreign forces by smearing tactics for the sake of stirring up violence are doomed to go to hell. We must show mercy to those who do not know what they are doing. However, this Council should condemn those people who induce the use of violence for the sake of safeguarding the corrupt system and winning in elections. I am referring to the DAB.

**MR LEE WING-TAT** (in Cantonese): President, earlier in the meeting, Mr TAM Yiu-chung, Chairman of the DAB criticized, with the aid of two pictures, the behaviour of some candidates from the Democratic Party. Of course, the making of a ruling by the President is also reasonable. Something like this has happened before. Nevertheless, I think Mr TAM should demonstrate his poise as the leader of a political party or he should know what it is meant by fairness. By fairness, it means that when a person makes any criticism, the person being criticized should be given a chance to defend himself. As we enjoy privileges in debates in this Chamber, we may say anything.

Another point I wish to raise is that the person in the photograph was pictured holding something. However, does it mean that she was launching an attack? I know that the case is being investigated by the police ..... actually I do not know whether it is being investigated. First, if anyone (regardless of the political party to which he or she belongs) uses violence, I believe an investigation will surely be launched. I wonder if Mr TAM Yiu-chung intends to act on behalf of the police or the Court, for he has already jumped to a conclusion before an outcome of the investigation is available.

When it comes to the other photograph — I am not a lawyer, and there are many barristers sitting in front of me — very often, a photograph is a snapshot of a scenario. In other words, it merely captures a scene for a very brief moment. Should he jump to a conclusion in this manner, his conclusion must be extremely rash. In particular, I know that a complaint has been lodged about this incident, and the case is being investigated by the police.

Second, the best solution to tackling the use of violence during elections is to, as proposed by the Democratic Party, designate the polling day as a cooling-off period. This proposal had been raised during several previous

elections, but then it was opposed by the DAB. I have no idea why the proposal was rejected. It was apparently feared that the atmosphere of election would be diluted, and therefore electioneering activities had to be continued. Actually, in many places, such as Taiwan, the polling day is already designated as a cooling-off period as the best way to minimize disputes caused by the vast majority of election-related activities. Hence, I hope the DAB can reconsider if it should support designating the polling day as a cooling-off period with a view to minimizing many undesirable incidents. Moreover, greater convenience will thus be given to the Electoral Affairs Commission and other government departments, such as the police.

Third, I would like to respond to the remarks made by Mr Jasper TSANG regarding the fairness of media coverage and the work before and during election campaigns. I think he already gave his own definition for certain acts of justice when he criticized Frederick FUNG. Let me cite an example to illustrate my point. All laws are bound to be flawed. Before being nominated, a candidate may spend \$500,000 on giving away rice, oil, salt, and so on, to the people in his constituency. If he is very "smart" in undertaking these activities and stops once his electioneering campaign begins, it would actually be very difficult for the ICAC to succeed in its investigation. Anyone who has experience in electioneering knows that such a loophole is inevitable when elections are held. A number of investigations carried out in relation to elections have failed to find out anything because it is very difficult to establish a relationship between the two. For instance, should a candidate who delivered rice, oil, salt, and even *lai see* to elderly people on a certain day every week six months before the election be considered as buying votes? Such a relationship is very difficult to establish. However, this is actually known to many people. Therefore, when a person criticizes others for their conduct during the election campaign period, he should also ask himself what planning his own political party has made during the campaign, and whether evidence can be produced. Of course, there is a lot of evidence. But the point is, it is still meaningless even if evidence can be produced because, according to our electioneering experience over the years, it is also very difficult to establish a relationship of bribes by relying solely on the production of evidence.

Therefore, regarding the earlier criticism against Frederick FUNG, it is very difficult ..... I have no idea because I did not catch every word clearly. It is more apparent ..... but I find the question raised by him tenable. Is there

any solution? It is very difficult to resolve, for it cannot be resolved by the existing system or other systems. Therefore, I think that the Honourable Member should not criticize those acts as electioneering for certain candidates by merely saying that ad hoc news have been released by newspapers on the polling day. Frankly speaking, even the candidate once said that she personally had no knowledge of the advertisement.

Furthermore, during the election period, many pro-communist newspapers would criticize democrats with a view to elevating the advertisements placed and comments made by the DAB and the Liberal Party. What can be done? Six months ago, these practices were very common. Some of the newspapers in the territory criticized one party and carried reports elevating the other one. What can be done? Actually, we are already accustomed to such electioneering culture and the so-called prices we have to face in a free society. Of course, I very much hope that every media and newspaper can report everything in a fairer manner. In reality, however, every newspaper has a stance of its own. It is rare for a newspaper to have no stance. This is what we cannot avoid in the political reality or in our political lives. Therefore, I think it is unwarranted to describe an ad hoc report as a factor causing a certain candidate to win or lose in an election. I think such kind of thinking is unfounded.

Furthermore, President, I agree with Mr LEUNG Kwok-hung who said that the use of verbal violence during the election period could actually be extremely detrimental. Martin LEE, who is sitting in front of me, has been condemned as a traitor on numerous occasions, even in this Chamber. Even WONG Kwok-hing has once condemned him as a traitor. Even when we were working in the districts — not only when we were engaging in our electioneering activities — we would be condemned as traitors even when we were merely happily writing Lunar New Year scrolls, such as "good health", "good luck", and so on. Of course, I know that some critics are the supporters of our rivals. I even know that some of them are members of certain political parties. But what can we do? Actually, there is nothing we can do. Therefore, if Members hope to progress towards a better political culture more acceptable to all, then the persons in charge of every political party should make joint efforts by asking their members and supporters whether the frequency and use of verbal violence is very serious and whether their use of verbal violence is more frequent than others before criticizing others for the mistakes probably made in the use of verbal violence. Thank you, President.

**MRS ANSON CHAN** (in Cantonese): Madam President, I am very honoured to be able to stand in the Legislative Council election held on 2 December last year. That was an important milestone in my life.

The road to election was not easy. In particular, with the lack of manpower and resources, I all the more appreciate that democracy is not an easy road to take. However, you will be greatly touched by the enthusiasm of voters who have high hopes for you to become their representative in the Legislative Council. I fully appreciate the public's hopes for me to fight for dual universal suffrage on their behalf, voice their aspirations and bring their strength into full play. Despite the fact that the dual elections by universal suffrage were already rejected by the Standing Committee of the National People's Congress in late-December last year, I will continue to work hard to fight for Hong Kong people a timetable and a roadmap to achieve universal suffrage in the shortest possible time. Before 2012, there is still much we can and should do.

Hong Kong has all along upheld the rule of law. However, the smearing tactics adopted by certain candidates and their supporters, particularly the practice of their electioneering teams of defying the rule of law and resorting to violence and intimidation, during the last election are indeed regrettable.

During the election campaign staged in Chater Garden on 25 November last year, the electioneering teams of one of my rivals organized and launched an attack by besieging the entire Chater Garden with large crowds of people. Their arrogant attitude aside, they also made insulting remarks and disallowed pan-democratic supporters, who were only a minority, to enter the Garden. On one occasion, they even scuffled and confronted with the police. The scene was finally brought under control after the police had called in reinforcement. I believe people watching news on that day would have seen one of the members of my electioneering team, Anthony LAM, being pushed by the supporters of my rival and fell on the ground and such chaotic situation as a handset being snatched.

Such behaviour, which is close to violence, is not an isolated incident. When I was cheering up for the pan-democratic candidates in Central on the polling day of the District Councils Election in November last year, I was

besieged and shouted upon by the rival electioneering teams. That was downright verbal violence.

On the evening of the Legislative Council By-election, my electioneering team and I were also besieged by my rival's supporters when we were engaging in our electioneering activities. To put it in a vulgar way, the situation at that time was reminiscent of show-downs by triad societies. As described by my electioneering team, the supporters of my rival were seen flocking out like armies with flags in their hands, besieging my electioneering team, scuffling on the main streets, and displaying a terrifying gesture of trying to chase away and hit people. Even some journalists were pushed and injured. The course of violence really arouses people's scorn and warrants public censure.

In another scene appearing on the international channel of YouTube, Miss TAM Heung-man and Mr Alan LEONG of the Civic Party were seen besieged, pushed to the corner of a wall and prevented from leaving by the electioneering team of their rivals outside a polling station of the Lung Sing constituency in Wong Tai Sin on the polling day of last year's District Councils Election. Even under the cameras of the police and media, the electioneering teams of their rivals shouted openly. It was really shocking that the whole process lasted 45 minutes, and yet no law-enforcement officers were seen interfering in such conduct, which was close to unlawful detention, thus indirectly conniving at the arrogant behaviour of these law-defying members of electioneering teams.

In the past, Hong Kong had an unequivocal image of respecting the rule of law in the international area. However, the abovementioned violent behaviour has gradually eroded the territory's international reputation. It is extremely regrettable that, during the entire process, the SAR Government failed to issue a clear message of "showing zero tolerance towards such violent behaviour". Under such circumstances, the Government is tantamount to conniving at or encouraging the relevant persons to act in an arbitrary and wilful manner. Furthermore, during the District Councils Election, the Government made less effort in conducting publicity to encourage voters to come out to vote, failed to maintain political neutrality, and was even suspected of favouring certain candidates.

On the polling day, some people complained to me that someone claiming to be a government officer conducted an exit poll and transmitted their voting

preference to somewhere else through a cell phone. At the last meeting, I asked the Government why, given that it had not appointed anyone to conduct such exit polls, it could not publicly make it clear to the public that no institutions had been commissioned to undertake such exit polls. Regrettably, the reply given by Secretary Stephen LAM at that time was not in the least sincere. He was even reluctant to make such a basic commitment.

Even though the Government has maintained all the time that the election must be conducted in an open, fair and honest manner, it conveyed, during the election, a message of tolerance in every sense of the word, and an image of conniving at violence, favouritism caused by the existence of grey areas and unfairness, thereby seriously tarnishing Hong Kong's image of respecting the rule of law.

Madam President, the rule of law, being the cornerstone of Hong Kong's prosperity and stability, must not be destroyed gradually. I strongly call on the Government to review the existing legislation and guidelines and take immediate and appropriate measures to improve the situation to ensure that the Legislative Council Election to be held soon can be conducted in an open and honest manner.

With these remarks, I support Ms Audrey EU's original motion.

**MR MARTIN LEE** (in Cantonese): Madam President, I believe the DAB is the most remarkable political party in using newspaper coverage as a tool of electioneering campaigns.

I would like to say a few words on an incident which took place in this Chamber several months ago. On Thursday, 25 October last year, the day after the publication of the policy address, I was accused in this Chamber by Members of the DAB holding in their hands some articles, which they clearly knew were translated wrongly, that I had used such wordings as "pressurizing". I was also denounced by some leftist Members as WU Sangui. Then, around 60 to 70 leftists requested to meet me downstairs. Not only did they denounce me outside the building, they also held up a number of protest placards accusing me of requesting a boycott of the Olympics. But actually, I was requesting others not to boycott the Olympics.

On the following Friday — as the article concerned was already published on Thursday, the number of articles published by *Sing Tao Daily* and a couple of other newspapers even reached 95 .....

**PRESIDENT** (in Cantonese): Mr Martin LEE, I have to interrupt you. Though I very much believe that you made that remark out of a profound feeling, I still hope that you can come back to the question of this motion debate, which is related to elections.

**MR MARTIN LEE** (in Cantonese): I have pointed out at the beginning of my speech that a certain political party uses these articles for its electioneering campaign.

**PRESIDENT** (in Cantonese): But you just kept talking about your personal matters, which are unrelated to elections.

**MR MARTIN LEE** (in Cantonese): President, I will come to the question as I go on.

**PRESIDENT** (in Cantonese): Then, please get on with what you want to say quickly.

**MR MARTIN LEE** (in Cantonese): This is a very important point. On Friday, 26 October, I was criticized by 95 articles and there was little support for me. Then, there were 88 articles on Saturday, 49 on Sunday, 96 on Monday, and 69 on Tuesday. However, then the publication of these articles came to a quick stop because some people compared it to the Cultural Revolution.

The incident actually happened during the election period because the District Councils Election was soon to be held. These newspaper coverage and several news headlines were printed by the DAB in the same leaflet, bearing such wordings as "traitor", "boycott", and so on, for distribution in the districts. When some people in the Democratic Party found this problematic, the DAB

explained that the reports were written by newspapers, not by the DAB. They had merely made photocopies of the news headlines and printed them in the leaflets. The DAB thus, in a way, admitted that the leaflets were distributed by it. However, it did not know that criticism did not have to be made in a direct manner. One might make use of newspapers to criticize others. But actually, he or she has committed an offence.

Therefore, you, Madam President, must understand that I have actually come to the point. It is pointed out in their amendment that some newspapers are apparently unfair to certain candidates. However, they have used the newspaper coverage. Is this fair to their rivals?

Many years ago, Madam President, I made a remark in this Council, that elections in Hong Kong were intervened by the Liaison Office after the reunification. At that time, the Liaison Office adopted a high profile in condemning me and demanded me to produce evidence. Though it was extremely difficult to produce evidence, everyone was aware of the existence of such a situation. Today, will there still be any people querying why Dr YEUNG Sum cannot produce evidence to accuse the Liaison Office? Because we all know that the Liaison Office is simply responsible for handling elections in Hong Kong. Actually, elections in Hong Kong are handled jointly by the Liaison Office and the SAR Government. For whom? The answer is definitely neither pan-democrats nor the Democratic Party. Then, for whom? Of course, there is a policy of affinity differentiation. Do I still need to say that they are doing this in the interest of those who are close to them? This is why all this is expected. Of course, this is unfair to us. However, we still have to face these problems because a decade has passed since the reunification. Will the Communist Party allow pan-democrats to run in elections so comfortably and win them? Therefore, we all know this only too well, only that the DAB still feels that it has not received enough assistance.

This is why I think that it is really inadvisable for the Liaison Office to continue to play this role because, if it does, it is telling the whole world that it is meddling in Hong Kong's internal affairs. At the same time, it is telling the whole world that it cannot let go and allow Hong Kong people to really implement the principles of "Hong Kong people ruling Hong Kong" and "a high degree of autonomy". In other words, it is telling the entire world that it has no confidence in the implementation of "one country, two systems". Insofar as Taiwan's reunification is concerned, this is extremely counter-productive.



When it comes to Taiwan, Madam President, for many years, we have been talking about the money politics in Taiwan and the country's corrupt elections. On the contrary, despite the absence of democracy in Hong Kong, elections held in Hong Kong are really clean, and are conducted in an open, fair and honest manner. However, I have great misgivings at the moment. Actually, it is not only me; many people share the view that Hong Kong is going downhill. Of course, the situation in Hong Kong is far from as rampant as the money politics in Taiwan. However, there are still occasional reports of voters collecting money. In other words, someone is paying money to buy votes, though some people say that the money is collected on the Mainland, while others say that it is collected in the territory. The Government must address these issues and make every effort to prevent this from becoming a habitual practice in Hong Kong's elections.

Lastly, I would like to say a few words on my other worries caused by the elections in Hong Kong. The Premier has told the Chief Executive to learn from Singapore, though he has not made it clear whether or not we have to learn from Singapore in respect of elections. However, I am extremely worried that we have to follow Singapore in conducting elections. If the democrats think that the existing electoral system is unfair, they might as well pay a visit to Singapore. I believe they will feel a great sense of relief when they return to Hong Kong. However, I really do not want Hong Kong to follow Singapore in taking its path of elections. Otherwise, Hong Kong can no longer tell the whole world that our elections are conducted in an open, fair and honest manner. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

**MR HOWARD YOUNG** (in Cantonese): Madam President, the question under discussion today is "ensuring the conduct of fair elections". In the opinion of the Liberal Party, democratic politics must be firmly founded on the major principle of fair elections. This is not only indisputable, but also worthy of support and affirmation. To win or lose an election is commonplace. Most importantly, all candidates should compete according to a fair set of rules of game. Under no circumstances can they win by breaking the law or rules, or even exploiting loopholes in the law.

Let me take the past District Councils Election and the Legislative Council Hong Kong Island By-election as examples. Because of fierce competition, there was obviously a rising trend in the number of complaints lodged concerning elections. For instance, the number of complaints lodged in relation to the District Councils Election held last year was 2 005, nearly one third up from the 1 479 complaints received during the District Councils Election conducted in 2003. The number of complaints received in relation to the Legislative Council Hong Kong Island By-election held at the end of last year was 490, more than double the 228 complaints received during the Hong Kong Island By-election conducted in 2000.

Despite the substantial rise in the numbers of complaints, it has aptly demonstrated that there are certainly grey areas in electoral legislation and guidelines. As a result, there have been an increasing number of electoral strategies involving "marginal cases", or even something close to "foul play". Nevertheless, generally speaking, we still consider elections held in Hong Kong and electoral regulations basically fair and impartial. According to a survey conducted last month, the second item of administration with which the public is most satisfied is "election freedom and fairness". This demonstrates the public's concern with and full confidence in election freedom and fairness. Nevertheless, I think some of the not so gentleman conduct caused by fierce competition is still worthy of our attention.

Though the Legislative Council Hong Kong Island By-election was basically a battle between two strong rivals, it was revealed by every opinion poll conducted by the University of Hong Kong in connection with the By-election that one of the candidates had been taking the lead. In the most extreme case, there was a margin as wide as more than 20 percentage points between that candidate and her major opponent. It can be said that the candidate could absolutely not fall behind at the election. However, in the evening of the polling day, that is, 2 December, a certain major newspaper suddenly distributed free electoral news similar to a special edition on Hong Kong Island claiming that its favourite candidate was in a dangerous position. Consequently, the camp of that candidate issued an "emergency call", and the candidate finally won the election with a great margin of more than 30 000 votes. We can see from her crushing victory that the "emergency call" was very problematic.

Madam President, according to the guidelines issued by the Electoral Affairs Commission (EAC), no election analysis should be conducted by major media and opinion poll agencies on the polling day. At the same time, the results of exit polls should not be published until the close of polling for the election to prevent voting preferences of electors from being influenced. In the District Councils Election held in November last year, the EAC granted approval to a total of 13 agencies to conduct exit polls for the elections, and no complaints were received directly. During the Legislative Council Hong Kong Island By-election held at the end of last year, only one complaint was received, in which the complainant alleged that a media reporter conducted exit polls by claiming that he was commissioned by the Government. Nevertheless, a Presiding Officer of the EAC immediately ordered the relevant person to clarify that it was absolutely not the case. This shows that the results of exit polls are basically used in accordance with guidelines.

Though the election news did not publish any exit poll figures, it contained some specific comment and prediction on individual candidates, and election analyses were involved as well. Furthermore, this sort of publicity does not necessarily have to be included in election expenses. The Liberal Party considers this obviously a "marginal case", and there is indeed a need for review.

Madam President, insofar as provision of social services is concerned, various political parties would very often organize some interest classes, kaifong tours, free hair cuts, blood pressure measurements or such activities and services as giving away oil, rice, and so on, to elderly singletons. What can district work do if these activities are considered to be likely to affect election results and warrant regulated? Most importantly, the electors are discerning. They will certainly distinguish clearly who is serving them truly or for the sake of votes.

Nevertheless, to ensure that elections at various levels are conducted in an open, fair and honest manner, we agree that the Government review existing electoral legislation and guidelines to improve various elections so as to ensure that the validity, legitimacy and fairness of various elections are not open to question. I believe only in doing so can our electoral system be constantly improved. This is also conducive to our moving towards the ultimate goal of universal suffrage.

Madam President, according to the opinion poll conducted last month by the New Century Forum, as mentioned by me earlier, members of the public are most satisfied with the SAR Government's cleanliness, election freedom and fairness and freedom of speech, just like the results of the previous poll. This demonstrates that election freedom is not only a fact, it is also recognized by members of the public. Of course, we must address the issue of grey areas. However, there will be a big problem if our election fairness is thrown into doubt. I so submit.

**MR ALAN LEONG** (in Cantonese): President, I originally thought that the motion debate sponsored by Ms Audrey EU today would be supported by all politicians. However, I find from the speeches delivered by some Members earlier that the motion has even been interpreted as "a bad loser's complaint". Such a distorted view may make a great difference.

President, over the past couple of years, I have had opportunities of not only canvassing, but also running in elections. I have quite a lot of experience in local election politics, too. According to my personal experience gained during the election period, coupled with the experience shared with my party comrades and friends from the democratic camp, I can conclude that a series of events related to violence, intimidation and other disputes occurred earlier during the District Councils Election and the Legislative Council By-election for the Hong Kong Island are absolutely unprecedented since my exposure to election politics. Furthermore, the problem was not confined to an individual district; it occurred in different districts concurrently.

Let me take the Lung Sing constituency of the Wong Tai Sin District Council, against which an election petition will soon be lodged by Miss TAM Heung-man of the Civic Party, as an example. Regarding the blockage of an access to a no canvassing zone within a polling station on the polling day for up to 45 minutes, even the Electoral Affairs Commission (EAC) has conceded in its reply to the Civic Party, and expressed regret, that the polling staff have failed to exercise effective crowd control at the polling station at that time. It is not hard to imagine that the polling staff must maintain basic order of polling stations to ensure that voters can reach the stations to cast their votes in a free, safe and smooth manner, and the impartiality of the election. However, it would be quite disappointing indeed that if even the EAC admits that the polling staff cannot meet this most basic requirement.

In fact, President, the staff employed by the authorities concerned were often insensitive to the offences committed inside and outside polling stations. As a result, no immediate action was taken to rectify unfairness. For instance, a polling agent had recorded its rival engaging in unauthorized canvassing in a no canvassing zone for more than 20 times within two hours in the afternoon of the polling day by making a gesture to hint the number of a candidate, requesting voters to support a certain candidate in a low voice, and so on. However, we did not see any effective action taken, despite the agent having complained to the polling staff, a Presiding Officer or a Returning Officer. An agent even had to wait until seven o'clock or so in the evening before he could see the polling staff take action to stop electioneering teams from engaging in unauthorized canvassing in stronger tones.

Furthermore, some electioneering team members were found, using assisting voters with mobility disability as a pretext, leading them all the way into a polling station, or even standing near polling booths, to watch how voters cast their votes from a short distance, or even trying to put ballot papers into the ballot box on behalf of voters. Surprisingly, the polling staff had acted indifferently to these acts. It was only after an agent had made a "stop" shout that the polling staff urged voters to put their ballot papers into the ballot box by themselves. Not only had they paid absolutely no regard to the possibility that the right of voters to secret polling would be jeopardized, they had also failed to take any action to pursue non-compliant electioneering team members.

President, the staff engaging in the work of polling stations are mostly deployed from different government departments, instead of staff specifically tasked with conducting elections. And yet, their work often involves complex electoral legislation and guidelines. Naturally, we expect that the polling staff are provided with adequate training so that they can have a good understanding of statutory election procedures and their own powers and responsibilities, and ensure meticulous attention and precision in carrying out their work.

President, I remember that, during the Legislative Council Election four years ago, a lot of complaints were lodged concerning the improper action of the polling staff, and even their misunderstanding of legislation. Later, in a review report published by an independent expert committee on the election, it was proposed that the mindset of the staff of the EAC should be changed to make them realize the great significance and sensitive nature of the election work. Furthermore, it was proposed that the training and supervision of the electoral

staff be strengthened. However, from the performance of some of the polling staff in the two recent elections, we can see that the Government has obviously failed to prescribe the right remedy in accordance with the expert advice to improve the quality of the election work.

President, we certainly understand that the polling staff have to cope with heavy and highly technical work on the polling day. In particular, most of the polling stations will function as counting stations. As a result, a number of the staff are required to work for more than 20 hours non-stop. Their hard work is worthy of our support and understanding. However, more and more evidence points to the fact that working long hours might make it difficult for the polling staff to remain focused at all times. Sometimes, in handling violations, they might even demonstrate an attitude of minimizing conflicts, carelessness and perfunctoriness. Because of this handling approach, not only will people lose confidence in election results, it also opens up a loophole for exploitation by those attempting to engage in corrupt conduct.

In fact, to enable elections to be conducted fairly and smoothly, the authorities concerned must make an effort in training and supervising the staff engaging in election work to ensure the maintenance of a professional and meticulous attitude. In addition, the Government should foster a favourable working environment enabling the staff to work with prudence. In particular, the Government must, taking into account the working hours of the polling staff, suitably deploy manpower and resources to ensure that the entire election process is manned by staff in their best condition.

President, I so submit.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

**MR LEE CHEUK-YAN** (in Cantonese): I recently referred to a remark made by CHEN Shui-bian sometime before our march to fight for the implementation of universal suffrage in 2012. CHEN Shui-bian commented, "Look at Hong Kong. They don't even have universal suffrage. They are simply deprived of their rights." At that time, I said, "Don't be belittled by 'Ah Bian'." Then, someone queried, "Why associate us with CHEN Shui-bian?" I replied, "How

can anyone say that I try to associate ourselves with 'Ah Bian' when I said that we must not be belittled by him?" Some other people soon questioned, "Are we supposed to admire Taiwan for its democratic elections? Elections in Taiwan are marked by money politics. Do people also want to see money politics in Hong Kong?" Naturally, I certainly do not want to see any money politics in Hong Kong. However, I must still point out that problems with elections in Hong Kong have already started to emerge. Just now, Mr Howard YOUNG remarked that Hong Kong is clean and honest, so he had great faith in its elections. But the greatest problem is that the alarm has already sounded for the conduct of our elections. Honourable colleagues have talked about all sorts of irregularities relating to exit polls, verbal violence, order and foul play in polling stations. I agree that such problems all exist, but I think the greatest problem is the one mentioned by Martin LEE just now: What role does the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (Liaison Office) play in the whole election process? Something novel has emerged in Hong Kong, I am afraid — not money politics, but "northern water politics".

In the case of stocks trading, we want to have "water" from the north. But in the case of politics, this will be a very serious problem. But is there really such a problem? Some have asked for proof. Well, people may well be treated to food and tours. So, frankly, how can we know anything? If proof is required, the Independent Commission Against Corruption can always launch an investigation. Through all our contacts with different people, we have really heard of or witnessed many such actual cases. The money spent during the entire election process, the "water" used, can be described as astronomical. But where did all this "water" come from? People naturally think of "northern water politics" in response. "Northern water politics" in Hong Kong is something very dangerous, the last thing we want to see.

President, you may ask what we can do about this. We do not have any proof. The budget of the Liaison Office is neither open to the public nor transparent. If the President really becomes a Standing Committee member of the National People's Congress later, will she ask for some information concerning the Liaison Office's budget? In the case of Hong Kong, the annual budget is always open to the public. Of course, everybody knows only too well that no one can possibly be privy to the Liaison Office's budget. No one will know anything about it.

Such is the greatest problem with the clean elections in Hong Kong. The point is that even though it is technically possible to tackle the problems of verbal violence, exit polls and order in polling stations mentioned just now, and even though the distribution of newspaper extras and other problems can also be solved, Hong Kong's elections will still be at great risk if money continues to be "pumped" for the purpose of influencing the conduct of elections. I therefore think that the only thing that can be done is to request electors to "continue to vote independently after being offered any benefits and treated to a meal". But Hong Kong people are very good and honest. Brazen people are capable of many embarrassing deeds, such as "continuing to vote independently after being treated to a meal". But some people will not feel good if they do not vote as requested after being treated to a meal. We frequently hear some elderly ladies, elderly persons or someone who has received some kind of benefits say that they must vote as requested after being treated to a meal. But the only solution may still be "continuing to vote independently after being offered benefits".

President, such a situation is unhealthy, one which we hate to see. Naturally, the best thing to do must be "turning off the tap" and the conduct of a truly fair election. But we do not know whether such a day will ever arrive because we think that the alarm was already sounded in the last election. Therefore, I think that the conduct of elections in Hong Kong has entered a very dangerous stage. Thank you, President.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

**MR SIN CHUNG-KAI** (in Cantonese): President, I have recently been to Taiwan to observe the election there. It is indeed true that elections in Taiwan used to be marked by many problems that Hong Kong people do not want to see. However, after so many elections (I have myself observed the elections there for more than a decade), they have corrected many undesirable practices. In particular, they no longer hold any "continuous feasts" and election bribery has started to become less frequent because they do not think that such practices can still work. Overall, they have started to abandon money elections, or money politics, and move towards clean elections. A Member remarked just now that the situation in Hong Kong is just the opposite. I find this very terrifying.



President, several Members have mentioned the rumour that in an election, the leftists spent as much as \$200 million. As a matter of fact, however hard the democratic camp tries, it will never be able to raise this amount of funding. This is an illegal practice, but it is not easy to get any proof. Stephen LAM will certainly claim that elections in Hong Kong are clean and fair. But the allusion earlier is not entirely unfounded.

In some cases, even though Secretary Stephen LAM's attention is brought to certain problems, he cannot possibly do anything except paying lip-service. However, in other cases, he may be able to do something. The following is an example. It is about exit polls. Audrey EU also attended that mini-seminar. We attended a forum on elections held by the National Democratic Institute, and we made some observations. There, we came across an elector who has frequently participated in the conduct of opinion polls. He said that on one occasion, when he was leaving a polling station after casting his vote, he saw some girls. One of the girls approached him and said that she was conducting an exit poll. He immediately questioned her which organization was the organizer. She replied that it was the Hong Kong Government. President, there could be a very serious allegation because the Hong Kong Government has never commissioned anyone to conduct any exit poll. So, he told her that the Hong Kong Government would not do anything like this. The girl was clever, and she immediately replied that the conduct of the poll had been approved by the Hong Kong Government. Well, that was possible because the Electoral Affairs Commission (EAC) really has the authority to grant such approval. But such a practice will mislead electors, making them think that an official exit poll is conducted among electors who have cast votes.

President, if the EAC really wants to conduct a serious investigation into the allegations mentioned by me, it must consider how to improve the situation, so that fair elections can be held. It is fair only when others and we are both permitted to conduct exit polls. The point is that after reading the guidelines, we find that no one is allowed to do so. But they could still do so, thus managing to grasp the latest situation of the election. This is very bad. The outcome in the long run is all very clear. If the worst comes to the worst, we may at most admit defeat, admit that the democratic camp is no match for the pro-establishment camp. We will just admit defeat. But will our admission of defeat do any good? "Tai Pan" says that it will be good. He may be right.

But this will destroy the system in operation since the start of Legislative Council elections in 1985, something that gives us Hong Kong people some degree of pride. I can remember that before the reunification in 1997, the then Home Affairs Branch organized a visit to Macao, where we discussed the issue of elections. What we could not understand that was the absence of even an electoral register for the election candidates there. The election candidates there thus did not even know who the electors were. That was why they even did not know how to start any door-to-door visits.

Elections in Hong Kong have been conducted on a very sound foundation since their very inception. Something that merits our commendation. I hope that the Secretary can seek to keep a good reputation for himself in history, rather than allowing the deterioration of our elections during his 10-year tenure. We are not making any unfounded allegations. We do observe many problems very clearly, though it may not be possible to verify whether there is any evidence in each of the cases mentioned, and whether the cases were really deception. But we have actually mentioned all these cases on the basis of reliable sources. The Secretary may in fact explore how to make the required improvements. But when it comes to the co-ordinating role of the Liaison Office, I believe the Secretary should be one of those being co-ordinated. So, the Secretary cannot possibly do much. But I hope that when things are still within his control, he can really do something. In his reply later on at this meeting, can the Secretary please tell us what measures he will take to deal with the problems relating to exit polls?

I so submit.

**MR ALBERT CHAN** (in Cantonese): President, I have been witnessing many odd, sordid and infamous electioneering practices since 1985.

Before I comment on the election issue, I wish to tell Members that a resident has told me to mention an actual case concerning him. During the District Councils Election in November last year, I was in Tin Tze Estate doing canvassing work for one of the candidates. We happened to be canvassing at the same spot as the candidate from the DAB. The canvassing teams of some kaifongs on our side were composed of youngsters below the age of 18. They were all accompanied by their mothers in the whole course. The members of the DAB canvassing team simply chased these youngsters and their mothers all

the way to take photographs of them at close quarters. These youngsters and their mothers were just ordinary people, so they were naturally scared and they immediately reported to the police. But the police said that they could do nothing because people were all free to take photographs in public places. But I must say that the people who were the targets of all this shooting were all very scared. I hope that Mr TAM Yiu-chung, as the Chairman of the DAB, can deal with this problem later on. We have reported to the police and written to the Registration and Electoral Office to demand regulation of such behaviour. The acts of chasing youngsters and women and taking photographs of them at close quarters will certainly create fear in them. Let us see how the Government is going to handle this problem.

President, when I was interviewed by the mass media on this District Councils Election, I did declare my capitulation publicly. Throughout my long years of involvement in elections, I have witnessed how the DAB, the entire leftist camp, has been continuously upgrading their electioneering. They have progressed by leaps and bounds. Nowadays, the democratic camp in Hong Kong face not only the DAB but also the entire State machinery. There are just several million people in Hong Kong. Maybe, some 60% of the 7 million people are in support of the democratic camp, but in actual numbers, there are only some 4 million people. This is far from being strong enough to oppose the Central People's Government backed by 1.3 billion people. The power unleashed by the entire Central People's Government in Hong Kong and the influence it exerts are far stronger than any power that can be unleashed by Falun Gong, any types of Qi Gong and Shen Gong.

With the manpower and resources we have ..... The large corporations and plutocrats in Hong Kong will never support the democratic camp, so the "royalist" parties, especially the DAB, enjoy all the advantage in terms of the manpower, resources, planning, strategy and organization required for electioneering. Even the Liberal Party does not compare with the DAB in any way. In terms of organizational development, the Liberal Party ..... When I heard Howard YOUNG talk about their organization of district work just now, I frankly did not know how to react. He wondered whether anything apart from blood pressure measurement and gift offering could still be done. Mr TAM Yiu-chung must really teach the Liberal Party how to conduct its district work. We must pity the Liberal Party if it really thinks that district work is all about blood pressure measurement and free haircuts. By the way, I must thank the Liberal Party when it comes to this issue because several years ago, the Liberal

Party handed out some gifts in the vicinity of Fuk Loi Estate. I told many elderly ladies of this, and after they had got a gift, they thanked me. I am really very grateful to the Liberal Party for handing out gifts to residents.

President, concerning this election, we need to analyse the problems at two levels. The first one is about the problem that has emerged in Hong Kong, one which many Members, both from the leftist camp and the democratic camp, have mentioned. The simplest solution to this problem is the introduction of a cooling-off period, which has also been proposed by some Members. If the DAB really disapproves of confrontation, thinking that no violence should be tolerated, it should agree that a cooling-off period should be the best solution. A cooling-off period is found all over the world, in Taiwan, the United States and Canada. Hong Kong is the only exception. It is obvious that the absence of a cooling-off period will give an absolute advantage to the leftist camp, which possesses huge mobilization ability, because they can arrange for transport for electors. Admittedly, even during the cooling-off period, transport can still be arranged as long as they do not wear any electioneering uniform and identify themselves as members of the electioneering team. In any case, they can continue to arrange for transport and make telephone calls. But since it will no longer be possible to display any huge array of manpower and resources, the boosting of voting support and the overall atmosphere will still be affected in some measure.

The introduction of a cooling-off period is therefore a sensible decision because the act of voting should be the manifestation of a calm and sensible decision. One must not be made to vote under the influence of various factors, nor should one do so under threat and intimidation or when lured by any material benefits. Therefore, the introduction of a cooling-off period is a decision that should be supported without any reservations, doubts and delay. Any continued delay put up by the Government will only show that it has ulterior political motives and is determined to favour certain political parties, especially pro-government ones. At a time when this practice is already widely adopted worldwide, the Hong Kong Government's continued rejection of the idea will only testify that it is out of touch with the times.

President, there is another prohibition, but we must give careful thoughts to it before making any decision. We were in Taiwan to observe the election there sometime ago. Actually, in the previous two elections, electioneering by overseas people was already prohibited. Two years ago, when I talked with

MA Ying-jeou and volunteered to help him with electioneering in Taiwan, he refused and even asked me to help the Democratic Progressive Party instead. He explained that it was against the electoral laws for anyone, especially non-Taiwan residents, to return to Taiwan to participate in electioneering. Such contravention, he said, might affect the candidates' chances of winning.

The election process in Hong Kong is really horrible. I believe many electors in Hong Kong have had the experience of receiving many telephone calls from mainland officials or people. Some friends of mine who do business in the Mainland were even told explicitly or directly or indirectly by local party secretaries or deputy party secretaries as to how they should vote. Such acts should be prohibited. Like Taiwan, Hong Kong should confine its elections to local people. All outsiders, especially government officials from outside Hong Kong, should not interfere with elections in Hong Kong.

Elections in Hong Kong are simply not fair and impartial. This has been the case for many years and has become increasingly so recently, the reason being that the influence of the Central Authorities have turned stronger and stronger. I have once remarked that in 10 years' time, the DAB will win all geographical constituency elections. I hope that my prophecy will not come true. I hope that Hong Kong people can all wake up and seek changes. Thank you, President.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

**DR FERNANDO CHEUNG** (in Cantonese): As a matter of course, elections must be fair. But in the context of Hong Kong, it is not so easy to have fair elections. As we can notice, we in the pan-democratic camp are labelled by the authorities as the opposition. We must face the ruling ..... I mean, the entire SAR Government or the ruling party. Since there is no ruling party in Hong Kong, what we face is the pro-establishment camp. But what stands behind the pro-establishment camp is in fact the entire State machinery. In terms of resources, we are of course no match ..... the disparity in resources is simply much too great. In the absence of an environment underpinned by fairness, openness and transparency, even though we run in elections, we will be no match for them, standing no chances of winning at all.

It is horrifying to note that in the District Councils Election which has just been conducted, there was such a huge disparity between both sides in terms of manpower and resources. As I have said, it was just like a giant towering over a baby. Some may wonder why there should still be such an impression despite the relevant regulations set out in the electoral laws. One reason is about exit polls.

On 12 December last year, the *Ming Pao* carried a news story in which it was said that exit polls had become a powerful weapon in elections. There are in fact some provisions in our electoral legislation which govern the conduct of exit polls, and one of them is that the findings of exit polls must not be disclosed publicly before the announcement of election results. But after the completion of the election concerned, how many organizations will disclose their findings publicly? Very few indeed. Basically, only the Public Opinion Programme of the University of Hong Kong will do so.

The approach adopted by Dr Robert CHUNG of the University of Hong Kong is very clear. Anyone who wishes to commission him to conduct an opinion poll must, first, give him the initiative, meaning that he must be the one to determine the design of the questionnaire. Second, all findings must be disclosed publicly. I think this is a transparent and fair approach, one which shows respect for the initiative he should enjoy as an academic and organization that conducts the poll. However, as far as we can observe, the reality is that very few opinion polls of this nature are conducted by an academic institution like the Public Opinion Programme of the University of Hong Kong. And, the organizations concerned also bear all sorts of names. As mentioned by Ms Audrey EU just now, some of these organizations are the Hong Kong Survey and Research Centre on Hong Kong Island, the Hong Kong Election Strategy and Research Centre in the Southern District, the Hong Kong Development Research Institute in Kowloon, the Hong Kong Community Research Centre in New Territories East, the Social Issues Survey Association in New Territories West and the Community Research Association in Yuen Long and the Outlying Islands. These organizations have conducted many exit polls. But what have they done after the elections concerned? Obviously, they reported the situation of the election virtually every single minute and second, so that the information could be used to map out the deployment of resources and the manipulation of different strategies. In this way, knowing where they should step up canvassing and where they would surely win, they could deploy resources to those constituencies in urgent need. Is this fair?

What is most unfair is that such exit polls are not counted as items of election expenses. The scale of such polls was enormous. According to media reports, Dr Robert CHUNG once pointed out in *The Tipping Point* that his team consisted of some 20 people only. But those of other organizations comprised 2 000 or so people in total, which was 80 times the strength of Dr Robert CHUNG's team. On Hong Kong Island, Dr Robert CHUNG's team conducted exit polls at 27 polling stations only. But the other side conducted polls at 320 to 330 polling stations. There was such a huge difference in scale, and the information was exclusive to the other side. Is this not downright unfairness?

This is much more than unfairness. As a matter of fact, we must plug the loopholes in the legislation. We have also noticed the emergence of a most unhealthy election culture recently. It was reported that on the polling day, many tourist coaches were seen, and that they organized many one-day polling-cum-sightseeing tours. They naturally did not use such a name. They just called these tours sightseeing tours. Reporters were informed that these sightseeing tours were all organized on the polling day, charging very low fees. Seafood and many interesting programmes were offered. There was invariably a special item — visits to polling stations. Since all tour members were their acquaintances, the organizers would immediately know who were in their tour groups once after registration and roll calls. In this way, they could be sure that reporters could not get in. This could facilitate vote counting because they could clearly know who went to which polling stations to cast how many votes. They were very scientific in a way. All these one-day special polling-cum-sightseeing tours can achieve very great effects. According to some reports, some reporters even saw that people were transported by coaches to places near polling stations and then left in coaches again after polling. Should all this be counted as election expenses? Is such a practice a contravention of the electoral legislation?

Some reports even disclosed that a certain elderly person had told a man that he wanted to leave before polling due to sickness and enquired whether he would still get the money. The reporter concerned heard the conversation. As for whether there is any proof, I must frankly say that it is very difficult to eradicate such practices. But such an unfair election, such as a battle between a giant and a baby, was improper and unfair. I do not think that this should be the election culture of Hong Kong. We must also mention that Miss TAM Heung-man and Mr Alan LEONG were besieged by dozens of people. This was almost unlawful detention, something that must not be tolerated.

Therefore, President, I hope that the authorities can expeditiously review the electoral legislation concerned and plug the loophole relating to exit polls. Thank you, President.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

**MR ALBERT CHENG** (in Cantonese): The motion today is about fair elections. Ensuring the conduct of fair elections is a cardinal principle, the importance of which is incontestable. As Members who run in elections, we of course wish to see a level playing field and a fair and impartial electoral system. And, most importantly, the Government's enforcement of electoral legislation must be vigorous and impartial. I do not think that anyone will object to all this.

I am an experienced media worker. Members have talked about the positions of the mass media. Since I have decided not to run in any more elections, I can comment on this motion topic as an impartial and independent individual.

I think any directly elected Members would not have managed to get a seat in this Council without having been cursed, chased after and besieged in the streets. Speaking of violence, I must say that I was one of the victims. During the election, I was once besieged in Sau Mau Ping, and I even had to make a report in the police station. I think all these are nothing new and bound to happen in any election. I am of course not saying that I condone violence in elections. Rather, I must stress that this motion debate today is aimed precisely at requesting the Government to take some actions and not to connive at any violence. The idea is that all such acts are unfair and will adversely affect the fairness and impartiality of elections.

Regarding the positions of the mass media, since the electronic media are regulated businesses, they must be fair and impartial, whether under the electoral legislation or the Broadcasting Authority Ordinance, and they must therefore give equal time to all election candidates. Such is the requirement of the Broadcasting Authority Ordinance. Frankly speaking, I will be lying if I claim that I did not have any personal positions when working for the radio station. I also had my position in the various elections. I of course will not admit any



contraventions of the laws on my part. I will never admit so. But if anyone asks me whether I had any positions, I will reply to them in the affirmative.

The printed media, on the other hand, are not so complicated in nature. Practically everyone can be a newspaper publisher. This explains why no one has ever challenged any printed media for having their positions during any elections (including those in mature Western democracies). Just now, many Members criticized a certain newspaper for biasing in favour some particular candidates. But I suppose this is something we must accept because this is precisely a manifestation of our right to freedom of speech. Newspaper publishers can all have their personal positions. This is the case in the United States, where there are both Republican newspapers and Democratic newspapers. And, much in the same way, there are both Labour newspapers and Conservative newspapers in the United Kingdom. This is unavoidable. We simply should not be unduly surprised.

In regard to exit polls, I must point out that in some other countries, there is actually a cooling-off period. In these countries, all electioneering activities, especially the conduct of exit polls as a means of campaigning, are already prohibited and outlawed the day before the election concerned. Our electoral legislation, however, does not contain any clear provisions on this. There is thus a point to hold this motion debate. I hope that the Government can study the experience of different countries and advanced democracies. It should study their electoral legislation and provisions on cooling-off periods. That way, it can find out more about the conditions under which exit polls are allowed and how the findings can be used. I think all these are the areas where government supervision is required.

When it comes to acts of smearing, violence and intimidation committed by this or that political party, I am convinced that electors are all very discerning. They all know how to make their choices. I heard that after I had been besieged, I got 10 000 more votes. Somewhat jokingly, I even told Peter LAM that it was a pity that he was not clever enough to simply fall prostrate. Had he done so, I told him, I would have got 10 000 more votes, in which case even Andrew TO could join this Council.

I think education is of very important. Legislative regulation is of course very important to ensuring the conduct of fair elections, but I think that apart

from this, the Government must still discharge the very significant responsibility of instilling an awareness of democracy in electors, so as to enable them to know how they should exercise their rights. In this way, there will be a level playing field for all election candidates and electors will be able to freely vote for the political parties or candidates they support. I think this is very, very important.

Another point is about whether or not the Government is biased in favour of any particular political parties. Frankly speaking, our debates in this Council have always focused on just one single issue — the lack of democracy in Hong Kong. This means that the Government actually lacks credibility. But if we look at some mature democracies in the world, we will notice that all ruling parties will exercise affinity differentiation. Those close to the ruling party will invariably be given benefits. There is one simple example. A ruling party may call a general election at any time it likes, or delineate constituencies in any way it wants. In Canada, I also helped in some electioneering work. I observed that they might at any time delineate a constituency in such a way that a certain candidate would surely lose 10 000 votes and thus lose the election. All is so simple and something like this is unavoidable.

As Members in the democratic camp ..... Many Members understandably do not want to be labelled as the opposition, but they must realize that the road to democracy is indeed very long and difficult. As Members are also aware, we must maintain the struggle, for it is not easy to tread this path. Some may envy those pro-establishment candidates who can meet with Bureau Directors and receive their support in canvassing. Well, in other countries, people can all the time switch to the opposite camp. Here in this Chamber, there is no physical division of political camps. Any Member may sit beside Anson CHAN. But in this connection, I must say that Anson CHAN has chosen the wrong camp. She should have joined the other camp.

We have ourselves chosen our present path. We have chosen the path of anti-establishment and democracy. We must realize that this path is very difficult, and we should have no grudges. SIN Chung-kai said that he wanted to admit defeat. Well, then, he should just go ahead instead of talking about any benefits. But the point is that we are all standing on moral high ground in our struggle for electors' support. Suppose the Government decides to help us ..... Do we really think we can win if Stephen LAM engages in canvassing for us? Suppose I am still going to run in the next election this year and Stephen LAM volunteers to help me, I will certainly turn down his offer because instead of

getting more votes, I will lose huge numbers of votes as a result of his help. So, I do not want him to do me any disservice. He must stay away from me, for I do not want to lose large numbers of votes.

I think we all have different positions. I am not going to run in the coming election. I can make a formal announcement here. President, the democratic camp has been doing some co-ordination recently, but they seem to have ignored me completely, and their co-ordination does not cover me. They should at least seek my views. They should at least pretend to show some respect for me. They say that they know that I am not running in the coming election. In that case, I had better announce my decision of not running in the election.

I really wish to advise those Members who want to run for re-election that the road to democracy is long and difficult. They must struggle very hard for every single vote. But, of course, no blood must be drawn.

I so submit.

**MRS SELINA CHOW** (in Cantonese): President, I believe that when both Hong Kong people in general and outsiders observing the elections in Hong Kong are asked to rate the cleanliness and impartiality of Hong Kong elections, they will not give a very low rating. Basically, we have a mechanism and some guidelines for the various political parties and groupings to lodge complaints in case they feel that there is any unfairness. I can say that in the case of the Liberal Party, while it complained against the DAB, it also complained against the Democratic Party. Any candidate who has lost in an election will feel aggrieved, and he will certainly complain about some sort of unfairness to him in the election. Some of these complaints may be substantiated while others may not be too justified. But I believe that there are bound to be complaints. The point is that while some complaints are justified, others are not. They are more imagined than real.

However, in some cases, the complaint may be perfectly justified. On example is what happened on 12 November last year. At that time, Philip WONG, a member of the Liberal Party, ran in the election. One member of his electioneering team was KO Keung-wah, the Resident Representative of Shung Ching San Tsuen, who is a very decent man, a very nice gentleman. But he was

ambushed, stabbed six times and had to be hospitalized. As a result, he could not go to the polling station to campaign for Peter WONG. The news of the attack worried me a lot, so I hastened to see him in the hospital. The injuries were not fatal, but he was already totally dispirited and could not help Peter WONG in his election campaign. Philip WONG's subsequent defeat in the election might not be caused by the attack, but as also pointed out by some Members, electors might have been scared as a result. We do have some dissatisfaction with this case because, as Members are aware, prior to the election, some magazines already gave extensive coverage to various rumours about the involvement of triads. Therefore, the police should have taken some precautions. But why didn't they do so? In the end, the tragedy took place. I think — this is just my personal feeling — this might have affected the outcome of the election to a greater or lesser extent. Certainly, one must not thus accuse the Government of trying to make the election unfair, but objectively speaking, there was indeed unfairness.

Like all Members, the Liberal Party is determined to uphold the fairness, openness and impartiality of all elections. We also hope that elections can be conducted normally and cleanly in all respects. In this regard, we do also think that it is necessary to conduct a review after every election because there is bound to be room for improvement.

When it comes to Mr TAM Yiu-chung's amendment, we will render our support because we do not quite agree to Mr Albert CHENG's remarks just now. Our mass media do indeed enjoy freedom of speech, but in times of elections, they must bear in mind the influence they can exert. This explains why there are rules governing the mass media now, such as the rule of "equal time". How could anyone still distribute newspaper extras on the critical situation of a certain candidate when all the findings of exit polls indicated that the candidate was in the lead (I learnt about this only afterwards)? Such acts will only mislead the public. They argue that the issue of exit polls must be handled cautiously, so how can they say that it was alright to distribute newspaper extras without any restrictions? I think that the Government should conduct an investigation into the case. I am not advocating any restriction of the freedom of speech. Rather, I am just saying that it is very important to separate propaganda and news reporting in the course of any elections. Mr Albert CHENG was of course right in pointing out that the mass media and the press all have their respective political positions, and Members are also aware of this. The public are clearly aware of this, too, but such acts must still be banned on polling day.

Some complaints are about arrangements at polling stations. As I have told the Secretary, access to a certain polling station is hindered by a long flight of steps, and it is very difficult for elderly people to go to that polling station. This problem must be rectified, and overall arrangements should be improved. We have also received some complaints about inconsistent enforcement by polling staff. To be fair, I must point out that such complaints are not new, as they may be received after every election. Since there are so many polling stations, inconsistent enforcement is bound to occur.

The point is that suppose inconsistency really occurs, can an appeal be lodged with a more senior official, so as to ensure consistency? I sometimes do think that officials will deliberately favour any particular political party. The point is that the enforcement of rules may vary from one official to another. Or, some officials may be a bit nervous. I have heard that some officials are not so afraid of the pro-establishment or "royalist" parties. Rather, they are afraid of the opposition parties, largely because they are more vociferous. Or, they are afraid because some of the opposition camp candidates are serving Members and are likely to be elected. They thus fear that if they offend these candidates, they will be in trouble afterwards. I think all these issues should require a review and there should be room for improvement.

Basically, we are of the view that it is most important to look at Hong Kong elections in context (Emily will certainly criticize me again) and check whether they are in general clean. In regard to Dr Fernando CHEUNG's remarks just now, I think it may be necessary and alright to conduct a review. But I also think that his other remarks, remarks about what this and that political party did to electors, were a bit far-fetched. I also think that it is not too appropriate to conduct the exit polls described. Thank you, President.

**MR LAU KONG-WAH** (in Cantonese): President, any form of violence should not be condoned or encouraged in elections. I believe this is the intention shared by everyone. Of course, while we do not encourage such things, we do not need to exaggerate some individual cases or allow them to become instruments in launching attacks of a political nature or slamming other political parties. I do not think this should be done. However, it is unfortunate that the topic of the motion debate today rests at this level again.

With respect to the cases mentioned by Members earlier, as Mr Albert CHENG has said, maybe he has seen a lot of these things and so he thinks they are most common. However, if exaggerations are made, then I think that it would not be that desirable. An example is the incident mentioned by Mrs Anson CHAN earlier. I remember whenever we take part in any public election forum, especially those held on the streets or in the parks, the people at the back are always shouting and very noisy. And there may be times when these people use expletives or the language of the common people. But to brand such acts as those of triads is somewhat over board, in my view. If these are acts of triads, then with respect to the case mentioned by Mr Jasper TSANG of being slapped in the face or some of our volunteers being pushed onto the floor by others in Chung On Estate, should these be regarded as acts by the henchmen of a triad society? I do not think things should go to such an extreme.

Actually, during the by-election, not only had Mrs CHAN that kind of experience but, as I can see, Mrs IP was blocked in front of the camera at times and she was not allowed to speak. These made people see that such things may appear in the electioneering teams of both candidates because the situation was so tense and heated. Our responsibility is to urge the Government to address such things squarely, and we also hope that we can act as an example by urging our own electioneering teams to stay calm. However, some cases are backed up by hard facts, including each one of the cases mentioned by Mr TAM Yiu-chung earlier. Mr LEE Wing-tat said that that incident of people pushing might only be an isolated incident. Actually, it is not. That was a case in which the entire process was videotaped. What we have done is just capturing one photograph as download. If the Democratic Party wishes to view the entire process recorded by the video camera, fine, we can provide the footage to them. But we do not want to accuse anyone, we just hope that the police will address that incident and investigate it.

On the issue of the *Apple Daily*, many Members may have some sort of misunderstanding earlier on. They said that because of the freedom of speech, all media may carry any kind of report. Such Members include Mr Albert CHENG. We understand that point perfectly. However, what the *Apple Daily* did on this occasion can be divided into a number of steps. First, it put up advertisements in every MTR station in Hong Kong with the slogan to this effect: "I have a date with conscience". Second, it aired advertisements on the Cable TV and on the business channel of the Now TV and the same slogan was used.

Third, it wrote an article. About that article, Mr TAM Yiu-chung did not read out the entire article earlier and the heading was to this effect: "Conscience has a date with you." What was done is to flatter one candidate and crush the other. Fourth, printing and distributing extras and financed such acts with millions dollars. Of course, Mrs CHAN said that she did not know about such things and she had no idea about them. I believe that was so. But the question is: If someone paid some money indirectly or some members of her electioneering team paid the money and if the money was not counted as part of her election expenses, then the situation is very grave indeed. Elections in Hong Kong used to be very clean and free from corruption, but with the appearance of such things, is it fair and impartial anymore? Why has Mrs Anson CHAN not talked about this aspect earlier on?

As a matter of fact, on top of every Member of this Council there is a blindfolded goddess who wields a sword in one hand and holds a balance in the other. We cannot just have the goddess holding the sword but not the balance. We cannot talk about one thing only while not mentioning the other. About all the things which we have said today, if the Government and the police have solid proof, then they must handle the cases and they cannot dismiss such things as attacks between parties. This is my personal view. So I agree entirely with what Mr Albert HO has said, that this is something which transcends party differences and this is also something to which we should lend our support. I hope Ms Audrey EU can also support our amendment. If she fails to do so, then she is lending her support to some big syndicates which may be the *Apple Daily* today, but other syndicates tomorrow, which play a part in the electioneering activities. This is something which we do not want to see. So we hope that she can support our amendment.

On the exit polls, actually I agree that an attempt should be made to find out the facts. I recall in the Legislative Council Election in 2004, Mr Martin LEE claimed that he was in critical circumstances and he said that according to the exit polls, he might not be elected. It turned out that it was not true. Had there been no exit polls, how could he have known? And if he did not know about this, was his claim of being in critical circumstances meant to deceive the public? Hence, the Government can carry out an investigation into this.

With respect to these clashes during the elections, I uphold a principle. I have been in the elections for 20 years, I think that these incidents do not affect

the election results so much. Therefore, usually I would tell my electioneering team that if such things happen, they must remain calm and must never add oil to the fire. The cases should be handled by the police. This is what we would do. We must never create more hostilities. With respect to this, I think this is a responsibility which every leader of every political party should bear. For they must not just ask the Government or their opponents to do something, they must ask what they themselves should do. This is something I will certainly do in elections.

We hope very much that elections in future can be more mature and better in quality. If this is something that should be done, then let us start to do it together. Thank you, President.

**PRESIDENT** (in Cantonese): Does any Member wish to speak?

**MR FRED LI** (in Cantonese): President, I have some responses to make after listening to the speech given by Mr LAU Kong-wah. I have taken part in elections for 22 years. Ever since 1985, I have taken part in elections of the District Council, Urban Council, the former Legislative Council, and the Legislative Council, in such manners as the proportional representation system, the single-seat, single-vote system and also the double-seat, double-vote system, too. I can say that elections are becoming more and more tilted towards one side and the Government is condoning such things.

I would focus my speech on the District Councils Election on this occasion. In the Kowloon East constituency with which I am most familiar, we lodged complaints to the Presiding Officers in certain polling stations. But what they could do at most was to transfer those staff of the polling stations whom we accused of assisting the rival candidates to elsewhere and that was all they could do. The matter was considered settled when these people had been told to leave the polling stations concerned. I have written to the Director of Bureau asking what kind of people would be the staff of the polling stations on this occasion and whether or not they are really civil servants. The reply I got is that they are basically all employees of the Government, some are government contract staff and they cannot be formally regarded as civil servants. But do some of these people have some kind of political inclinations? I hope the Director of Bureau can handle the matter carefully, for whenever a large number of staff is



employed for some exercise, it cannot be ruled out that there are some people hired to be responsible for counting votes as part of their extra duties or keeping order in the polling stations, and so on, who will have some political inclinations. They may support the Democratic Party or the DAB. It is unfortunate that those about whom we complained are not supporters of the Democratic Party. We have made a complaint afterwards but a complaint lodged on that day cannot hopefully be able to solve the problem. It is because the situation was very confused and many incidents did happen.

There are a few incidents that I wish to share with Members. First, the media, the pro-establishment group and the pro-China camp have attacked the *Apple Daily* with respect to Mrs CHAN's running in the election on that occasion. It is right and I believe so, that among all the newspapers, there is only the *Apple Daily* that stands out in its unwavering support for the democratic camp and the mass rallies. This is clear enough. President, this is the only newspaper that is doing such things among so many newspapers in the print media. The next election for the Legislative Council is going to be held very soon and we can just imagine how many in the media will arrange interviews with the DAB candidates and how many in the media will arrange interviews with candidates from the democratic camp? It may be that media reports on candidates from these two camps are at a ratio of seven to three or eight to two. This is basically the case. We must be sensible and we must be fair about this. There are at least five or six newspapers totally on the side of the DAB, conducting propaganda for the pro-China camp. They write about the good deeds and achievements of these candidates while they write about the bad things and the ignoble past of candidates from the opposition camp. This is what we see when we read the newspapers.

I wrote personally to Justice WOO at that time, complaining about a newspaper favouring a candidate from the DAB and my complaint was found justified. Justice WOO agreed with my view and asked why that newspaper had only reported things about that particular candidate but nothing about the opponents. Then a warning was issued to that newspaper. But what is the use of warnings? That newspaper still continued to do that and even though my complaint was substantiated, things still remained the same as before. That newspaper will not report anything at all about candidates from the democratic camp. We all know that these newspapers all target at candidates from the democratic camp and the pan-democratic camp. Is that fair at all? What can

we say when things have remained unfair for so long? The Government does not do anything. I do not want the Government to do anything either, unless some very unfair incidents have really happened. Then the Government should take action after we have lodged complaints.

With respect to the polling stations, however, I think the Director of Bureau must never expect to shirk his responsibilities. First, the neutrality of the staff is more and more open to doubt. There are some problems with respect to some of them. Second, the so-called no canvassing zone before the polling stations which is marked in yellow lines. I hope the Director of Bureau can make some visits in plain clothes and then he will find that there are many hidden and secret members of the electioneering teams. These hidden members are mostly people not from the democratic camp, for we simply do not have so many people. We do not have so many people walking back and forth outside the polling stations all through the 15-hour voting period. I have been to some 10 to 20 polling stations myself and I can see many of these hidden members of the electioneering teams. They are not allowed to wear any armbands or display any numbers, but they would approach everyone going there to vote with a friendly pat on the shoulder and some would even assist the old folks going into the polling stations. What in fact are these people? Most of them are supporters of the DAB. Actually, many of them are people from the residents' associations and Mutual Aid Committees (MACs). The voting inclination of many MACs is clear enough, for it hinges on the issue of resources. The DAB has got abundant resources and so it has more opportunities of collaboration with these MACs and it is easier for them to forge such ties with them. They would organize some mainland tours free of charge. There are many other arrangements as well, and the mainland authorities even arrange for some leaders to meet with the chairmen of these MACs. All in all, they are well pampered and such preferential treatment and hospitality are generously extended to them. This is something we can never hope to do.

As things develop in this way, elections will become more and more one-sided. I hope the Director of Bureau can act fairly with respect to the problems I have witnessed and in the imminent election, all such hidden or secret people should be removed. And the exit polls should be left to the academic institutions and they must never be conducted by these so-called research institutes, for they are really the mouthpieces of some political groups. Please look carefully with discerning eyes and stop deceiving ourselves. I so submit.

**PRESIDENT** (in Cantonese): Does any Member wish to speak?

**MS EMILY LAU** (in Cantonese): President, the topic of the motion debate sponsored by Ms Audrey EU is "Ensuring the conduct of fair elections". I can only say that Ms Audrey EU is kind and she has a good intention.

Actually, on the question of fairness, it can be examined from a number of perspectives. Earlier on, a few Honourable colleagues have said that in the motion debate held at the end of 2006, I urged the Central Government not to meddle with the affairs of Hong Kong. The Xinhua News Agency before 1997 and the Liaison Office of the Central People's Government in Hong Kong have intervened in all sorts of election matters in Hong Kong, be they large or small, and even co-ordination is undertaken. It is simply outrageous. And how can there be any fairness and justice under these circumstances?

Incidents that happened on that day belonged to a lower level. Many Honourable colleagues have pointed out earlier that incidents of violence have happened. Not many people from The Frontier have stood in the elections and so we do not have so much first-hand experience in that. However, from what they have said or from what was aired on the TV on that day, we can see that Miss TAM Heung-man and Mr Alan LEONG were besieged by people. That made us furious. But if Honourable colleagues want to see the Director of Bureau handle such matters fairly, it would be easier to borrow a comb from a monk. How can this government or the Donald TSANG clique be fair at all? Had they been fair, there would not have been any affinity differentiation or the many instances of unfairness that have happened. Last week, I asked a question about the exit polls and the way civil servants handled the situation in the polling stations. Mr Fred LI has just made the point and so have the people from The Frontier, that complaints were lodged about many aspects of the election and photographs were taken as well, but so what? They did not care the least.

So from my own perspective, I wish the authorities to take stringent measures to handle these matters, but as I have said this, I know that I am actually fooling myself as well as others. Because if we think the authorities will listen, we are actually misleading the public. Many Honourable colleagues are therefore right when they say that if you want to be in the opposition camp, you must be prepared to be persecuted and oppressed. If you feel like it, you

can walk over to the other side and there you will find favours and riches waiting for you. You can expect to have cosy homes and sexy cars and all kinds of good things in life. But if you choose the other side, you will have to bear the consequences.

However, since the motion is laid on the table for debate, then I will talk about it. As some Directors of Bureau have said, there is no need to care about them, all these are devoid of any legal effect and let them say whatever they like. President, you have heard me talk about this many times, but at times it is better to voice things out than not. Therefore, many people today, be they from the opposition camp, the backbenchers, the royalists, and so on, they have all cited many examples. If the authorities are still blind to these, then when elections are held a few months later, and should incidents happen again, the reputation of the authorities will surely hit the rock bottom and it will be dumped into the dustbin.

Mrs Selina CHOW talked about earlier the experience they had in Yuen Long. She pointed out that the incident had something to do with the triads according to the newspapers. Some people say that that is not an act of triads while some say it is. If someone in the incident was really chopped six times, then it is very likely that it is an act of the triads. Yesterday the newspaper reported again that in the District Councils election in Yuen Long and in many rural committees, the attitude displayed by the Rural Committee is that it does not care a dime. This is to prevent the emergence of any row with the DAB. And so it abstained and more than 10 abstentions were cast. The *Sing Tao Daily* — it is a royalist newspaper — asked why the Committee was doing that. The reply given was that it wanted to make the Liaison Office of the Central People's Government in Hong Kong condemn the DAB. It can therefore be seen that there were people stirring trouble on the election day. After the election was over, when it came to electing the chairmen of various committees, the Liaison Office had to be called in to intervene. I do not know if the Liaison Office has ever condemned the DAB for making relations in Yuen Long so bad, for this may affect the election in September.

So President, do you not think that the situation is a terrible mess? Previously and at a certain stage, or just for some very transient moments, or when I do not see things so clearly, I would say that the electoral arrangements in Hong Kong are fair, but what can I say so now?

Nothing has been done to enquire about these polls or whether permission should be given to them to make any information public or use such information. As Ms Audrey EU pointed out earlier, these polls are conducted in a most thorough manner like carpet bombing and they will never duplicate. All the 500 polling stations were sampled and that is exactly the number of all polling stations.

How can the pan-democratic camp be expected to have so many resources to carry out such polls? On top of that, it should not be done this way. Why? President, do you still remember how the Secretary responded to our question last week? He said that even though the authorities did not impose any requirements on them, the publication of poll results or forecasts in voting intention during the voting period may serve to affect the voting intention and the election results. As such, it has become not so fair and impartial.

Even the Secretary made that remark. President, but does he care or not? Of course, he does not. Members asked the Secretary questions in the Chamber or outside the Chamber, and he said that there was nothing more that could be done and so let those people conduct such polls. So those who can afford the money can do more polls since such expenses are not counted as election expenses.

This situation is very bad. Ms Audrey EU asked whether or not the relevant laws and guidelines could be amended. It depends on the timing. We have asked the Secretariat to help us find out how things operate in overseas countries that are fair, just and civilized.

As for the printing of extra editions of newspapers, President, I do not agree to that. The media may have their own stand. It is all right if some people think that they want to be members of the opposition camp, or if the media like to be close to certain people. It is also fine if they like to curry gains from certain people or if they like to smear others. If the people concerned have the means, they may file a case with the Court to accuse the media concerned. There is no problem about it. On the polling day, there are people who will say that their campaign is facing a critical moment and so they may hand out leaflets (and leaflets are counted as part of the election expenses). I cannot see anything wrong with this. However, if the media are allowed to go on doing these, in September we may see a situation where newspapers all issue

extras. But then, the effect of extras will thus be offset, for everyone is churning out extras. What harm will this do? The reputation of the election itself.

With respect to all these scenarios, I do not know if the Secretary has got any preparation at hand. Or he may be quite proud of them. Now the seats of the royalists are getting larger and larger in number. The ideal thing is that in September only 10 seats are left to all the other people. Just wait and see. Those of us who want to fight will keep on fighting. Since the motion is here, nothing can be done about it and so we have to discuss it. If the authorities still want to sweep these problems under the carpet, I think the authorities deserve to be condemned by the people of Hong Kong.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): If not, I will now call upon Ms Audrey EU to speak on Mr TAM Yiu-chung's amendment. You may speak up to five minutes.

**MS AUDREY EU** (in Cantonese): President, the original motion moved by me mainly raises four points: first, incidents of violence in elections; second, the use of exit poll results; third, the employment of electoral staff and fourth, the provision of community services. I have heard many Honourable colleagues speak and in fact, they also agreed that controversies would arise in these several areas.

The amendment moved by Mr TAM Yiu-chung in fact targets the *Apple Daily*. President, I will first comment on his accusations of the *Apple Daily* or the Next Media (Limited), then I will explain how we would vote. Mr LAU Kong-wah and Mr TAM Yiu-chung both said that the *Apple Daily* had adopted a four-step approach. First, it placed advertisements in MTR stations, it then took out advertisements on NOW TV and some radio stations, and after that, it published some ad hoc election news and wrote some articles.

President, I also have the advertisement mentioned by them and it reads, "I have an appointment with conscience". However, I believe the DAB has not looked into this matter because in fact, this advertisement was published in August last year, well before Mrs Anson CHAN declared her intention to stand in the election and before any slogan was coined. Of course, this advertisement was still running in December, but it did not come into being because Mrs Anson CHAN had come up with such a slogan.

Moreover, when it comes to slogans, Members all remember that when Donald TSANG stood in the election of the Chief Executive, he also came up with a slogan which says, "I will get the job done". After that, one could find slogans that read like "I will get the ..... done" everywhere in town. I once found that the billboard advertisement of a drama troupe made up of young people read, "I will get the show done". The name of a foreign film known as "Wedding Daze" was translated as "我會結好呢次婚" (I will get the wedding done). An advertisement of the Octopus Cards Limited may read, "I will get the Octopus Card done"; the Hong Kong Observatory could say, "I will get the job of tracking this typhoon done.", whereas Qi Gong masters could say, "I will get the power cultivation done". Such slogans can be found everywhere. If we pinpoint the slogans and prohibit people from copying or parodying them, I do not know what people should do. Where does the loophole lie and how should changes be made? Moreover, should we not examine whether a slogan had appeared earlier than the one a candidate came up with? I think they have to investigate thoroughly before they can identify the loophole and the area to which they want to make improvements.

The second point targeted by him is ad hoc election news. President, first, I also wish to state the position of the Civic Party. When the Civic Party speaks, it never criticizes any member of the mass media for supporting a certain political party or grouping or for not doing so. We would never take the position of considering any action acceptable as long as it supports the pro-democracy camp or considering all actions that do not support the pro-democracy camp wrong. It is not our intention to interfere with the freedom of the press and the freedom of speech either. The main aim in moving this motion today is to ensure a fair system and this system should be applied to all people. Moreover, it is also necessary to enforce the law and law enforcement should also apply to all people. We have to make this very clear.

In fact, it is commonly known that various members of the mass media have different stances. All of us understand this and we cannot ask the authorities to ..... I am not suggesting that legislation should be enacted to control the mass media by allowing them to say certain things but not some other things either. After listening to the comments made by Members of the DAB carefully, I could not actually hear them spell out any suggestion on the measures to deal with the issue of publishing ad hoc election news. When Mr TAM Yiu-chung spoke, one point raised by him was that we should probably allow all members of the mass media to publish ad hoc election news on the polling day. I think that it is worthwhile to discuss this. If we say that the publication of ad hoc election news is acceptable, should all people be allowed to do so? Should this be spelt out clearly? Or should all people be prohibited from publishing ad hoc election news? If they are prohibited from doing so, what would be done?

Regarding the leaflets pleading emergency in electioneering work, I think there is one very interesting point in Mrs Selina CHOW's remark. She said that the exit polls showed clearly that someone was leading by a wide margin, so why was an emergency still declared? I wonder if this is called "a person would reveal the truth if a ghost slaps the back of his head". Because there is no evidence to prove that the "Next Media" knew the results of the exit polls. Our position is that if there is any area arousing controversy, a review should be conducted.

We will support Mr TAM Yiu-chung's amendment, however, it does not mean we agree that any member of the mass media can engage in any irregularity. Our position on the entire motion is that we should review what sort of system can be considered fair and applicable to everyone. Based on such a position, President, we will support Mr TAM Yiu-chung's amendment.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Madam President, I would like to thank Members for their valuable opinions. In less than one month at the end of 2007, two large-scale elections were conducted. The turnout rate in the District Councils Election on 18 November last year was 38.8%, with a total of 1.14 million electors casting votes. The elector turnout was a record high in the history of District Council elections. In the Legislative Council Hong Kong Island Geographical Constituency By-election on 2 December last year, the turnout rate was over



52%, which has shown the growing civic awareness of Hong Kong people. These two elections were basically conducted in an orderly manner in accordance with the law, and promoted on the basis of the fair, open and impartial electoral model of Hong Kong.

One of the focuses of the motion today is to ensure the conduct of a fair election in accordance with the law, as well as propose a review of the existing laws and guidelines and the implementation of proper measures to improve the regulation of various conduct related to elections by the SAR Government. In fact, before every large-scale election such as the District Councils Election or the Legislative Council election, reviews of the relevant laws and guidelines will be conducted by the SAR Government and the Electoral Affairs Commission (EAC).

In preparation for the District Councils Election in 2007, the District Councils Ordinance and related regulations were amended. On the one hand, new arrangements such as the printing of the supporting organization and the photo of the candidate on the ballot paper were introduced, and the financial subsidy scheme of "\$10 a vote" was extended to the District Council elections. On the other hand, the election expense limit was raised and relevant election details updated.

Regarding the Guidelines on Election-related Activities in respect of the District Councils Elections, public consultation was conducted before the Election and the revised Guidelines were also released before the Election.

Regarding the Legislative Council Election in 2008, the amendment bill is now being examined by the Legislative Council. Moreover, Madam President, at the meeting of the Panel on Constitutional Affairs last Monday, Members' views were sought on the amendment of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation. In the coming months, public consultation on the Guidelines on Election-related Activities in respect of the Legislative Council Elections will also be conducted. Therefore, before every large-scale election, we will listen to Members' views on the relevant laws and guidelines, consult the public and conduct a review with the aim of ensuring the electoral system of Hong Kong will continue to adhere to the principle of fairness, openness, impartiality and honesty.

Members expressed their views earlier on several incidents happened during the two elections last year, I will respond to areas that I have found the most important.

First of all, regarding incidents of violence related to elections, I can issue a solemn statement to assure all of you that electoral violence will not be tolerated by the SAR Government. When such incidents happened last year, the Security Bureau and the police expressed grave concern. The Secretary for Security and the Deputy Commissioner of Police met with Members of the Legislative Council and various political parties and groupings at different times to express their concern for such incidents.

During the elections, the Government called on running candidates and their supporters to respect the long-standing good electoral culture; to exercise self-control and to avoid deliberate provocation. And appropriate manpower of the police was also deployed to go on duty at the polling stations to maintain law and order. The cases concerned are being followed up by the police. Mrs Selina CHOW particularly mentioned the case in Yuen Long. The persons involved have already been arrested by the police. And the related working procedures will be reviewed and improved on the basis of the elections conducted over this period.

Apart from our insistence on non-tolerance of any violent conduct, in terms of elections, the Elections (Corrupt and Illegal Conduct) Ordinance has been in place to target on violence and threats related to elections. Therefore, we have maintained a very insistent stance on this issue.

Mr TAM Yiu-chung particularly mentioned a number of incidents on behalf of the DAB, claiming their candidates had been challenged in various ways. I can reassure him that the law-enforcement department of the SAR Government will follow up these incidents in a stern manner. After the Yuen Long case, the Commissioner of Police made a public statement on the non-tolerance of the police of such violent incidents. And I also visited Yuen Long on 17 November, that is, one day before the election, to meet the local District Officer and Police Superintendent to understand the situation. Therefore, Mrs Anson CHAN, these incidents have been handled with extreme care and no connivance has been allowed.

Regarding the concern of Miss TAM Heung-man for her personal experience on the polling day of 18 November, as Miss TAM intends to lodge an election petition to the Court soon, it is inappropriate for us to go into the details of this incident today. However, I can reiterate a few points. The Presiding Officer took immediate action on that day and called in the police for assistance. The investigation of the EAC found there was insufficient evidence to support the blocking of electors in and out of the polling station due to the incident. And a reply was sent to Miss TAM. However, I just give an account of the situation at this stage.

Lastly, I wish to draw Members' attention to the serious crime related to elections. The sentencing guideline issued by the Court of Appeal in November 1997 provides that any convicted offence of serious crime related to elections should be sentenced to immediate imprisonment.

I would like to talk about the issue of exit polls, Members' main concern today.

Regarding exit polls and the release of information, the Guidelines on Election-related Activities (the Guidelines) have set out the relevant rules and regulations in detail. It is stipulated *inter alia* that no polls should be conducted inside the polling station, the elector's right to refuse to disclose his voting intention should be respected, and the voting intention of any electors should not be instructed or disclosed. Otherwise, it constitutes a criminal offence.

Regarding the release of exit poll results, I gave an explanation on the issue to Members last week. If the results of exit polls or the prediction of voting intention is announced during the polling period, it is possible that the voting intention of electors and the results of the election will be affected. In the Guidelines, the EAC has clearly stated to the media and relevant organizations that the results of exit polls should be announced and relevant comments be made only after the end of polling. In case of any non-compliance with the Guidelines by any organizations or individuals, a letter of warning may be issued to them by the Registration and Electoral Office. Moreover, the EAC can make a public statement to pass a severe reprimand or a reprimand on the relevant organization or individual.

Regarding the processing of applications for conduct of exit polls, every application will be treated the same by the Registration and Electoral Office

strictly in accordance with the Guidelines. During the District Councils Election in 2007, a total of 55 complaints concerning exit polls were received by the Office, which will definitely be actively followed up. And during the Legislative Council By-election in December 2007, seven complaints of this nature were received by the same Office, which will again be actively followed up in accordance with the relevant laws and the Guidelines.

A number of Members raised today the issue regarding the coverage of elections by the mass media. It is clearly stipulated in the Guidelines issued by the EAC that the mass media should extend fair and equal treatment to candidates in the same constituency. In case of any unfair and unequal treatment for these candidates by the media, the EAC can reprimand them. Dr KWOK Ka-ki particularly commented that there was a lack of fairness on the part of the media of Hong Kong nowadays. I believe the media workers will think otherwise because in general, thousands of media workers of Hong Kong have made their best effort to reflect to the public various incidents and the domestic issues of Hong Kong. If criticisms levelled at the media's handling of elections have come from different camps today, it may show that on the whole, our media have fully reflected the views of the left, the middle and the right related to elections. Mr TAM Yiu-chung particularly mentioned the issue of an ad hoc edition by a media organization on the polling day. As the relevant complaint is being processed, I will not make any further comments.

Madam President, regarding the employment of electoral staff, we did receive Members' letters after the elections. We also explained that the Registration and Electoral Office had recruited 14 000 civil servants in the District Councils Election in 2007, and 2 900 civil servants in the By-election in December to help push ahead with the electoral arrangements. In these two elections, the Home Affairs Department also deployed 430 and 110 contract staff whose main duty was to maintain order in the No Staying Zone and the No Canvassing Zone. In these two elections, there were 50 and four non-civil servant contract staff who carried out this duty respectively. Therefore, the 430 and 110 staff I mentioned earlier were actually employed by the Home Affairs Department. The majority of them were civil servants, with the exception of only 50 and four staff. But all of them were under the employ of the Home Affairs Department.

In future elections, taking account of the manpower needed in every election, arrangements will be made to deploy civil servants as far as possible to

carry out these duties, instead of recruiting temporary staff outside the Civil Service to take up electoral duties. Moreover, adequate training will be provided before every election to equip the Presiding Officers and other electoral staff with the knowledge of electoral arrangements, as well as relevant guidelines and laws.

Dr YEUNG Sum particularly mentioned the meeting of Principal Officials with individual candidates before the Legislative Council By-election. I gave an explanation in this Chamber to Members that everyone was equal under this arrangement. Any Principal Officials meeting with a particular candidate will also receive other candidates to listen to their views upon their request.

Mr LEUNG Yiu-chung specifically mentioned that we should seriously — particularly I am in the capacity of Secretary — should seriously handle these issues related to elections. I can tell Mr LEUNG Yiu-chung and Honourable Members that we have been very serious about the constitutional development of Hong Kong, as well as the large-scale elections conducted once in several years and the occasional individual by-elections. Otherwise, we would not have enabled the making of a decision on the timetable for universal suffrage after our efforts over the past few years, and the turnout rate or the voter turnout will not see a growing increase through our concerted efforts. Moreover, I can respond to the questions particularly raised by Honourable Members today: Exactly what stance has the Central Government maintained? What stance has the SAR Government maintained? I can tell Members categorically that both the Central Government and the SAR Government attaches great importance to administration in accordance with the law, as well as the conduct of different elections in Hong Kong in accordance with the laws of Hong Kong.

The motion today has also raised the issue of the provision of community services. I can reassure Ms Audrey EU and Honourable Members that under Section 11 of the Elections (Corrupt and Illegal Conduct) Ordinance, any person who offers an advantage to another person as an inducement to vote at the election for a particular candidate shall be guilty of an offence. An advantage includes anything of monetary value, gift, loan, office, employment, assignment, contract, favour or service. Regarding the giving of a treat, under Section 12 of the Ordinance, any person is not allowed at any time to provide, or meet the cost of providing any food, drink or entertainment for another person to influence the voting preference of electors. Similarly, the Ordinance also prohibits the solicitation or acceptance of any improper treat.

Whenever an election is conducted, the EAC will organize a briefing for candidates to explain to them the electoral arrangements. And staff of the Independent Commission Against Corruption (ICAC) will also attend the briefing to explain the relevant laws in detail. Moreover, an information handbook has been published by the ICAC for distribution to candidates upon their submission of the nomination form to call their attention to the need to obey the law and respect the legislative spirit. Of course, the information has also been uploaded onto the webpage of the ICAC. And the ICAC has also called electors' attention to observe and respect a clean election through the media and the mailing of pamphlets to electors. Moreover, the ICAC has organized briefings upon the invitation of individual candidates and political parties. In case of any queries, enquiry through its hotline is welcome.

Before summing up, I have to respond to the views of several Members. Mr Martin LEE expressed his concern about the maintenance of the existing honest elections of Hong Kong in future. I can reassure Mr Martin LEE that the SAR Government will insist on the conduct of fair, open, impartial and honest elections in Hong Kong. He particularly mentioned elections in Taiwan. I believe it is not his intention to propose copy of the electoral conventions and practices of Taiwan to Hong Kong. Of course, it is our hope that the election of different places will continue to become more honest and open. Mr Martin LEE also mentioned Singapore in particular. I believe Hong Kong is a free society. We have fostered an atmosphere where diversified views, as well as positive and negative views can always be expressed in the councils and the community of Hong Kong. In fact, any views can be reflected in our councils. The SAR Government is prepared to work with different political parties and groupings on a long-term basis. And everyone can have his own views.

At the beginning of the debate, Ms Audrey EU particularly reminded us of the need to keep our electoral system abreast of the times. This I agree. To keep abreast of the times can be manifested in various areas, such as the progress towards universal suffrage, and the drawing up of some new regulations for the practical arrangements of elections. For instance, there was concern a few years ago about electors being encouraged or prompted to take photos by mobile phone during polling to serve as a record of their vote. Taking account of Members' opinion and in response to the public concern, some amendments were made to the by-law then to define a categorical stance, which did act as a

deterrent. Therefore, in the forthcoming Legislative Council Election, corresponding arrangements will be made for the electoral laws and regulations as well as the Guidelines.

Mr Frederick FUNG particularly mentioned today the issue concerning the constituencies of District Councils. I wish to once again call the attention of Mr Frederick FUNG and Honourable Members to the new practice introduced since I took up the post of Secretary in 2002. Reviews have been conducted before every term of the District Council elections to see whether there has been a sharp increase in the population of new towns. If the population has seen a considerable increase, there will be an increase in the number of seats in the constituencies of new towns. But the number of seats in other old constituencies will not be reduced. From a macroscopic angle, such a practice has taken into account the population mobility of Hong Kong. Mr Frederick FUNG particularly mentioned the Sham Shui Po district. We did give it repeated consideration. On the whole, after reviewing the total population and its distribution in the Sham Shui Po district at the time, we found the constituency demarcation in 2007 could primarily be based on the population of around 17 000 people in each constituency — upper and lower limits did apply. And the EAC listened widely to the views of the districts and different political parties and groupings, and consulted the public before drawing up such a constituency demarcation.

Madam President, the debate today has touched on a lot of details, some concerning the electoral system itself; some concerning the practical arrangements related to elections. However, on the whole, to sum up, I wish to reassure Honourable Members that, first, elections of the District Council and the Legislative Council are conducted in a fair, open and honest manner. And any concerns of Members or complaints received by the EAC, the police and the ICAC are handled in accordance with the laws and the Guidelines. The voter turnout of the District Councils Election in November and the Legislative Council By-election in December last year were high, showing no signs of electors being under any influence when they voted and therefore, no signs of any queries about the results of these two elections. Instead, I think there are some assumptions behind the motion proposed by Ms Audrey EU. And I consider certain assumptions somewhat generalizing, blowing some individual issues up. However, I can reassure Honourable Members that the SAR

Government's stance on the conduct of fair, open, impartial and honest elections in Hong Kong will be maintained and will absolutely not change. We will only continue to have it actively enforced.

Thank you, Madam President. I so submit.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr TAM Yiu-chung to Ms Audrey EU's motion, be passed. I now put the question to you. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr SIN Chung-kai rose to claim a division.

**PRESIDENT** (in Cantonese): Mr SIN Chung-kai has claimed a division. The division bell will ring for three minutes, after which the division will begin.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr David LI, Ms Margaret NG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Abraham SHEK, Miss LI Fung-ying,



Mr WONG Kwok-hing, Dr Joseph LEE, Mr Jeffrey LAM, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the amendment.

Mr CHEUNG Man-kwong and Mr SIN Chung-kai voted against the amendment.

Geographical Constituencies:

Mr James TIEN, Mr LEE Cheuk-yan, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Mr LAU Chin-shek, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr LI Kwok-ying, Mr CHEUNG Hok-ming, Mr Ronny TONG, Mr Albert CHENG and Mrs Anson CHAN voted for the amendment.

Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr Albert CHAN, Mr LEE Wing-tat and Mr LEUNG Kwok-hung voted against the amendment.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 19 were present, 17 were in favour of the amendment and two against it; while among the Members returned by geographical constituencies through direct elections, 28 were present, 19 were in favour of the amendment and eight against it. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was carried.

**PRESIDENT** (in Cantonese): Ms Audrey EU, you may now reply and you have one minute 32 seconds.

**MS AUDREY EU** (in Cantonese): President, when the Secretary spoke just now, he said that my original motion was generalizing and that there were some assumptions in it. It is not fair at all.

However, President, having listened to all Legislative Council Members — it seems there were 24 of them — speak, you can see that Members of all political parties and groupings share the same views, so it is obvious that I did not generalize anything. Apart from The Alliance, whose Members did not take part in any direct election or district council election, other political parties and groupings all share the same views.

I felt very disappointed after hearing the Secretary's remarks. Apart from reading out a long passage spelling out the existing legislation, he also repeatedly guaranteed personally that all elections would definitely be fair and impartial, saying that he would resolutely defend their fairness and impartiality. I think that the attitude of the Secretary conveys an impression — to put it in English — of being very complacent, that is, he is very satisfied and happy with the *status quo*, thinking that there is no need to make improvements.

We all understand after listening to the comments concerning the exit polls, particularly after hearing Mrs CHOW's remark about "a wide margin" — unless the exit polls were conducted in a blanket fashion, how did she know that when the ad hoc election news were published, one side was leading "by a wide margin"? We remember that after the election had ended, the survey results published by Dr Robert CHUNG still showed that the results were very close. If such exit polls were conducted every minute or every second, can Members imagine what difference this would make in grasping the developments in an election? Therefore, this is a very serious problem and I really think it necessary for the Policy Bureau concerned and the Government to conduct a review. Moreover, it is also necessary to address the problem of violence.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Audrey EU, as amended by Mr TAM Yiu-chung, be passed. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion as amended passed.

**PRESIDENT** (in Cantonese): Second motion: Introducing legislative amendments to open up community radio stations.

I now call upon Mr James TO to speak and move his motion.

## **INTRODUCING LEGISLATIVE AMENDMENTS TO OPEN UP COMMUNITY RADIO STATIONS**

**MR JAMES TO** (in Cantonese): President, this is the fifth time in three years that a motion relating to the opening up of public service broadcasting or channels for public use is debated in the Legislative Council. In 2006 the topics discussed included "Policy on public service broadcasting", "Public service broadcasting for Hong Kong", and "Opening up the airwaves", while in 2007 there were such motions as "Transforming Radio Television Hong Kong to become the Hong Kong Public Broadcasting Corporation".

In past debates, be they focused on the airwaves or public channels of radio or television stations or digitalization, there was actually one common starting point and that is, Hong Kong must have more platforms of speech that are not subject to censorship by the Government, which means a truly free forum of speech.

The recent uproar revolving around Citizens' Radio is a typical example of the legislation not progressing with the times and imposing unreasonable restrictions on the freedom of speech. This archaic Telecommunications

Ordinance (TO) drawn up more than 30 years ago, which requires organizations to apply for a licence to operate a radio station, does not even set out clear guidelines and the criteria for approving applications. The Government's powers are basically unrestricted, thus enabling it to reject any application for a radio licence easily without giving any reason.

Let us further look at the system for vetting and approving applications for licence under the Ordinance. It turns out to be the Chief Executive in Council that is responsible for examining the application of Citizens' Radio and this shows that the powers are highly centralized in the Government. The Judge who ruled that the TO is unconstitutional said to the effect that such a vetting and approving system inevitably caused doubts about political factors being involved in vetting and approving the application. Under such a draconian and unreasonable vetting and approving regime, can members of the general public, especially people whose political views are different from the Government, stand any chance of success in applying for a licence to operate a community radio station?

From the Interception of Communications Ordinance in 2006 to the incident of Citizens' Radio last year, it seems that the Government has entirely failed to learn a lesson. Despite my repeated calls for amendment of the Interception of Communications Ordinance over the last decade or so in the Legislative Council to replace some unconstitutional draconian provisions, the Government had turned a deaf ear to all these calls and it was only when the Ordinance was overruled by the Court and judged as unconstitutional that the Government hastily initiated the legislative exercise.

Now, the TO is a replica of the Interception of Communications Ordinance back then. Even though the Legislative Council already started 13 years ago to call for the opening up of channels for use by the public, what has been done? The Government has still maintained its position and launched operations to clamp down on broadcasting activities and arrest the operators and even applied for an injunction to ban Citizens' Radio from broadcasting, arguing that the TO is entirely lawful and constitutional. It even went further to allege that some people had engaged in illegal broadcasting in defiance of the rule of law and social order. The Government's attitude is basically to take a firm grip on the power to conduct censorship and exercise absolute control on the airwaves, and

it is only when a judgment is made by the Court of Final Appeal on the unconstitutionality of the TO that the Government cannot refuse to loosen its grip.

It is impossible for the law of any country to be perfect and flawless. In many cases, flawed laws are often draconian laws suppressing the freedom of the people. One day when the law no longer serves as the vehicle for administration of justice, do we still have to accept it silently? With regard to the people who set up Citizens' Radio, the High Court Judge held the following position: "It would be wrong, I think, to say that they have simply found a loophole and are exploiting it. They see themselves as acting to protect certain fundamental freedoms."

Critics of Citizens' Radio said that nowhere in the world can there be unfettered and unchecked freedom of speech. This is certainly agreed by all. However, no government of a democratic country or place in the world can have such unlimited powers to curb the freedom of speech.

Secretary Frederick MA said that illegal broadcasting and freedom of speech cannot be lumped together. In fact, the common law spirit in Hong Kong is that we can have the freedom to do what is not prohibited, and freedom of speech is protected by the Basic Law. Therefore, an unconstitutional law is an infringement on freedom. Over the past few months, whether in examining the constitutionality of the TO or the Government's application for an injunction order, the Court had discussed illegal broadcasting and freedom of speech together, that is, the two were lumped together, as the Secretary has put it. The Court even stated this: "..... when fundamental freedoms are at issue — issues of freedom of speech and freedom of communication — this court bears special responsibilities".

Up to this moment, the Government still has not made any undertaking to the public that it would consider amending the TO and the Broadcasting Ordinance for the purpose of opening up the airwaves and channels for public use. Worse still, it even applied to the Court for an injunction order against broadcasting by Citizens' Radio as if it considers the draconian law not draconian enough, in an attempt to resolve a case of a criminal nature by way of civil proceedings. It is actually the Government who has lumped two things together and abused the judicial proceedings.

I must ask the Government how many prominent talk show hosts have to go off the air and how many "SZETO Wahs" have to be sentenced to imprisonment and how much public discontent has to be accumulated before the Government will truly show its sincerity by returning to the public the right to use the airwaves and public channels? Can the Government take off the "the Emperor's new clothes" and tell the public candidly that the bottomline of the Government is to absolutely disallow the inclusion in the airwaves more voices criticizing the Government and so, it cannot allow the opening up of the airwaves for community radios stations?

The Government said that Hong Kong already has sufficient channels for the expression of opinions and it does not see a need for community radio stations in society. But please take a look at this: There are 7 million people in Hong Kong but only three radio stations, one being the publicly-run Radio Television Hong Kong and the other two are commercial radio stations, providing 13 channels altogether. If we look at places around the world, we cannot possibly find one city of the same scale as Hong Kong where there are so few radio stations and channels. The most ridiculous thing is that there are even more television stations than radio stations in Hong Kong, which is downright an anomaly in other countries.

In fact, the community radio stations that I am talking about refer to non-profit-making community radio stations set up and operated on the initiative of the people. There are copious examples worldwide and this is nothing new. In Australia where there is a population of 20 million, there are 442 community radio stations, which means one community radio station for every 45 000 people on average. In India, there are over 6 000 community radio stations for a population of 1 billion, which means one for every 180 000 people on average, and any non-profit-making organization which has provided community service for three years can apply for a licence. In the United Kingdom, their government launched a pilot scheme as early as in 2002 and issued 17 licences for community radio stations to allow the community to make their voices heard through the airwaves, including broadcasting in the downtown area amidst the hustle and bustle of large crowds in Manchester.

In Asian countries such as Thailand, Japan, South Korea and the Philippines, and in Western countries such as the United States, Canada, Sweden and the Ireland, there is lawful community radio broadcasting that does not affect

public service, operating with a transmission power from one watt to 30 watts and reaching an area from five miles to 10-odd miles. In these countries there are even joint associations and regional organizations of community radio stations, setting out on their own principles for compliance by radio station operators, such as the principle of not interfering with public service broadcasting channels and emergency service.

Please note the fact that the numbers of radio stations in those foreign countries that I have just mentioned include only those set up and operated by the community or non-profit-making community radios. Government-run public service broadcasting and commercial radio stations are not included. Let us look at Hong Kong. There is not even room for one community radio station in our population of 7 million. The development of community radio stations in Hong Kong lags behind that in anywhere else in the world and yet, the Government has still rejected the application of Citizens' Radio on the ground that there is no need for a community radio station in Hong Kong. This is indeed incomprehensible.

In fact, what should be opened up is more than just the radio spectrum. The United Democrats of Hong Kong already proposed as early as in 1993 the opening up of digital media broadcasting channels. As digital television technology becomes increasingly popular, the Government should also open up television channels for public use, so that members of the public, non-governmental and non-profit-making organizations can produce television programmes without restrictions on the form and contents of the programmes. The use of channels by the public will enable various strata of society and social groups to understand each other better and give play to social values, such as community creativity. In fact, this has been extensively discussed in the community and in the Legislative Council before and I will not repeat the points one by one here.

President, I have proposed this motion today not with the objective of speaking up for any existing community radio station. Nor do I aim to defend any illegal act. My objective is to put across the message to the community, that there are some rights which in the first place belong to the people; these rights are what we should have, and they deserve to be cherished, upheld and promoted, and I mean the right of the people to express their views in free air. So, if the Government is genuinely sincere in resolutely upholding freedom of speech, as it has vowed to do, will it please do not say again in its response that it

is inappropriate to set up community radio stations in Hong Kong because it is a small place with many high-rise buildings, and will it please do not argue that illegal broadcasting will interfere with emergency service, because not even the Judge believed this. If the Government genuinely respects the value of the freedom of speech, will it please immediately undertake to amend the TO and the Broadcasting Ordinance to allow the public to express their views through the airwaves and allow the public to monitor the Government through an open forum for public expression of opinions.

With these remarks, President, I beg to move.

**Mr James TO moved the following motion: (Translation)**

"That existing legislation restricts the setting up of community radio stations by the public and the Government has unrestricted power to reject the applications from members of the public for a licence to operate a radio station, which has led to criminal prosecution against members of the public for setting up and participating in community radio stations, thus depriving the public of the right to express opinions through different channels and violating human rights; this Council urges the Government to amend the Telecommunications Ordinance and the Broadcasting Ordinance to open up public service broadcasting, including setting up channels for digital television and radio broadcasting for use by the public and allowing the community to set up and operate radio and television broadcasting services, so as to safeguard the freedom of speech of the public."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr James TO be passed.

**PRESIDENT** (in Cantonese): Three Members intend to move amendments to this motion. The motion and the three amendments will now be debated together in a joint debate.

I now call upon Mr CHAN Kam-lam to speak first, to be followed by Mr Albert HO and Mr LEUNG Kwok-hung; but no amendments are to be moved at this stage.



**MR CHAN KAM-LAM** (in Cantonese): President, on behalf of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), I wish to express some different views on Mr James TO's motion, because we really cannot agree with a number of points made in the original motion.

Firstly, the original motion said that "existing legislation restricts the setting up of community radio stations by the public", and we have reservations about this point. We agree that restrictions do exist, but this is because radio spectrum is indeed a limited resource in Hong Kong and in order to prevent wastage and abuse which may cause interference, it is necessary to set up a licensing system. Moreover, these restrictions can be commonly found in many places worldwide, and we do not see that the licence in Hong Kong includes terms and conditions that are more stringent than those in foreign countries.

At present, our licensing system aims to maintain the effective and orderly operation of the airwaves or the spectrum for the protection of the freedom of speech of the public. Mr James TO questioned why not even one community radio station is allowed to operate in Hong Kong with a population of 7 million. I must ask: Are the Commercial Radio which has operated in Hong Kong for decades and the Metro Radio Station which has operated for more than a decade not community radio stations set up by the public? This shows that the comment of "existing legislation restricts the setting up of community radio stations by the public" may not be a full reflection of the reality. In my amendment I propose that "existing legislation stipulates that members of the public and organizations must, prior to the setting up of radio stations, apply to the Government for a licence to operate a radio station". This is precisely the minimum requirement for maintaining the effective operation of the airwaves under the existing legislation.

The original motion also said that "the Government has unrestricted power to reject the applications from members of the public for a licence to operate a radio station", which is even farther from the truth. Under section 7(11) of the TO, "Where the Authority refuses to issue a licence to a person, he shall provide to the person his reasons in writing for the refusal." When he was interviewed on the telephone by Radio Television Hong Kong (RTHK) on 11 January, Mr LEUNG Kwok-hung who spoke in his capacity as a partner of Citizens' Radio expressly pointed out that they had received a written reply from the Government which explained in detail that their application was rejected on the ground that

Citizens' Radio only had the ability to provide community broadcasting but failed to meet the broadcasting conditions and technological requirements and that there is not a need to provide a specific community radio channel in Hong Kong.

Meanwhile, Mr Albert HO, in his capacity as the lawyer of Citizens' Radio, confirmed personally on the same day in the same RTHK programme that concerning the rejection of their application for a licence to operate a radio station, Citizens' Radio should in the first place consider seeking judicial review, but they did not do so for some reasons. This shows that while the Government indeed has the "power to reject the applications" from members of the public for a licence to operate a radio station, it absolutely has not abused it; nor has it exercised any "unrestricted power to reject the applications".

The allegation in the original motion that this "..... has led to criminal prosecution against members of the public for setting up and participating in community radio stations" is also biased. As we all know, the participation in radio programmes by a vast majority of law-abiding citizens is not a problem at all; nor will their participation result in criminal prosecution, except for a handful of people who defied the rule of law and openly engaged in illegal broadcasting. There is no question of the public being deprived of the right to express their opinions as long as they conduct and participate in broadcasting activities lawfully.

As for the comment that human rights are violated, I wish to point out that Article 19 of the International Covenant on Civil and Political Rights provides that everyone shall have the right to freedom of expression, but the exercise of the right carries with it special duties and responsibilities. From this we can see that human rights are not absolute and unrestricted. Illegal broadcasting and freedom of speech are two entirely different matters and no equal sign can be drawn between them.

President, "All persons are equal before the law" is the spirit of the rule of law persistently upheld in Hong Kong, and also the cornerstone of the stability and prosperity of Hong Kong. All persons must respect the judicial system. Section 23 of the TO clearly provides that any person who engages in broadcasting without a licence shall be guilty of an offence. Therefore, a person whose application for a licence to operate a radio station is rejected for not meeting the requirements may seek judicial review if he is dissatisfied with

the determination. But he absolutely cannot engage in illegal broadcasting; nor can he call on the public to defy the law, for this is irresponsible and sheer neglect of the rule of law. Therefore, we cannot agree with the comment made in the original motion that disallowing illegal broadcasting is restricting the public's freedom of speech.

In fact, whether or not the people's freedom of speech is restricted is not measured by the number of radio licences issued — Mr TO pointed out earlier that in many countries, dozens or even hundreds of radio licences are issued — obviously, it is even more unreasonable to make a judgment on basis of whether or not illegal broadcasting is permitted. The key should lie in whether there are sufficient and different channels for members of the public to express their opinions.

Insofar as conventional channels are concerned, the three existing radio stations, two free television stations and three pay television stations have all produced current affairs and "phone-in" programmes. This, together with the pages for complaints and commentaries in over 40 newspapers and hundreds of periodicals and magazines, provides various broadcasting platforms and print media for the expression of opinions by all the people of Hong Kong. The new media which is developing rapidly has become very popular in the Internet and this has greatly increased both the forms and number of media. Under such circumstances, the forum for speech of the public will only become more extensive and broader. So, how will it be narrowed?

All legislation must progress with the times and be regularly reviewed in the light of changes in social conditions and this has been a view consistently held by the DAB. Therefore, as the times change and technology develops, and as the forms of media become increasingly diversified, we agree that the TO and the Broadcasting Ordinance should be reviewed to protect freedom of speech of the public while ensuring that lawful communications will not be interfered.

In the meantime, since there are people, not many though, questioning the lack of transparency in the Government's licensing system, the Government can take the opportunity of the legislative review to consider the inclusion of express provisions in law to make the public fully aware of the factors that will be taken into consideration in issuing licences and to allow them to express opinions through different channels. However, as the appeal against the

unconstitutionality of the TO is pending, this is absolutely not the most suitable time to call for immediate legislative amendments. This is why the DAB has proposed an amendment to the motion to call for a review of the ordinances.

President, I so submit.

**MR ALBERT HO** (in Cantonese): Madam President, before I go on to speak, I wish to make a declaration to you first. I am the lawyer representing Citizens' Radio and some parties concerned.

Today, we propose this amendment to call on the Government to address squarely the long-term aspiration of the community for opening up the airwaves. Recently, the controversy centring around Citizens' Radio has become a topic of heated debate in society, involving several points at issue, which include whether the TO is a piece of unconstitutional draconian law and whether the Government has misused the judicial recourse to suppress community organizations and individuals who wish to exercise their right to broadcasting or freedom of opinion and expression. In fact, this incident of the so-called civil disobedience by Citizens' Radio is only an ignited fuse and behind it there is a huge bomb waiting to be defused, and this time bomb is the obsolete TO, a mechanism that suffocates the freedom of speech and freedom to disseminate information in society and yet, our Government is still reluctant to defuse this time bomb.

I must point out that it is absolutely not just for a year or two that the community has called for the opening up of the airwaves and television channels for public use. The Government should know that it only has to look up the records of the Legislative Council for the past decade or so to see that since the 1990s this Council has held many debates calling for the opening up of channels in the media. The Democratic Party proposed a motion in 1994 to call for the development of public television broadcasting and opening up of channels for use by the public. The justifications put forward by us in the debate back then are consistent with our reasons in calling for the opening up of the airwaves for community radio stations and channels for public service broadcasting today, hoping that by enabling the public to exercise their rights more freely and to operate non-profit-making and non-commercial radio stations, individuals and organizations in the community can participate in production and management and hence express their messages and opinions in a more diversified way, thereby facilitating the exchange of information in society as a whole. This will

certainly help society develop in the direction of providing more open, more diversified and wider leeway for freedom. A major consensus was actually reached on these proposals in the Legislative Council at that time and even the then Democratic Alliance for the Betterment of Hong Kong openly expressed support for setting up channels for public use in the motion debate, while Mr Howard YOUNG and Mrs Selina CHOW of the Liberal Party also said in their speeches that the community had reached a consensus on the opening up of channels for use by the public, and we all supported community creativity in a pluralistic society and hoped that public channels could start broadcasting early.

After the reunification, this issue has been discussed in many motion debates of the Legislative Council. Many Members also asked oral questions and made many proposals on the opening up of the airwaves and channels for public use. The Committee on Review of Public Service Broadcasting, the Legislative Council Panel on Information Technology and Broadcasting and the Democratic Party have submitted to the Government full reports and recommendations on the opening up of channels for use by the public. Regrettably, it has been 14 years now, but many opinions put forward by us are still not accepted by the Government. The situation today has remained the same as that a decade or two or even a longer time ago, in that no channel has been opened for use by the public and broadcasting has generally remained to be shackled by an obsolete and unreasonable regulatory regime.

Insofar as the airwaves are concerned, it has been the Government's long-held position to oppose the setting up and operation of public channels by the community. The reasons are actually similar to those explained by CHAN Kam-lam earlier and that is, as there are now television stations, the Internet and many newspapers, they do not see a need to set up these channels in Hong Kong. They even said that three television stations are already sufficient and that sometimes, not all the channels are used, citing the example that, as we all know, a programme may sometimes be broadcast in several channels at the same time. Madam President, it is actually because there is such a case that we can see that many of the channels are not fully utilized and the reason why they are not fully utilized is precisely the lack of public involvement.

As a matter of fact, apart from Radio Television Hong Kong, are the other radio stations equivalents of community radio stations? Having listened to Members' speeches earlier on, I must say that they really are an eye opener to me. I finally find out that CHAN Kam-lam actually considers them community

radio stations. Perhaps he has really not studied this issue in any serious manner. Indeed, community radio stations are set up in many places overseas, and these radio stations are non-profit-making public service broadcasters and their broadcasting is often district-based. For instance, if there are community radio stations in Hong Kong, there may be one in Tin Shui Wai, and there may be such radio stations on Lantau or Hong Kong Island East. Broadcasting is often conducted by the community or even a university because in many universities there is on-campus broadcast not by the university administration. Moreover, the broadcasting of some radio stations aim to serve specific functions or objectives by, for instance, producing programmes relating to religion or those in which the ethnic minorities are interested, and broadcasts of specific information.

The characteristics of these community radio stations are that they are non-profit-making and their producers participate in the production of the programmes often as amateurs, as they take part in it purely for their own interest or objective. These radio stations certainly cannot compare to those operating on commercial principles and set up at a cost of tens of million or even hundreds of million dollars. However, we can see that their functions are obviously different and so, we absolutely should not mention them in the same breath. In Hong Kong there must be more participation by the community, rather than allowing monopolization by just a few commercial enterprises which only broadcast programmes that they consider worth broadcasting and even hire radio hosts whom they consider worth hiring or whose opinions suits their taste, thus forcing many popular radio hosts or those who used to enjoy great popularity to go off the air for political reasons and resulting in self-censorship. This is the last thing we would wish to see in Hong Kong.

Madam President, there is another point and that is, as also mentioned by Mr CHAN Kam-lam just now, freedoms are not absolute and so, we still need a system and regulatory procedures and this, I think, is right. We certainly have no objection to putting in place procedures to regulate licensing. What is regrettable is that firstly, our regulatory procedures do not set out clear criteria as to who can apply for a licence to operate a radio station, what the minimum requirements are, why these requirements are necessary, whether these requirements have been openly discussed and drawn up by way of legislation, and whether these requirements are formulated in a fair manner on the basis of the consensus reached in the community.

Secondly, transparency is lacking in the procedures. After an application is submitted, there is completely no exchange, and once a decision of rejection is made, the decision is final, just as what happened to the application of Citizens' Radio which received a letter only after one year saying, "Sorry, you do not meet the requirements because you do not have the technologies and so, your application is not approved." Even in the case of the application for a licence to, say, open a restaurant, if the licensing authority is not satisfied, it will still tell the applicant what he should do, so that when the applicant has completed the work required, a licence would be issued, and there will be many exchanges in the process. However, the Broadcasting Authority has not done this, and there has been no exchange whatsoever.

So, do Members understand why the Court would ultimately find this system unconstitutional and in breach of the Basic Law and find Citizens' Radio and the people concerned not guilty? It is because the entire system should not continue to be authorized by law and in the absence of a licensing system, the acts made by broadcasters should not be considered as illegal acts.

Madam President, we think that the fight that Citizens' Radio is putting up by peaceful means and even by breaking the law for the opening up of broadcasting for public participation is a peaceful fight which carries many aspirations of the community. Many lawyers also hold the view that the principles of the Hong Kong Bill of Rights Ordinance and the Basic Law should be upheld, in order to guarantee the opening up of the airwaves and ensure free dissemination of opinions and information. Furthermore, the "black-box operation" and the many obsolete regulatory measures in the entire system should have been updated and revamped a long time ago. Thank you, Madam President.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, having listened to the speech of Mr CHAN Kam-lam, I found it most laughable. He said that we already have many channels for expression of opinions and so, why should we need more channels for broadcasting? What he has said is like a person with cancer seeking medical treatment in a hospital, but when he finds out that only one doctor knows how to treat him, he asked, "Buddy, is this a hospital? How come there is only one doctor who can treat cancer?" The hospital authority replied, "We have many doctors in, say, the chest division, cough division and

paediatrics and what is wrong about not having any doctor for treating cancer? There should not be any problem as long as you do not have cancer, and we are still a good hospital." It is certainly undesirable to manage a hospital in such a way. So, while the DAB always claim to be pragmatic, they are not pragmatic when it comes to certain taboos. Members, when you go to a hospital, will the head of hospital tell people who have cancer not to come to his hospital because there is only one doctor for treating cancer?

In Hong Kong, we, being citizens of Hong Kong, should all enjoy this right. The right for which we are putting up a fight today is a right you can also exercise, and if the legislation is successfully amended in future, will the DAB say that they do not want to have their own radio station for broadcasting? Can you undertake that you will not set up any community radio station and tell us that what you have is already enough? Jasper TSANG, is it that you only wish to have an online radio? If I succeed in fighting for this right in the future, will you not do the same and set up your community radio station? Will you say that you do not want it?

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, please remember to face the Chair when you speak.

**MR LEUNG KWOK-HUNG** (in Cantonese): Yes, President.

**PRESIDENT** (in Cantonese): You should not face other Members when you speak.

**MR LEUNG KWOK-HUNG** (in Cantonese): Yes. Inexplicable anger just flared up in me when I heard those remarks. This is one point.

Second, it is difficult to be a royalist, and even more difficult to be an autocratic royalist. What are we arguing about? We are talking about unconstitutionality of the law. It is not the case that we are deliberately acting in breach of a law for no reason at all. I am not saying that I oppose making murder an offence and I would, therefore, commit murder. I am saying that



there is this law which is incompatible with Article 39 of the Basic Law. Do not mislead the public. As to whether we should resort to civil disobedience, this is debatable, but one cannot distort other people's remarks. Is it that we are talking about offenders of general criminal offences? As in the case of Secretary TSANG Tak-sing, I have never considered him to have committed a criminal offence, but a political offence only. His distribution of pamphlets was certainly a wrongdoing under the rule of the Hong Kong-British Government then. Buddy, it was an offence to distribute pamphlets at that time and one would need to seek approval for doing so. To distribute pamphlets in Chinese, one must obtain the approval of the Chief Secretary, but no approval was required for pamphlets in English. Why is it that he seems to have changed his tone as he has more powers now?

Speaking of this point, I would like to share with Members a piece of information. In 1951, after the establishment of the People's Republic of China, everybody could run a publication with two shops acting as guarantors, that is, one could run a publication if two shops could act as guarantors for him. In 1978, after the Gang of Four was overthrown, there was the so-called campaign of "Beijing Spring". When the public wanted to run community publications or underground publications, the Chinese Communist Government would tell them that these were illegal publications. It took decades to work on a piece of provisional legislation, and as the shops had all been nationalized, where could one look for shops to act as guarantors? Without legislation, and since the public could not look for shops to act as guarantors, they could not register and they could not run a publication and as a result, the people were convicted for offending the law. This is what has happened now. President, Members, I wish to remind the President and Members that this Ordinance was a means employed by the Hong Kong-British Government to clamp down on us, because it was concerned that broadcasting in the air would cause problems to their regime and so, it was used to impose control on us. But now, the new master also thinks that our airwaves may not only cause troubles to Hong Kong people, but also to himself. So, this is like inbreeding, and only the bad stuff can remain.

Today, the Government still insists that this Ordinance shall remain in force. Does it not feel ashamed? This is a government that does not increase the magnitude of airwaves by many folds or by several folds in view of the progressing concepts of human rights and the rapidly developing technologies

and amend the legislation, so that the airwaves can be opened up for use by the public. Should it not do this? Let me tell the Government that if the Court made a judgment not in its favour, it would regret; if the Government lost the case, it would regret what it had done.

When we discussed the wiretapping law, Donald TSANG said, "Administrative and legislative means would suffice. Buddy, trust me!" But after he lost, did he not have to make amendments? When that happens, the pro-government camp will definitely say, "Yes, there is something wrong with it." Buddy, as the poem goes, "frenzied willows dance to the wanton breeze; flimsy peach blossoms drift along the stream". DU Fu's description is marvellous. He was talking about the struggles between political factions in Tang Dynasty and describing how brazenly the political factions had made about-turns at that time.

Members, I, as a Member of the Legislative Council, certainly feel most ashamed. You are asking me to make a law but Article 74 of the Basic Law provides that a bill must not be introduced if it will affect the policies and administration of the Government. Buddy, this bill will definitely affect the administration of the Government. Then how can it be introduced? If Members cannot introduce it, and if the Government does not introduce it, how can amendments be made? If the law is not amended, we have to apply for a licence but our application will not be approved, and this shows how wicked and cunning they are. We were precluded from holding a press conference for a year. The Office of the Telecommunications Authority (OFTA) said that they noted our letter but the next day a letter from the Chief Executive arrived, saying that he was aware of the rejection of our application by the Telecommunications Authority and so, he would not give us his permission. Don't worry, Secretary Frederick MA, because you were not involved at that time. It is precisely because this system is so absurd that we broke the law. Why do we not seek judicial review? Because we were pre-empted by our arrest by the authorities and the subsequent criminal proceedings. Had we been arrested at a later time, we would have sought judicial review. One must know clearly what he is talking about and if he does not, he had better not say anything in order to bring less disgrace to himself.

So, on this issue, we have resorted to civil disobedience. We do not deny our responsibility; nor do we intend to evade it. The authorities do not have to

worry. What have we been criticizing? We have been criticizing the Government, not the Court; we have been criticizing the authorities that can make political and policy decisions, and if they consider that something can no longer meet modern needs, they should take the initiative to introduce amendments, rather than obliging kick in the ass by the Court — this saying of "kick his ass" is quite a decent expression (*Laughter*), as everyone in the parliament uses it. This is what the Government is like now. It is most despicable for the Government to be told by the Court to do something, you know? That would mean a process in which we have to rush things through and make "midnight legislation", in which case Members cannot go home and rest. Do we wish to see this happen?

Now, we are calling on the Government not to leave it to the Court and handle the problem with its own independent judgment, and even though he was elected by 800 people, he still has to be responsible to those people, and the 6.9 million people, by issuing licences and amending the law. Why do we say that the existing law is undesirable? It is because under the law, Donald TSANG can arrogate all powers to himself. During the hearing of our case, we cited a precedent to the Judge that in Sri Lanka, a Minister was tasked to appoint a committee for issuing licences and the Supreme Court of Sri Lanka still considered this arrangement dictatorial and arbitrary, buddy. President, do you see what I mean? We must speak on facts.

We take issue with Donald TSANG being in a position to act in whatever way he likes and no objective criteria are set out for us to make an application and as a result, the application is processed in a way that is even worse than the marking scheme in kindergartens. A score of 60 is originally set as the passing mark, but when I have scored the passing mark, I am nonetheless considered to have failed the examination. Then I asked for a review of the marking of my examination paper because given that I have scored 60 marks, why should I be considered failed? Another person may score only 40 marks but he is said to have passed the examination. These should be open for review. But there is no such system, you see what I mean? The existing system is a corrupt system.

Right, speaking of the injunction order, President — This is what our Chief Executive is like: In one of his hands he is holding the TO to suppress us and in his other hand there is the injunction order. He is using both hands to slap us in the face. What offence have we committed? What kind of authority

do they have to do this? Let me tell Members that I think what I saw in Taiwan is like what we now see in Hong Kong, because under the one-party dictatorship of the Kuomintang, the party, the government and the army took up all the spectrum and channels of both television and radio. But after the opening up of the airwaves, it turned out that there is sufficient spectrum. Members, the DAB has connections with Taiwan, too. Why do they not pay a visit to Taiwan and then come back to take me to task, buddy?

President, my argument is simple. Today, we are talking about a right that each and every member of the 6.9 million population can enjoy. This is not a right exclusive to us.

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, I have to tell you you are speaking too loudly indeed.

**MR LEUNG KWOK-HUNG** (in Cantonese): Is this exchange also counted towards my speaking time?

**PRESIDENT** (in Cantonese): Please speak softly. If you speak with reason, we will understand your point.

**MR LEUNG KWOK-HUNG** (in Cantonese): OK. The Filipino community is so huge; so is the Hakka community, and there are also many people whose native origin is Chiu Chow. If a licence is issued to them, they can broadcast in Chiu Chow. The Rediffusion used to provide these broadcasting services, did it not? Tell me your native origin and I can immediately set up a radio for you provided that I have a licence. I can then set up a radio station for you. If you are a native of Chiu Chow, I can set up a radio station which broadcasts in Chiu Chow. If you speak Tagalo, then a radio station for Tagalo broadcasts can be set up for you. This is all useful, and we are not doing this in a fit of pique.

Members, as I speak here today, I am waiting for punishment to be meted out to me. I only wish to seek justice and I hold that the Government has the duty to exercise its constitutional power to return to all the people the freedom to which they are entitled, so as to enable the public to express their opinions and

give play to their freedom of speech in the airwaves. This is their most fundamental right. If the Government does not do this and leaves it to the Court, that would be very wrong.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, the topic of this motion debate today is of great concern to the public and the Government, involving the Government's policy on broadcasting and freedom of speech. Therefore, I hope that apart from Mr James TO, Mr CHAN Kam-lam, Mr Albert HO and Mr LEUNG Kwok-hung, other Members will also express their views later on, and we will very much respect your views. So, I would first listen to all the speeches .....

**MR MARTIN LEE** (in Cantonese): President, a quorum is lacking now. I echo the Secretary's view and so, I hope Members can return to this Chamber to listen to the debate.

**PRESIDENT** (in Cantonese): Please sit down. Mr Martin LEE reminded me that a quorum is indeed lacking now. Will the Clerk please ring the bell to summon Members to return to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

**PRESIDENT** (in Cantonese): A quorum is present. Secretary, please go on.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, perhaps let me start all over again.

This motion debate today is about two issues of great concern to the Government and the public, namely, the policy on broadcasting and freedom of speech. I know that apart from Mr James TO, Mr CHAN Kam-lam, Mr Albert HO and Mr LEUNG Kwok-hung, other Members are also very concerned about these two issues. So, I will first listen to the views of all Members before I give a reply.

Thank you, President.

**DR KWOK KA-KI** (in Cantonese): President, I can see that it is actually quite tiring for the Secretary to sit here.

Hong Kong has claimed to be Asia's world city. We have even organized telecommunications exhibitions and computer exhibitions, and our telecommunications and broadcasting industries are claimed to be always in the forefront of Asia. Now that even our television broadcasting has entered the digital era. We have many television channels, and members of the public can receive digital television broadcasts very easily and in an unobstructed manner. But when it comes to radio broadcasting, and when it comes to the many appeals to the Government for opening up the airwaves for digital broadcasting and community radio stations, the Government will dismiss these appeals using a lot of excuses. These excuses include first, Hong Kong actually may not have the required technologies; second, these technologies may be very costly and not everybody can access this service, and third, the radio is indeed very expensive and according to some government papers, it can cost as much as over \$500 and it is better not to pursue it because of the expensive costs. In the final analysis, I think it is all because the Government does not wish to open up this forum for speech for the public.

Some colleagues said earlier that digital broadcasting is already implemented in many places, including many advanced Asian countries and cities, such as Australia, Taiwan, Singapore, and Korea. In Europe and the United States, digital broadcasting and the opening up of community radio stations are no novelties, for these have already been implemented for years there.

We always do not understand why the Government has to reject this proposal with so many excuses. If it is due to the inadequacy of technology, Mr SIN Chung-kai has already provided us with some information and told us about the many options, including Eureka 147, In-Band On Channel (IBOC), Digital Radio Mondiale, and so on, that can overcome the technical problems.

As for the reception of the market, the Secretary is in charge of the commerce bureau and as Hong Kong practises market economy, we should leave it to the market to make the decision as to whether anyone will use something or whether anyone will set up radio stations. In Hong Kong, there are vehicles which are worth millions of dollars, and some Members of the "rich men's

party" do drive such vehicles which are worth millions of dollars. Can we say that these vehicles must not be imported because they are expensive? Some residential properties can cost as much as \$100 million to \$200 million. Can we say that they must not be put up for sale because they are expensive? We cannot say this, can we? We should leave it to the market to make the decision. If, in the market, there are people who will set up community radio stations and who are also willing to pay the price, we should leave it to the market.

Moreover, if there are people who consider digital broadcasting necessary and if they think that the cost is within their affordability, they would use it. Certainly, some people may think the contrary and naturally, they will not use this channel to receive news or information and they will use other channels instead. Why does the Government still stick to the old rut and refuse to change?

Let us not forget that the existing Telecommunications Ordinance was enacted during the former colonial era due to the concern that the forum for speech would be shattered by people (including people who opposed the colonial rule) whose voices the Government did not wish to hear. What age is it now? We have been reunited with China and it has been 10 years since the reunification. We are all under one roof and we are all Chinese. We are Hong Kong people who enjoy equal rights under the SAR Government. Unlike the past colonial government, the SAR Government has promised to give Hong Kong people the forum for speech and freedom of speech.

It is true that, as some people have said, the public can run newspapers and they can also run magazines. But why are they not allowed to operate community radio stations? The reason is simple. Because people who can run newspapers or magazines must be either very rich or supported by certain industries. Some people who are engaged in profitable trades also run newspapers because they have a very good relationship with the Government. But when it comes to broadcasting, we all know that the operation of a community radio station may not require huge capital input. Perhaps it is because the Government realizes this that it is so worried.

But what are the other concerns of the Government? Why does it do this? Not only has the Government refused to amend the law, it has even adopted a

high-handed or high-profile approach by, among other things, invoking the Crimes Ordinance and resorting to civil proceedings, in an attempt to ban broadcasting by Citizens' Radio. This is most unusual, but the Government has still done it. We can see that behind the Government there is a strong force, including a political force, pushing the Government to go very far. Secretary, the Government has indeed gone very far in clamping down on Citizens' Radio. The more the Government tries to do this and the more it says to deny this intention, the more clearly Hong Kong people can see that the Government has its own agenda which everyone knows only too well. However, it is unnecessary for the Government to do this.

When the airwaves are opened up and when community radio stations are set up, it follows that there will be different voices. The Government is concerned about the emergence of dissenting voices but at the same time, there will also be many voices in support of the Government. The Government can set up many pro-establishment radio stations because the Government has a lot of money and resources. In the previous motion debate we discussed the situation where the pro-government political force has continuous financial support and will never be short of funds. If the airwaves are opened up in the future, I think the people who are sitting opposite us will have the best equipment.

In spite of this, why do we still persist with our fight for this cause? We actually do not target persons. Rather, we target the issue. We hope that Hong Kong can live up to its reputation and truly become Asia's world city, and we also hope that Hong Kong can truly provide the forum for speech.

However, the Government has insisted on not amending the law and on the contrary, it has employed high-handed means to ensure that community radio stations will not appear and ..... We all know that the Government has virtually resorted to dishonest measures such as instituting prosecution selectively, and this, I think, will only cause stronger resentment among Hong Kong people. This is originally a good thing, and this can also eliminate unreasonable laws made by the former colonial government, but the Government has not seized the opportunity to make changes and worse still, it has continued to closely cling onto these laws and this is indeed unnecessary.

I so submit. Thank you, President.



**MR RONNY TONG** (in Cantonese): President, in my speech today, I wish to discuss this issue from a constitutional and legal angle. President, I had actually proposed an amendment but you made a ruling against it yesterday. President, I am not trying to argue against this ruling but I wish to make it clear that we do not intend to predict how the Court will judge on the constitutionality or otherwise of the Ordinance. Rather, we hope to explore the question of the opening up of the airwaves from a constitutional angle.

President, I wish to speak in this context mainly because we consider Mr CHAN Kam-lam's amendment too simple and lopsided, for his amendment only mentions that there is such stipulation in the existing Ordinance and so, Hong Kong people must apply to the Government for a licence and comply with the requirements as set out in the amendment. Our view is that the case is not this simple. First of all, we must understand that the existing Telecommunications Ordinance (TO) is the version of 1963. If you, President, take a look at the TO, you will find the provisions very strange. It does not mention the Chief Executive and instead, it provides that the application shall be approved by the Governor in Council. From this we can see that it is obsolete, and we can also say that it is an extremely unreasonable law left by the former colonial government.

However, the most important point is that the Ordinance only sets out the application procedures, requiring the approval of the Governor in Council. But there is no provision which clearly stipulates what exactly the criteria are for assessing an application, the factors that determine the success or otherwise of an application, and whether there is any channel for or stipulation on lodging an appeal to challenge the decision of the executive authorities. All these are regarded as provisions in breach of the constitutional order in the context of other ordinances.

In fact, in common law or the study of constitutionalism, there is the concept of "blanket power" which means a sweeping, general power. This is a power which, in modern society, cannot be considered as constitutional. In this respect, in other precedents, when the executive authorities are given some sweeping, unrestricted powers which I have just mentioned, the Court has, in cases involving many other similar ordinances, made judgments in accordance with the Basic Law on the unconstitutionality of such powers. Therefore, these ordinances must be dealt with immediately in that the Government should introduce amendments as soon as possible to ensure their constitutionality.

Under such circumstances, disregarding whether there is any challenge to the Ordinance or whether the Court has made a determination, since there is this senior official or the post of the Secretary for Justice in the SAR Government, he, being the highest legal adviser to the Government, should understand that such provisions are grossly obsolete.

It is all the more necessary for us to understand that while Article 27 of the Basic Law protects freedom of speech, as many colleagues have said earlier, we cannot lose sight of Article 16 of the Hong Kong Bill of Rights which clearly provides for freedom of speech and what is more, it is also our fundamental human right and freedom to impart information and ideas. In other words, each and every member of the public has the right to impart and disseminate information and ideas for reception by other Hong Kong people. Therefore, the restrictions imposed by this Ordinance are utterly unacceptable.

On this issue, Judge HARTMANN gave a very clear explanation in the judgment he delivered a few days ago. I think Judge HARTMANN's opinion has hit the nail on the head, for it has immediately spelt out the crux of the issue. In paragraph 35 of the judgment he said to the effect that the most pressing issue, in his view, was not compliance with the injunction order sought by the Government; the most pressing issue is how the law in doubt could be amended in reasonable circumstances and whether illegal broadcasting would do harm to the community of Hong Kong. Based on the evidence submitted before the Court, he finally judged that there was no evidence showing that illegal broadcasting by Citizens' Radio would do any obvious harm to society. He, therefore, finally declined the Government's application for an injunction order.

President, the Government's application for an injunction order has actually led to a more significant question concerning the rule of law. Why did the Government not act in accordance with the law? Since the Court has issued a suspension order and an ordinance is in place to provide that illegal broadcasting is liable to prosecution, why did the Government not enforce the ordinance, but initiate civil proceedings to apply for a short-term injunction order applicable only to six defendants? This is the biggest problem, and judging from the final outcome, it is not difficult for people to infer that the Government made such an application with the aim of using judicial proceedings to serve a political purpose. If that is the case, it would absolutely infringe on a very fundamental principle of the rule of law and this is absolutely unacceptable to Hong Kong people.

Since we have a Senior Counsel as the Secretary for Justice of the SAR Government, he should understand this point. We are not talking about whether or not the Court has the power to deal with this issue. The Court certainly has the power to do so, but the question is whether the Government should initiate judicial proceedings and pass its responsibility to the Court in order to serve its political purpose. I think our Secretary for Justice must re-examine what he has done, and whether a political problem should be resolved by legal means or whether he should address squarely the constitutionality of this Ordinance and introduce legislative amendments expeditiously, rather than seeking an injunction order by hastily initiating civil proceedings, hoping to temporarily cover the mouths of some people. I think such a decision is very regrettable. Thank you, President.

**MR SIN CHUNG-KAI** (in Cantonese): President, whenever members of the public call for the opening up of the airwaves and the setting up of radio channels for use by the public, the Government will refuse on the ground of spectrum constraint. But in fact, all it needs to do is to introduce digital audio or digital sound broadcasting and it can solve the problem of spectrum constraint which has precluded the setting up of new channels.

If we look at overseas experience, it is not difficult to find out that it has become a world trend to launch digital audio broadcasting. That digital audio broadcasting has not yet been introduced in Hong Kong is a policy issue, not a technical issue.

Eureka 147, a mainstream standard for digital audio broadcasting, has since 1995 been formally adopted in Europe. This standard is currently adopted in countries including Belgium, the Czech Republic, Denmark, Germany, Ireland, Norway, Romania, Spain, Sweden, Switzerland and Britain. It is also adopted in countries outside Europe such as Canada and Singapore. Besides, trial runs are also conducted in some other countries and I will not name them one by one. However, I wish to make one point and that is, digital audio broadcasting has been launched in an increasing number of countries, showing that this trend of development is quite obvious.

That said, has any country encountered technical problems? The answer is yes. The United States have encountered technical problems. The frequency used for the operation of Eureka 147 is L-Band and VHF Band III.

In the United States, one of these two frequency bands is military access, whereas the other is used for television broadcasting. Such being the case, what should the United States do? Should they give it up or look for an alternative? The United States chose the latter. The FCC, namely, the Federal Communications Commission, of the United States decided in 2002 to adopt the standard of In-Band On Channel (IBOC) in order to solve the problem. The IBOC is different from Eureka 147 in that it can gradually shift from AM/FM broadcasts to digital broadcasting and requires no new radio frequency. It means that the same frequencies can be used for analogue broadcasting and digital broadcasting simultaneously.

However, IBOC is a proprietary technology. The United States citizens are required to pay royalties when they apply for a broadcasting licence. For what reasons the United States still took great pains to implement digital broadcasting given the considerable technical constraints and even though the requisite technology required the payment of royalties?

In May 2007, the several members of the FCC published their reports on their websites. In the reports they explicitly affirmed the importance of digital audio broadcasting and they all expressed the wish that this service can be expanded by, for instance, broadcasting more community-based programmes, widening the room for discussion on public affairs, creating a forum for local composers of music to publish their works, and producing programmes with ethnic minorities as the target audience.

To sum up their views, I would say that they have proposed "pluralism". "Pluralism" means the expression of different viewpoints and this means not only freedom of speech, as the forum for expression is also widened.

How can digital audio broadcasting facilitate the more pluralistic expression of opinions? At present, analogue broadcasting can only transmit on one channel using one block of spectrum but digital audio broadcasting allows multichannel broadcasting using the same frequencies. Indeed, we can see that digital television broadcasting has already produced this effect of transmitting more channels by using one block of spectrum.

If more frequencies are made available, more people can take part in operating radio stations and the public will have more choices of programmes. Not only will there be more choices of programmes, the sound quality will also

be upgraded. In the meantime, this can encourage creative works as well as their practical application. Other information such as weather and traffic information, lyrics, and so on, can be transmitted simultaneously.

As early as in 1996 the British Government enacted legislation for the introduction of digital audio broadcasting and approved in 1998 the first licence for digital audio broadcasting. Hong Kong has lagged behind for a whole decade.

In 1998, the Information Technology and Broadcasting Bureau established the Digital Audio Broadcasting Steering Committee to co-ordinate a technical trial of digital audio broadcasting by various radio stations. The standard adopted at that time was Eureka 147, and the results of the test were generally satisfactory. The Government also commissioned a consultancy survey on the market. Consumers generally welcomed the provision of more radio content but the receiver was quite expensive at that time, although its price has come down substantially now. The receiver cost over \$1,000 and even as much as a few thousand dollars back then and now, it costs only US\$30 to US\$50, which is equivalent to around \$200 to \$300, or \$300 to \$400.

After 2000, the Government published the "Digital Terrestrial Broadcasting in Hong Kong — A Consultation Paper". It was a further review based on the consultancy report in 1998. A second consultation was conducted in 2003, and the Government maintained the recommendation made in the first consultation paper and suggested to keep on waiting. In 2006, in its papers submitted to the Legislative Council Panel on Information Technology and Broadcasting, the Government continued to uphold the original decision on digital audio broadcasting and that is, they are not going to do it.

The three papers are all based on the technical report in 1998, which I think is outdated. In respect of the use of spectrum, the Government has long reserved the L-Band and VHF for trial tests. On the technical front, the Eureka 147 standard of a decade ago has already developed into a new generation of "DAB+" technology, which is better than the past "DAB", for the former uses a more advanced compression technology which can help improve the reception technology. As for the price of the receiver, broadcasting in Eureka 147 has now covered a population of 500 million and the price of the receiver has been further adjusted downward. Receivers can now be purchased from large-scale online shopping websites at a price as low as \$500.

Why does the Government still refuse to launch digital broadcasting which is long overdue?

Here, I wish to urge the Government to make reference to the experience in overseas countries and the Mainland and look into such new technologies as "DAB+" and IBOC, expeditiously draw up a timetable for introducing digital audio broadcasting and assign digital or analogue broadcasting frequencies for the public to set up community radio stations for broadcasting programmes produced by members of the public.

In fact, President, the Government does have spectrum to spare and it also has the necessary technology; the only thing that is lacking is mostly a policy. If the Government can adopt an open policy on broadcasting, all the problems can be resolved. I hope that the Government will not deter digital audio broadcasting on the pretext of technical constraints anymore.

I so submit.

**MR LEUNG YIU-CHUNG** (in Cantonese): President, I would like to express through you, President, my respect and gratitude to friends from Citizens' Radio. President, it is because I am indeed very grateful to them for fighting for our right to use the airwaves by way of civil disobedience, which is indeed most admirable. Their action has reminded us that ownership of the airwaves does not only rest with some people; their ownership can also rest with the public, for they are not patented. The airwaves have become a patent only because of the restrictions imposed on us by an archaic ordinance. Subsequent to some actions taken by us, we came to realize that the ordinance is unconstitutional. Had these actions not been taken, we would not have known this. After taking these actions, we have, step by step, gained an in-depth understanding and more knowledge of this issue. Therefore, I wish to express through the President not only my gratitude, but also my respect and appreciation to them.

Besides, they have, more importantly, inspired many members of the public and aroused their concern about this issue. The day before yesterday a youngster in the district suddenly came up to me. He said, "LEUNG Yiu-chung, do you support the fight for the opening up of the airwaves?" I do not know his attitude towards this issue; I was a bit taken by surprise but certainly, I said that I supported it. He said, "Good to hear that." I asked him

why and he said, "Of course, it is good to hear that. If the airwaves can be opened up, the situation would be different." I asked him how it would be different. He went on to recount his experience.

He found that in Chai Wan, some elderly people who live in public housing estates are very bored and so, he asked them why they did not listen to the radio instead of sitting there feeling dejected. This kindhearted youngster bought some radios for the elderly. The elderly said that they would like to listen to Cantonese opera and so, he tried to tune the radio to Radio 5 of Radio Television Hong Kong but it turned out that they could not receive Radio 5 in that district, because some districts cannot receive certain radio channels. He said that if the airwaves are opened up, some community radio stations can be developed and their programmes can be broadcast and received in certain districts even if they do not have strong reception capabilities, and this will be better.

Moreover, he said that members of the public can actually talk to each other, exchange views with each other and even give performance through the airwaves. For example, they can perform ..... As many people like to sing Cantonese opera scores in parks, he said that information can be disseminated in the community through the airwaves and this will bring convenience to the public. So, the Secretary's worries are unwarranted because this may not necessarily involve politics. In fact, the community very much wishes to disseminate information on everyday life and conduct cultural and arts exchanges through the airwaves. The airwaves can be very useful in these respects.

He, therefore, considered that it would be best to fight for their opening up as soon as possible for use by the general public. He added that some people had said that ..... Strangely enough, Mr CHAN Kam-lam is among those people who said that opening up the airwaves may not be the only option, for there are other channels to serve the purpose. The youngster, however, took exception to this view. Why? For instance, computer technologies are now highly developed, and from my own experience in operating an online radio station, difficulties do exist because not everyone can operate computers. Even if everyone manages to operate a computer, it is impossible to carry a computer with us all the time, so we cannot listen to the radio anytime. But if the airwaves are opened up for use by everyone, as long as one has a radio, he can listen to it while cooking his meal at home or even when he is taking a bath, and this will be most convenient, and this is also the reason why it can become popular.

Earlier on other colleagues mentioned running a newspaper or other alternatives. But is everyone literate enough to read newspapers? Can the elderly see the words? That is a problem. Although not everyone is able to hear, the radio is still a more convenient channel. Therefore, he said that he must support this, because this concerns not only our right, but will also lead to some very important changes to our lives and so, he must throw weight behind this.

President, apart from what I have said, the most important role of the airwaves is their facilitation of communications. In society nowadays, indifference prevails in human relationships, but if there is this convenient channel for communication, we can facilitate social progress. We do not have to feel so worried, for freedom of speech may not necessarily upset the order in society or pose enormous threats to the Government. If there are people who insist on holding such view, it only reflects cowardice in them. If this is the view of the Government, it shows only more clearly that the Government lacks confidence in its administration.

If the Government considers that it has upheld the people-oriented principle in its administration, why should it be afraid of discussion with the public? Why is it a problem to allow the public to air their views freely and unreservedly? The more the truth is debated, the clearer it becomes. Allowing more communications and discussion among the public will only be more beneficial to the Government's policy enforcement. On the contrary, if the Government is overwhelmed by worries and fear, it would be inhibited from doing anything. I wonder if the Secretary is overwhelmed by worries and fear. If not, why are the airwaves not opened up? Opening up the airwaves will provide a forum for the public, which is most important.

So, President, I think it is very good that today, we have the opportunity to express not only our views, but also our support for Citizens' Radio. I hope that friends from Citizens' Radio can win their case and I also hope that they can persevere with their fight.

President, I so submit.

**MR ALBERT CHAN** (in Cantonese): President, in 2006 I proposed a motion in this Chamber calling for the opening up of the airwaves. At that time I said,



"Narrow-mindedness and a mentality that resists changes will deprive us of the high skies of freedom". However, this criticism and such situation can still be found in Hong Kong. Our air has remained very filthy, and our sky has remained closed.

President, in his response later the Secretary will certainly say that since legal proceedings have commenced and as we respect the judicial system, no decision can be made on some major policies. But this court case will certainly be taken to the Court of Final Appeal ultimately, which means that it may be held up for two or three years. Then the Government would employ stalling tactics and the sky would remain closed for a few more years. The Secretary would tell us that they would further conduct public consultation but I hope the Secretary knows that the opening up the airwaves has been discussed in this society and this Chamber for a couple of decades. It has been discussed again and again since I joined this Council in 1991. In 1996 I also proposed a motion in this Council on opening up the telecommunications market and the airwaves as well as the issue of pay television. But it has been more than a decade now and the Government has not made the slightest progress. Audio broadcasting has developed at a pace which is even slower than a snail's pace.

The development of television stations, however, has made quantum leaps. From the previous landscape where there were only two licensed broadcasters providing free television services on two Chinese channels and two English channels, there are now two pay television service providers providing members of the public with a great variety of choices. Compared with the choices of television channels, the choices of audio broadcasting are lagging far behind. The Government still refuses to open up audio broadcasting and obviously, this is purely due to political not technical reasons. Digital broadcasting has already been introduced for television broadcasting, and as digitization of audio broadcasting requires a lower level of technology than that of television broadcasting, digital sound broadcasting absolutely should not be a problem. Digital broadcasting has been implemented for years in various parts of the world but on this issue, the position of Hong Kong has remained most outdated and the relevant development has remained stagnant. This is a disgrace to Hong Kong people. Our Government should also feel ashamed, because compared with other places, Hong Kong is extremely backward.

President, I hope the Secretary will understand a concept and that is, the airwaves are a public asset commonly owned by society and the people. The

Government, or the ruling authority, cannot deprive the public of their right to use the airwave. Nor can this public asset be manipulated and controlled by a consortium which obtains a licence at \$3 million a year. This is a right in common ownership by all people of Hong Kong. Therefore, as long as no improvement is made to this situation and no changes made to the airwaves, Hong Kong people are deprived of their rights every day, every minute, and every second. We hope that when addressing this problem squarely, the Secretary will not consider the opening up of the airwaves as a grace and he will not consider the opening up of the airwaves as a handout to the people. The airwaves are a common, undeprivable asset of the people. This concept must be clearly spelt out. If the Government maintains its refusal to accept this concept and its refusal to open up the airwaves, I can tell the Secretary explicitly that civil obedience would never cease.

Recently, when the High Court declined the Government's application for an injunction order, Citizens' Radio proactively announced unilaterally that they would give the Government three months for consultation and discussion, and during these three months, Citizens' Radio will not engage in illegal broadcasting. I very much hope that the Secretary can extend the ..... since they are extending the olive branch, the Secretary should not bash them over their head with a big hammer. Since "Long Hair" and "Ah Ngau" of Citizens' Radio have exercised so much self-restraint, the Secretary should seize the opportunity to provide ample room for the community to air their anger and discontent. The authorities should publish a consultation paper early to extensively consult the public on the opening up of channels in the airwaves and work out a concrete proposal in three months. It must not resort to procrastination on the pretext that the case is being heard in court. It must not keep on dragging its feet on the pretext of technical problems, and it must not keep on dragging its feet for reasons such as financial constraints, for there has been a delay of over a decade to two decades, Secretary. The Secretary can look up the records of past meetings of the Legislative Council. We started to discuss this issue as early as in the colonial era.

Under the current situation, President, if the Government is not so chicken-hearted (what exactly is the Government afraid of, since it has said that it has such a large pool of talents and even recruited Under Secretaries and assistants to Policy Secretaries from outside the Civil Service?), and if the Government is so full of confidence, it can set up on its own a number of community radio stations. Although I have set up the New Citizens' Radio, we

are still a case of David fighting Goliath. The Government may as well offer high salaries to hire for the Government more "hatchet men" to attack the pan-democratic camp through the media. As long as it has money, why should it be worried about not being able to hire hands? People just make an about-turn anytime, do they not?

So, the concern of the Secretary is unwarranted. Since he is confident in himself and he has the money and powers, he can use his powers to make a show of his strength and in this way, he can showcase his spirit of strong governance. If not, he would be a "tortoise hiding its head in its shell", controlling the two broadcasters and hiring those mediocre persons to talk nonsense or things that nobody understands. Now I refuse to listen to the programmes of Radio Television Hong Kong, because we really do not know what they are raving and ranting about, for what they said is always incomprehensible gibberish. President, the opening up of the airwaves is a common aspiration of the people, and an irreversible trend. It is also a major task that this Council has repeatedly urged the Government to accomplish over the past decade or so. The Government should stop causing delays, and if it continued to drag its feet, it would continue to be a "tortoise hiding its head in its shell".

**MS MARGARET NG:** Madam President, it seems only yesterday that Members of this Council urged the Government to review the Telecommunications Ordinance to protect the right to freedom and privacy of communication and to regulate secret surveillance. The Government adamantly resisted all warnings and insisted that what it was doing was lawful. History has proved the Government wrong, but it took three rulings from the Courts to convince the Government to amend the law. This evening, it seems we are watching history about to repeat itself.

Law reform is an integral part of the rule of law. If the law we passed is shown to curtail free speech unjustifiably, the Government must be prepared to consider where reform is appropriate, and be slow to apply for a gagging order to silence challengers.

The Telecommunications Ordinance was enacted more than 30 years ago under the colonial administration. Under the Ordinance, no one may broadcast without a licence. If he does so, he commits a crime. But the law gives the Chief Executive in Council an unrestricted power to grant or refuse to grant a

licence. It seems that the factors to be considered are not set out. The applicant has no way of knowing what conditions he has to meet before he can be granted a licence. In the recent incident which aroused wide public interest, Citizens' Radio tried to apply for a licence many months ago but did not succeed. I understand some reasons were given, but they were unconvincing. In any case, under the law the Government is not required to do so. It has every appearance of being an arbitrary power. There seems to be no reprieve.

The operators of Citizens' Radio and Members of this Council have pressed for reform of the law. The Government has persisted in refusing. Without the Government's agreement, no attempt to amend the law is feasible. In these circumstances, the law-abiding citizen is faced with a dilemma: to give up his freedom, or to exercise his freedom at the risk of criminal prosecution.

The operators of Citizens' Radio chose to risk prosecution. They were convinced the relevant provisions of the Ordinance are in breach of the Basic Law which protects fundamental human rights, including the freedom of speech. We do not have to agree with their choice. But they plainly have a case. The Magistrate before whom they were charged agreed with them. He may be found to be mistaken upon appeal. The Government certainly takes this stance. But the Magistrate's ruling should at least put the Government on notice that the lawfulness of present arrangements for applying for a licence is questionable.

But even if the Ordinance is not unconstitutional, the challenge has at least drawn attention to the fact that the present arrangements are unsatisfactory and unfair. It is unjust to force law-abiding citizens to put up with such a law. The law can be improved and updated even if it is not unconstitutional. The Government would have been more worthy of support if, while they prosecute offenders, officials also agreed to review the law. Better still, while the arrangements are unsatisfactory, they should first review and bring it up-to-date before prosecuting anyone.

Instead, the Government took the opposite stance. Not only did it hasten to prosecute, but when prosecution failed to convict, because the Magistrate accepted that the provisions under which the charge was brought was unconstitutional, the Secretary for Justice took civil proceedings to apply for an injunction to stop Citizens' Radio from broadcasting in the interim. This is oppressive. The injunction could have no other effect but gagging those who dared to challenge the Government. It is particularly oppressive when the

Government has no evidence that the broadcasting would endanger public safety as it claims.

Madam President, these developments vividly demonstrate that the Government is unwilling to take any initiative to review the law. Last week, when the Chief Executive attended this House, I asked him why he refused to review the law. He denied that he has refused. Yet, when asked, he refused to promise to do so. Significantly, he said that people here already have a great deal of speech freedom in Hong Kong. The Chief Executive has got it wrong. It is not for the Government to decide whether a citizen has enough freedom. It is for the citizen to decide when and how he wants to express his views, by writing, by broadcasting or whatever means, and every restriction imposed by the Government must be shown to be justified, and the burden of proof is on the Government.

Thank you, Madam President.

**MS EMILY LAU** (in Cantonese): President, just now, Mr Albert HO made a declaration of interest, saying that he was the lawyer of Citizens' Radio, and I also wish to declare my interest. I am a supporter of Citizens' Radio. Mr LEUNG Yiu-chung said in moving this motion just now that, Mr James TO had given us an opportunity to salute them — "Ah Ngau", you are really terrific.

President, I believe many members of the public also support them. President, you did not join the major rally on 13 January. On that day, some people were holding a box and it seemed that it was full of money. We all know how Hong Kong people are like. At present, the stock market has slumped a lot and they care a lot about money. However, on that day — several friends of mine told me subsequently — many people made it a point to approach them and stuffed money into the box that "Ah Ngau" was holding, so it could be seen that the public greatly supports Citizens' Radio. However, the Secretary ..... alas! Sometimes, one has the impression that the Secretary is very hardworking. Even though he sank to the bottom, he still made his way back valiantly. He works very hard and is more open-minded. However, President, his handling of this incident is really not at all satisfactory. Therefore, Ms Margaret NG was right in saying that history was repeating itself. If this is so, it will really be terrible — litigation — litigation all the way to the Court of Final Appeal, and it will be ruled that this is unconstitutional and the judge will again be asked to

give the Government several months' time, otherwise, the authorities will surely fall from power. However, the judge said that since these people had engaged in such activities for several years, was it not the case that they had not caused any interference or danger? I think the authorities really should not do such unsightly things anymore.

When was the judgment delivered? The judgment that the ordinance was unconstitutional was delivered on the 8th. The authorities then immediately asked the judge to prohibit this group of people from broadcasting as the legislation had to remain in force. President, we had a meeting on the 9th. During lunch time, I was not aware that the Secretary had the time to come here personally on that day. At that time, we were having our lunch. When it was mentioned that on the 10th, Citizens' Radio would go on air again, the Secretary asked with particular care, only that he did not take out a pen and paper to jot down the information, who among us would join the broadcast the next day. In fact, the press had already reported on this before that, in view of this, I told him all the names. Subsequently, he applied to the Court for an injunction in the afternoon.

We learnt about this piece of news sometime after five o'clock. At that time, we were still in the Legislative Council Building. A reporter asked me if I had betrayed anyone, so on, so forth. I said that first of all, the names had been mentioned in the press for several days because "Ah Ngau" had invited us to join the broadcast long ago. On the next day, that is, on Wednesday, the application was rejected, so another application was made on Thursday. On Thursday, I attended a gathering which took place in the Mandarin Oriental Hotel and which you, President, often would not attend but I often would. On entering, I saw the Chief Secretary for Administration, so I greeted him and asked him why he dragged the Court into this incident, since the Administration had requested the Court to allow the legislation to remain in force, so why was it necessary to apply for an injunction? If the Government applied for an injunction, it was only diverting attention, as the broadcast every Thursday evening made by "Ah Ngau" was illegal because the Court had stated that the legislation would remain in force. However, some people observed that this law had many flaws and was also unconstitutional, yet such a course of action was still taken. However, the present approach has changed. The people involved in illegal broadcasts were accused of contempt of court, that is, they acted in defiance of the Court. I asked the Chief Secretary for Administration whether it was really necessary to do so. At that time, the Chief Secretary for Administration said that of course,

the other Secretary of Department knew what he was doing. However, at present, we really do not know.

Therefore, I hope that the Secretary can look further at how this matter can be dealt with. If the law has to be amended, this should proceed as quickly as possible. Hence, I agree very much with Mr James TO's proposal. Of course, we have the royalist camp here and the comments made by Mr CHAN Kam-lam just now were meant for the Government's defence. In fact, it was not necessary to do so but if one wants to do so, it is necessary to consider the underlying principles that must be defended, and a review that complies with the law has to be conducted.

However, President, I found that the policy deputy spokesperson for information technology and broadcasting of the DAB, Christopher CHUNG, did not put it this way. On the 15th, the Hong Kong Economic Journal reported that Christopher CHUNG believed it was necessary to amend the Telecommunications Ordinance, pointing out forthright that this piece of legislation was obviously a draconian law passed down by the British-Hong Kong Administration. In the past, power was mainly concentrated in the hands of the Governor and the Executive Council, so he did not understand why the SAR Government was so backward and still adopted these measures which oppress the people, President. The Hong Kong Economic Journal also reported that Christopher CHUNG believed that the authorities could make improvements in two ways. First, should licensing be maintained to regulate radio stations? He said it is up to the Government to decide, however, it should establish an independent appeals board to handle complaints. Second, Christopher CHUNG said that the Government should establish an independent committee to deal with the approval of licences. This committee should consist of judges, representatives of the industry and members of the public. He believed that by enhancing the representativeness of the committee, the public's doubts about whether the Government had made such decisions without regard to reality could be allayed.

Oh dear, President, people would think that I have joined the DAB because I have spent several minutes recounting something related to the DAB. The problem is, sometimes, we also have a big question mark in our mind. I learnt from the newspaper that he was the policy deputy spokesperson, so we thought what he said would be correct, however, it is not known which

spokesperson would say what. I just do not know whom I should believe in but of course, I believe in people who say reasonable things, President.

Therefore, I hope that the Secretary will not be biased in favour of certain comments. I believe that if some things are supported by the public and these things should be done, they should be done as soon as possible. This is because if some people challenge the law — as I said, these people hold adult identity cards and of course, they know what the consequences will be — however, since this matter has aroused so much attention in Hong Kong society and even in the international community, I believe that ..... Secretary, in fact, you will not have any free time because at one moment, you had to deal with matters relating to the Ngong Ping 360, and at another, you have to deal with matters relating to the Tourism Board, in which problems have cropped up. Moreover, there are also matters relating to Radio Television Hong Kong (at present, the Government does not even dare submit the report on this). The public are very sensitive to these issues.

I hope the authorities will really respond in goodwill. Just now, Mr Albert CHAN said that they would not cause any trouble in the next three months if no drastic action was taken. Frankly speaking, we will probably also organize a major rally and we will not rule out any action in this regard. I hope the authorities will undertake to make amendments as soon as possible. However, President, if the Secretary says that he does not care and will take legal action against them as far as the Court of Final Appeal, as Members have said, there will surely be even more struggles. I believe that at present, all the cards have been put on the table. I hope that the Secretary will not be misled by some people and that he can gain a good grasp of the views in society. I so submit.

**MR HOWARD YOUNG** (in Cantonese): Madam President, as I pointed out in the motion debate in November 2006, airwaves are resources jointly owned by the public, and the prerequisites for a modern metropolis must be advanced dissemination of information and freedom of the press and of speech. For this reason, the Liberal Party has long since agreed that with the development of digital broadcasting, more broadcasting channels should in fact be opened, so that those who intend to operate community radio stations or who wish to use public access channels can have opportunities to reach their potential audience or viewers.



It is believed that the launch of digital broadcasting on 31 December last year should have marked a very important step towards the achievement of the abovementioned goal. It is highly likely that large numbers of minority interest programme will emerge for selection by the public. As for community digital radio stations, I believe that once the required technologies are mature and finalized, it will be possible to allocate some channels for the production of minority interest programmes to meet the needs of certain community groups and to make it easier for some people to convey their views and advocacies to the public through the airwaves.

As for the question of whether people can be allowed to use the airwaves for voice broadcasting before the actual establishment of digital radio stations, I think there are many problems. For instance, as pointed out earlier by E. K. N. YUNG, Chair Professor of the Wireless Communications Research Centre, Department of Electronic Engineering, City University of Hong Kong, the FM channels for radio broadcasting are already very congested, with three radio stations operating as many as seven channels within the frequency range of FM86 to FM108. That being the case, it will be difficult to spare any more channels for those who wish to apply for the operation of a new radio station. The operation of any community radio station regardless of all these constraints may therefore cause impacts on social order and security. The Government must therefore impose control, but this has nothing whatsoever to do with any curtailment of freedom of speech.

As a matter of fact, serious accidents resulting from the interference of normal radio frequencies by illegal radio stations are not rare in other countries. For example, on 19 March 2006, it was reported by the Associated Press that some pilots could even hear the disco music broadcast by an illegal radio station during their flight, and this posed a very great threat to aviation safety.

We naturally support freedom of speech and expression. But we also think that frequencies must be orderly allocated to radio stations. The allocation of frequencies must be appropriately planned, and the right of lawful use must be awarded in accordance with a set of procedures, so as to prevent any interferences. All this should not be dismissed as violations of human rights. As also pointed out by the International Telecommunication Union (ITU), since spectrum resources are limited, governments should formulate planning on the frequencies used by radio stations.

Besides, the Government must also consider the programme quality of the radio station concerned when processing its licence application. For example, it must consider whether its programmes will propagate sex, violence or illegal acts, lest some may commit illegal acts under the guise of freedom of speech.

In the survey conducted by the New Century Forum last month (I already mentioned this in the previous debate), the public gave the highest ratings to the same aspects of the SAR Government's administration as in the previous survey, namely, "a clean government", "free and fair elections" and "protection of freedom of speech". Two of these aspects are the motion topics today, and the average rating of the three aspects is 4.4 points. I do not think that many people will buy the idea that our freedom of speech can be protected only by the establishment of community radio stations.

Radio and television stations aside, the newspapers, electronic media and web platforms in Hong Kong also provide the public with plenty of opportunities to air their views. Some political parties have also set up their web radio stations, blogs and even web television stations (for example, the Civic Party has recently set up its CPTV). But we have not seen any government attempts to interfere with the operation of these web radio and television stations. This can aptly show that the people of Hong Kong can enjoy very great freedom of speech.

We appreciate the wish of some in society to establish community radio stations, to reach more people through the airwaves and even to propagate their own political opinions. But if everybody just establishes his or her radio station regardless of the realistic situation, then there will be just too many radio stations. In that case, normal radio communications will certainly be affected, posing threats to radio communications connected with emergency rescue work and aviation. This will be extremely dangerous. The Government must therefore impose a certain degree of control, so as to prevent disruption of public order.

We believe that with the advent of the digital broadcasting era, it is necessary to review the Telecommunications Ordinance and the Broadcasting Ordinance, so that our broadcasting policy can keep abreast of the times and we can strike a proper balance between the protection of freedom of speech and the need for normal radio communications.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

**MRS ANSON CHAN** (in Cantonese): Madam President, the Telecommunications Authority (TA) acted on the strength of section 23 of the Telecommunications Ordinance (TO) and prosecuted people who operated and took part in the programmes of Citizens' Radio and charged them for illegal broadcasting. On 8 January this year, Magistrate Douglas YAU Tak-hong of the Eastern Magistracy ruled that approval had to be obtained from the Broadcasting Authority (BA) before a telecommunications licence was to be granted. But as the licensing conditions of the BA were not clear, plus the fact that members of the BA were all appointed by the Chief Executive, this led to the possibility of a complete control by the executive authorities in licensing matters. Hence he ruled that section 23 of the TO was in breach of the Basic Law and the Hong Kong Bill of Rights Ordinance. The charges pressed against the defendants were dismissed.

Recently, the Secretary for Justice filed an application to extend the validity period of the injunction applicable to Citizens' Radio and his application was dismissed by Judge HARTMANN of the High Court. The Judge pointed out in his judgment that ever since the commencement of broadcasting of Citizens' Radio in 2005, there had been no evidence showing that the radio station had caused any interference with public and emergency services like aviation, police and ambulance services. Hence it was considered inappropriate to extend the validity period of the injunction.

The airwaves are a community asset and it is the common aspiration of the people and a global trend to open up the airwaves. Since the democratization of South Korea, the number of radio stations has grown to some 200. After the cessation of the state of emergency in Taiwan in 1993, the number of radio stations has grown from 33 to 178. In 1995, the Supreme Court of India declared the former law on radio station control unconstitutional. Then the airwaves were opened, and the number of non-government radio stations has been growing by the hundreds each year.

Among developed countries and whose population are similar to that of Hong Kong or even less, with the exception of Singapore, the number of radio stations is all larger than that of Hong Kong. In Israel, for example, though the

country has a population of 6.4 million, there are 155 radio stations. In Ireland with a population of 4.1 million, there are 49 radio stations. Luxembourg with a population of 450 000 has 28 radio stations. New Zealand has a population of 4.1 million, but it has more than 400 radio stations, of which 55 are in the city of Auckland alone, 46 in the capital city of Wellington and 45 in Christchurch.

In Hong Kong, for so many years, the FM and AM bands for radio broadcasting have only three radio stations and no new licence has ever been issued for more than a decade. The Citizens' Radio incident on this occasion makes us see that the TO may be unconstitutional and the relevant policy is outdated.

Now the Government puts up grounds like the shortage of FM bands and other technical reasons in its refusal to issue the licence to Citizens' Radio. But overseas experience and technological developments show that as a general rule, FM radios broadcast between 88.1 to 107.9 Mhz and the spectrum is usually divided into 100 small zones and so theoretically it can accommodate 100 radio stations. It is not difficult at all to prevent radio stations from interfering with each other, given the present-day state of technology. On top of that, in any big city, not all radio stations are after total coverage. As there are only three radio stations in Hong Kong with a total of 13 channels, consideration should be given to redistributing the present channels so that the minority, non-mainstream and non-profit-making programmes can be aired, thus making it possible for greater diversity in the community.

Madam President, to enable the public to voice opinions and discuss public affairs in the airwaves is an important part of the realization of the freedom of speech and the freedom of expression. It is an important indicator for the manifestation of the freedom of speech as enshrined in the Basic Law. This also has a bearing on issues of public interest like the freedom of information, equal opportunities and the sharing of community resources. Now the Government, in rejecting applications for licence by invoking all sorts of technical grounds and refusing to amend the outdated and possibly unconstitutional TO, only makes the public query whether political objectives exist when the authorities exercise control of the airwaves.

The Chief Executive in Council has refused to issue new licences and almost no reason is given. I demand that the Government amend the TO expeditiously and solve the problem in relation to its unclear and doubtful

constitutional status. The new TO must incorporate provisions on competition and unambiguous licensing principles must be drawn up. Like those in such advanced countries as the United States and Canada, they should be simple and highly transparent, devoid of any screening process and be clearly spelt out for the public to understand. In addition, the new channels should not be monopolized by the syndicates or commercial concerns and the needs of both the majority and the minority must be taken care of.

Madam President, I so submit.

**MR MARTIN LEE** (in Cantonese): Madam President, first of all, I would like to make a declaration of interest as I am one of the barristers of the case in question.

Madam President, as many Members have already discussed the issue, so I do not wish to repeat the arguments. The only point that I would like to mention is that the Telecommunications Ordinance is really a draconian law. Many Members mentioned that this was in fact a draconian law left behind by the British Hong Kong Government. I believe many people would agree to this point. Of course, after the passage of the Bill of Rights, many aspects of our human rights are protected. But Article 39 of the Basic Law does confer the power on the SAR Government to use law to restrict various aspects of our human rights. However, a very significant principle is, even if it has to restrict people's human rights, it should not act too unscrupulously.

Are there really some unscrupulous elements in this Ordinance? I believe by citing one example, I can make Members understand the situation. In prosecuting certain public figures this time, the authorities had invoked section 23 of the Telecommunications Ordinance. Besides prosecuting the person transmitting electronic signals, that is, the head of the radio station, or the person responsible for setting up the radio, the section can also be invoked for prosecuting guests who participated in certain programmes — prosecution actions had already been taken by now, and one of the prosecuted guests is SZETO Wah. What is even more ridiculous is that even those who tune in and listen to the broadcast will be liable to prosecution, too. In other words, if those who listen to the radio station know that it is unlicensed but still tune in to listen to its programmes, they will be equally liable to prosecution and can be

sentenced to imprisonment. Therefore, for this point alone, how can the Secretary refuse to amend the Ordinance? Let us forget the rest, and just discuss this point, this is obviously very unreasonable. Do we really have such a need? I have heard of allusions to something like "eavesdropping", but are you suggesting that eavesdropping will cause a plane to plummet? Therefore, this is obviously very unreasonable.

Besides, though the Magistrate had made a ruling in the morning to the effect that the law was unconstitutional and the charges were dropped, in the afternoon of the same day, the Senior Counsel of the Government made an application to the Court for suspending the validity of the ruling that the law was unconstitutional, and he had done that. But was this move necessary? In fact, this might not be necessary at all, because the Magistrate cannot make a declaration which may affect others. A Magistrate can only pass a ruling in a case when several defendants are being prosecuted, and other Magistrates are not required to follow his ruling; and even for himself, when he hears other cases in future, if he has some new arguments and evidence, he does not have to follow this ruling. Therefore, it is not necessary for them to put the ruling on stay at all.

I hope the Secretary can grasp this good opportunity because the authorities can still have the time to conduct a review and make amendments. Very often, when an ordinance is ruled as unconstitutional, the Government will naturally become very anxious. But in anxiously seeking to suspend the validity of the ruling, what the authorities want to do is none other than buying more time for doing some remedial work, that is, for amending the relevant ordinance as soon as possible, thus turning the unconstitutional parts of the ordinance into constitutional ones, such that law-enforcement actions can then be taken. However, this time, the Government did not take that course of action. The authorities had absolutely not mentioned their intention of making amendments to the law. But obviously, I believe no one would say that the Ordinance is completely correct and constitutional. As such, why did the Government not propose to amend the legislation when the Government proposed to suspend the ruling? I hope the Secretary can think twice. Thank you, Madam President.

**MR ALAN LEONG** (in Cantonese): Madam President, recently a certain media organization asked netizens a question in an online voting zone, "Do you support

Citizens' Radio in challenging the Telecommunications Ordinance by way of civil disobedience?" I find the way in which the question was set very weird, and I cannot help associating it with the story of The Emperor's New Clothes. The question seems to be asking the people, "Do you support that small child in asking the Emperor whether he has put his clothes on?" On the other hand, it does not ask the more fundamental question: Has the Emperor put on his clothes?

Madam President, I have been worried that the media and the public have recently been focusing their attention on people who oppose the TO, but they have not explored as a more fundamental action the contents of the legislation in question, and made suggestions on how amendments should be introduced to respond to the new circumstances and new requirements of society. The motion moved by Mr James TO will enable us to put our focus back on the law itself, so as to examine the need for reviewing it with a view to broadening the scope of community broadcasting.

Madam President, in fact, unless the SAR Government intends to discredit local judicial officers' legal knowledge and their determination to defend the rule of law, the judgment of Magistrate Douglas YAU of the Eastern Magistracy should be acted on immediately and seriously. Magistrate YAU had explicitly pointed out that the TO had conferred unrestricted discretionary power on the Chief Executive in Council to handle issues related to the examination of applications and the issue of broadcasting licences in accordance with the views of the Broadcasting Authority. However, Madam President, at present, all the members of the Broadcasting Authority are appointed by the Chief Executive, so this Authority itself is subject to the visible control of the Chief Executive.

Magistrate YAU was of the view that the authorities were required by law to be able to accord fair and equal treatment to different applicants in exercising their power, and they should enable the public to understand the criteria which they had adopted in exercising the discretionary power, and for those whose applications were rejected, they should be informed of the reasons of their rejection as well as whether they have the chance to challenge the rejection decision. Besides, the organization responsible for regulating the examination and vetting of licence applications should be independent of the Government. But as revealed by case evidence, under the current regulatory framework, basically, all the persons who applied for a licence for operating a radio station in recent years really did receive fair and equal treatment — their applications have

all been rejected in the same way, and fair and equal enough, they are not informed of the reasons of their rejection.

Madam President, since the authorities enjoy unrestricted discretionary power in various aspects such as the appointment of members of the regulatory authority and the vetting and issue of broadcasting licences, and so on, this is not compatible with the basic power requirements on restricting the people's rights as contained in the Basic Law and the Hong Kong Bill of Rights Ordinance. Therefore, the Magistrate thought that the TO is not compatible with the Basic Law.

When Magistrate YAU suspended the criminal proceedings last week, so as to enable the Government to lodge an appeal on the issue of whether the TO was constitutional, the Government took the opportunity to play the trick of swapping concepts by saying that, since the proceedings were not closed, so the TO was still intact, and the Government would carry on with its enforcement actions. In fact, as a professional judicial officer, Magistrate YAU had, after making his own observations on the TO, come to the conclusion that the Ordinance was unconstitutional, and such justifications would not vanish just because the executive was lodging an appeal according to the legal procedures. In other words, the justifications are evident to all, and all that the Government has to do is to face up to such justifications and tackle the problem.

Madam President, however, we remember that in the Chief Executive's Question and Answer Session held last week, Mr Donald TSANG categorically refuse to amend the TO, as if Magistrate Douglas YAU's judgment had never existed. Instead, the Government made use of an injunction order to extend the "life" of a law that violates human rights, and eventually it met another defeat in the Court. I believe Members can still recall that when the part of the TO on covert surveillance was ruled unconstitutional two years ago, the Government acted similarly by refusing to amend the law. Instead, it tried to override the law by making use of an administrative order. It carried on with its work in this way until it no longer worked, and then it resorted to forcing the Legislative Council to work in extreme great haste to complete the legislative procedure which should otherwise have been proceeded with much earlier.

Madam President, will the Government tread on the same erroneous path in handling the law on the licensing of broadcasting in airwaves as in the case of



the enactment of legislation on covert surveillance? Frankly speaking, the Government still has not been able to convince us that the authorities have already learned a lesson from the experience in the case of two years ago. On the contrary, the officials have been acting in very much the same way as their predecessors did two years ago — stubbornly refusing to admit the errors and even resorting to extreme means to deal a blow to the rule of law. In short, they are unwilling to respect the views of judicial officers to amend the law that violates human rights.

Madam President, may I once again plead to the authorities: If they are really so anxious about the consequences of a legal vacuum, they should expeditiously review the legislation and put forward amendments, instead of making use of administrative or judicial means to uphold certain laws that are not worthy of safeguarding, outdated, unconstitutional and cannot protect the freedom of speech of the people, which is protected by the constitution.

Madam President, the rule of law is not just a simple matter with the Government enacting the law and the people complying with it. In order to manifest the spirit of the rule of law, it would require the implementation and enforcement of law in order to promote, fulfil and safeguard the freedom and rights of speech of the people. I hope the Government can understand this.

Madam President, I so submit.

**MS MIRIAM LAU** (in Cantonese): Madam President, human rights are universal values in the international community and their significance had already been spelt out in Article 1 of the United Nations Universal Declaration of Human Rights, "All human beings are born free and equal in dignity and rights." Therefore, like everyone else, I absolutely support the protection of human rights.

However, with regard to Mr James TO's allegation in his motion that the restriction imposed by law on the people's right to set up community radio stations is tantamount to depriving the people of the right to express their opinions through different channels and violating human rights, I have substantial reservation about it.

Of course, as a kind of naturally endowed rights, human rights are above everything. However, we must understand that legislation is still required for the protection and assurance of human rights. It is necessary for each and every citizen to be law-abiding, otherwise, how can the law and order of a society be maintained?

I definitely understand that some people would like to demonstrate the rights to the freedom of speech through operating community radio stations and they may think that some legal provisions are incompatible with the provisions in the Basic Law and the Hong Kong Bill of Rights Ordinance that safeguard the freedom of speech.

However, the Citizens' Radio case is still pending an appeal, and the Court still has not handed down its final judgment. So it is premature to say whether the law in question is really unconstitutional now. If we demand the Government to amend the law now, it is like asking it to pass a predetermined verdict before a proper hearing has been conducted. This is against the principle of the rule of law. I think the public should have confidence in the local judicial system and should trust that the judges would pass a reasonable and suitable judgment on the case.

I believe Members can still recall that, as Mr Alan LEONG has also mentioned this earlier on, after the Government's acts of intercepting communications were ruled by the Court as unconstitutional, it had immediately put forward a legislative proposal. In addition, having adequately considered the divergent views of Members and people from different walks of life in society, the Government proposed several amendments in a bid to avoid violating human rights. I hope this time we can adopt the same mentality in handling the case of Citizens' Radio.

In fact, the crux of this debate does not lie only in whether legislative amendments should be introduced, but also in whether we should comply with law. I say so because, while Mr James TO was demanding that legislative amendments be introduced, Members from the pan-democratic camp were already attending activities organized by Citizens' Radio and took part in illegal broadcasting and even ignored the Court's injunction order. This was most sarcastic, and it also showed great disrespect to the rule of law.

Let us take the case of Citizens' Radio as an example. On 8 January this year, Magistrate Douglas YAU had already passed a judgment. The Secretary for Justice indicated that it would lodge an appeal with the High Court, so he applied to the Magistrate for leave to appeal against the decision of striking down the charge. The Magistrate accepted the application and the case would be brought up for a retrial on 11 February. So the Secretary for Justice had also applied for an injunction order to ban Citizens' Radio from continuing broadcasting.

However, in defiance of the Court's injunction order, Citizens' Radio launched its broadcasting activities again. This makes a big mockery of Hong Kong people who all along have treasured the rule of law very much. In fact, the Government's application for extension of the injunction order had already been turned down by the Court last week. It demonstrated adequately that it was entirely unnecessary for them to act in a way not in compliance with the injunction order.

It came as no surprise that their act of defying the Court's injunction order had elicited serious criticisms from both the Bar Association of Hong Kong and The Law Society of Hong Kong. The Bar issued a declaration on 11 January to condemn such acts, and said that respecting law is a core value of Hong Kong, which is crucial to maintaining the rule of law in the territory. It also pointed out clearly that a litigant must comply with the injunction order issued by the Court; and even if the litigant found the order unfair or unjust, instead of refusing to comply with it, he could only appeal against it through judicial proceedings.

The Law Society also made a declaration on the same day, (I quote) "The existence of the rule of law depends on our respect for the Court. Regardless of the controversy between the Government and Citizens' Radio, the decision of the Court must be respected. Only in this way can we safeguard the spirit of the rule of law." (End of quote)

Madam President, as Mr Howard YOUNG pointed out in his earlier speech, the airwaves are precious public assets, the orderly utilization of which must be ensured. If everyone does not comply with the rules and freely operates community radio stations, it will only lead to unnecessary confusion which cannot be mentioned in the same breath with the violation of human rights.

Of course, on the questions of whether some unreasonable provisions do exist or whether certain provisions warrant amendments to the Telecommunications Ordinance and the Broadcasting Ordinance, there is still room for further discussion. But we should trust our judicial system. We should wait for the Court's judgment before making any further decisions.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

**DR FERNANDO CHEUNG** (in Cantonese): I think basically there should not be any controversy about opening up the airwaves. What are the advantages of opening up the airwaves? What is so special about providing the people with more avenues of expressing their views through the addition of several new radio stations?

Recently, I have read an article written by CHAN Sic-chi, the writer of the book *Twelve Housewives in Tin Shui Wai*. She said that actually it should be a good idea if Tin Shui Wai could have a community radio station of its own. She said that there were many low-income families in Tin Shui Wai, where many small children were badly in need of tuition services. On the other hand, some people may have the capabilities of providing tuition services to others, but may find it cumbersome to travel to Tin Shui Wai. Besides, neither information nor matching of such need and service is available. If there is a community radio station in the community, it will enable secondary and university students living in nearby districts, such as Tuen Mun and Yuen Long, to teach primary students in Tin Shui Wai through broadcasts over the radio. By running such on-air tuition services, they can discuss subjects such as Chinese, English and Mathematics as well as textbook knowledge with such students. This is really a good idea.

Why is this approach feasible? Because it does not require any television sets — if high definition television sets are required, they would even cost more. Let us think about this: How affordable it would be if all that is required is just a radio! In comparison with other communication or telecommunication devices, radio is an inexpensive and effective communication tool. If we can really allow the development of such community radio stations, we can exercise very

great imagination in helping different communities. Come to think about this: Housewives may exchange information in identifying the best offers in the market. The unemployed in the district may not know where they can find jobs, but if people can communicate among themselves, and then information can come to their households direct, you may imagine how great such a force will be in different communities.

Yet, at present, it is still very difficult for us to see this happening. "Ah Ngau" TSANG Kin-shing has been striving for such a simple community radio station for many years. He hopes to apply for a licence. He has submitted applications through the proper channel. But unfortunately, we have the Telecommunications Ordinance, a draconian law enacted a long time ago. It has been operating like a "black-box operation" with no transparency and no checks and balances whatsoever. But TSANG kept on broadcasting in civil disobedience. Before Martin LEE delivered his speech earlier on, I did not know that it was also illegal for a person to tune into the programmes of a community radio station and he could be arrested. I can recall that I had once been interviewed by Citizens' Radio over the telephone. I did not realize that I had already committed an offence. President, I could have been arrested a long time ago. Of course, recently I have also participated in a programme broadcast by Citizens' Radio and now I am always bringing with me a toothbrush, that is, I am mentally prepared for it in this manner.

Why do we have to allow the emergence of such a law? Why can we not now, at a time when our economy is booming, open up the airwaves? What does the Government wish to control? Earlier on, someone said that tolerating such radio stations to broadcast would affect public safety, and so on. President, I have very little knowledge of the technical issues, but frankly speaking, many people who are conversant with the technical side have already come forward to say that there should be no problem at all. As a small community radio station, its power is so small, its broadcasting range so narrow, its frequency so low, basically it would not affect law enforcement, public security, even the communication for aeroplanes and shipping, definitely it would not have any bearing on anything. Now, even the Court does not accept such an allegation.

Basically, such a law should have been amended a long time ago, but the Government is unwilling to do so. Citizens' Radio has the courage to challenge

the law, but the Government reacted categorically by arresting the persons concerned before handing them to the Court for trial. Then, the Government took enforcement action selectively by arresting SZETO Wah, an old gentleman aged over 70. On the other hand, other people such as Anthony CHEUNG, who is a Member of the Executive Council, and CHOY So-yuk were not implicated. Regarding such selective law-enforcement actions, such politically selective law-enforcement actions, what kind of implications do they carry?

After the case had been heard by the Court, the Government lost its case. But feeling dissatisfied with the Magistrate's verdict that the law is unconstitutional, the Government said that it would lodge an appeal. It is perfectly fine for it to lodge an appeal; just go ahead with it. But the Government chose to apply for an injunction order which dragged the Court into the controversy by way of a civil action and it degraded the Court into a political tool for persecuting dissidents — it just does not allow them to go on broadcasting. Therefore, once they start broadcasting, they have not only committed a criminal offence by violating the Telecommunications Ordinance, but they will also face a civil charge of contempt of court, thereby subjecting them to double blows.

With such suppressive measures, does our Government, being a strong governing regime in the 21st century, wish to tell the world that it is even "tougher" than Singapore, such that whenever anything happens, it will take prosecution action until the relevant persons become bankrupt? Does the Government intend to prosecute the "opposition camp" until all its members are sentenced to imprisonment? I hope this is not the case. The Government may say that we do not have enough radio frequency, but at this day and age, our technologies are developing towards digital radio broadcasting, and our television has already undergone digitization.

Let us take a look at the situation. On the day right after the injunction order was issued, LIAN Yi-zheng said that the Telecommunications Ordinance had been ruled by the High Court as "having violated the Basic Law" two years ago; the Government should have amended it a long time ago. But instead of amending it, it simply rejected the applications submitted by people not in the Government for setting up community radio stations by invoking the more ridiculous parts of the Ordinance which highlighted the logic of governance of the colonial era. In addition, it prosecuted people not in the Government for broadcasting illegally. The selective application of the rule of law which shows

contempt of the basic rights of the people as well as such hostile mentality and tactics towards the people are just the same in nature as the colonial governance of the Hong Kong British Administration some four decades ago. They are very much the same. I suppose the SAR Government does not intend to bring the spirit of the rule of law into play in this manner. Therefore, President, the so-called "blows" dealt by us are exactly our attempts to deal blows to a draconian law. We hope Hong Kong people would realize that if we can open up the airwaves, we can then enable many communities and many socially disadvantaged groups to make their voices heard. I hope the Government can consider this issue seriously.

Thank you, President.

**MR ALBERT CHENG** (in Cantonese): According to Rule 83A of the Rules of Procedure, which is related to the "Registration of Interests", "In the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest." In addition, Rule 84(1A) of the Rules of Procedure provides that "In the Council or a committee of the whole Council, a Member shall withdraw when a vote is taken on a question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy", in which case he can speak and cast his vote.

Why did I quote the Rules of Procedure? Because I want to make a declaration of interest. Madam President, since the subject of the motion debate today has to do with opening up public service broadcasting and community radio stations, before I speak further, I have to declare my interest. A company led by me formally submitted an application to the Government early this month to establish a new commercial radio station which will broadcast on the AM band. I hereby declare my interest.

Coming back to the question, just now, many Honourable colleagues have spoken and many of them are experts on law. I subscribe to the legal viewpoints presented by them. I think that as information technology advances with the times, there is really a need to amend the Broadcasting Ordinance. This is beyond doubt and also my position.

The original motion and some of the amendments point out that the existing legislation restricts the establishment of community radio stations by the public. However, I do not think this is a very accurate description. One should say "regulate" instead of "restrict". I think the legislation imposes stringent regulation, however, there is no legislation prohibiting the establishment of community radio stations by the public. The original motion also says that the Government has unrestricted power to reject the applications from members of the public for a licence to operate a radio station, however, this is probably also not the whole truth. Under the existing regulations, after an application made by the public to establish a radio station is rejected, it is true that there is no appeal mechanism for them to lodge an appeal. This is a loophole in law. However, to take my case as an example, I have already made an application and if the Government does not approve of my application, I can try to get a fair judgment by seeking judicial review. Therefore, it is debatable whether the Government really has absolute power to reject applications.

At present, concerning the actual restrictions on applications to operate radio stations made by the public, as a member of the sector, I can point out that this is not an issue relating to the legislation, but an issue relating to the policy on opening up the airwaves. At present, the Government has made available seven FM channels. The two licensed radio stations — the Metro Broadcast Corporation Limited (the Metro) and the Hong Kong Commercial Broadcasting Company Limited (HKCB) — have two channels each, so they have four channels in total. Radio Television Hong Kong (RTHK) does not hold any broadcasting licence, so it is in fact broadcasting without a licence. However, since it is a government department, it is given three FM channels.

In addition, the Government has also made available eight AM channels for the purpose of broadcasting and the so-called community radio stations, that is, the Metro and the HKCB, both have one AM channel each, whereas RTHK, which is engaged in unlicensed broadcasting, has three AM channels. Therefore, there are in fact two channels left — no, RTHK has four channels and four plus two is six, so I have applied for one of the channels.

At present, as I said just now, the actual restriction relating to the applications to operate radio stations is related to the availability of radio channels. With the technology nowadays, it is in fact possible for the Government to reshuffle the channels. Although it will not be possible to greatly increase their number, it will at least be possible to increase the number



of FM channels from seven to nine or 10. However, when it comes to community radio stations, the most important thing is public service broadcasting. Unfortunately, judging from the present situation, it is very likely that the Government would defer the submission of its report to the Panel on Information Technology and Broadcasting originally scheduled for next week. However, we will still hold a meeting to discuss this issue. In fact, the most important thing is that community radio stations should broadcast by means of public service broadcasting, or the so-called PSB. Therefore, I think the most important thing is for the Government to review its existing policy on broadcasting and establish PSB as soon as possible instead of dragging its feet.

After a platform for PSB has been established, it will be possible to provide some channels or timeslots for broadcasting by the community. This is the fairest approach. If community radio stations or communities involved in broadcasting have to make their own investments to establish channels to make public broadcasts, they will be constrained by their capital, as a result, groups with vested interests will have an edge. For example, church communities will have an edge because they have money and trade unions — of course, the Federation of Trade Unions has the wealth and influence to run a radio station of its own but the Hong Kong Confederation of Trade Unions probably does not have the money to do so. Therefore, in the final analysis, it is a must for the Government to make investments for the sake of community radio stations and establish a PSB channel.

Just now, various Honourable colleagues pointed out that with the advances in information technology nowadays, television stations have already adopted digital broadcasting. In fact, radio stations also have no time to lose in going digital because of the limitations of the FM band. If the Government develops digital broadcasting, the number of channels will naturally increase. In theory, the number can reach several hundred. Perhaps let us not talk about several hundred channels. If the number can be increased to several dozens, I believe this will give the public the freedom of expression and "Ah Ngau's" Citizens' Radio will also be able to make formal and legal broadcasts. I believe that only in this way can we get to the heart of the matter instead of scratching the surface of it.

(THE PRESIDENT'S DEPUTY, MS MIRIAM LAU, took the chair)

In sum, the original motion and various amendments, with the exception of Mr CHAN Kam-lam's amendment, are strictly speaking at odds with the present policy of the Government. Of course, Members may query whether the Chief Executive has absolute power of rejection. There are stipulations in the Basic Law. As I said just now, in view of the issues relating to the declaration of interest and the provisions of the Rules of Procedure, although I have the right to speak and vote, I have chosen not to vote in order to show my impartiality.

I so submit. Thank you, Deputy President.

**MR FREDERICK FUNG** (in Cantonese): Deputy President, last Tuesday, Magistrate of the Eastern Magistracy, Mr Douglas YAU, delivered a clear judgment on the charges of illegal broadcasting against Citizens' Radio. It was ruled that the Telecommunications Ordinance (TO) violates the Basic Law and the Hong Kong Bill of Rights Ordinance and obviously, that the licensing regime and procedure for radio stations in the TO obviously give the Chief Executive excessive power and does not protect the freedom of speech. Therefore, the charges against the six defendants were dismissed.

According to section 7 of the existing TO, the power to issue licences rests in the hands of the Chief Executive in Council, however, it is not specified clearly therein what the conditions for granting a licence are, so the public do not have a clear piece of legislation to follow. Moreover, since the members of the Broadcasting Authority (BA) responsible for approving licences are all appointed by the Chief Executive, whether a licence will be granted or not depends entirely on the Chief Executive. Furthermore, the authorities can refuse to grant a licence to an applicant without explanation but no appeals channel is available, so it can be seen that there is no effective checks and balances in the whole licensing regime.

After learning about the judgment, the Secretary for Justice requested the Magistrate to suspend his ruling, and on the next day, he cited such untenable grounds as inciting others to follow suit or interference with emergency telecommunications systems and applied to the High Court for an interim injunction to prohibit Citizens' Radio from resuming broadcast. However, in fact, in the interim before the appeal is heard, unlicensed broadcasting would still be regarded as a criminal offence, the Government would still have the power to

continue to invoke the TO to stop unlicensed broadcasting and people engaged in such activity are still liable to criminal prosecution.

Why did the Secretary for Justice attend to such trifles at the expense of what is essential and take a circuitous course of action that relied on the injunction of the Court? This course of action makes the public doubt whether the authorities are politically motivated and are trying to increase the legal and political stakes for people taking part in the broadcasts of Citizens' Radio. Of course, they have to face the consequences of the appeal against the judgment on the TO, and even if the TO is eventually ruled to be unconstitutional, there is still the likelihood that they will be charged with contempt of court. Moreover, this course of action taken by the Secretary for Justice also diverts attention from this act of civil disobedience that originally targeted only on the Government by dragging the Court in for no good reason. Moreover, in an attempt to divert the attention of the public, the Court was pitted against people fighting for the freedom of speech, thus misleading the public into thinking that these people are at odds with the judgment of the Court and want to challenge the judicial system in Hong Kong. The decision of Mr Justice HARTMANN, Judge of the High Court, to refuse to extend the injunction on Monday shows that the authorities do not have any good ground.

Deputy President, the authorities' unscrupulous approach of trying to intimidate opponents through technicalities in law and manipulate public opinion have in fact only done harm to others without doing themselves any good. It does not contribute towards solving the problem in any material way. The Hong Kong Association for Democracy and People's Livelihood (ADPL) holds that the judgment delivered by the Magistrate was based on adequate and strong grounds and it points out that any restriction on the freedom of speech should be subjected to regulation. Regrettably, the authorities paid no heed to this and embarked on a game of pointless legal proceedings. This reflects the fact that the authorities has not reflected seriously on this matter or learnt a lesson from the hasty introduction of legislation to regulate the interception of communications by the Government on the last occasion, such that this TO riddled with flaws can be reviewed properly.

The ADPL is of the view that following Hong Kong's reunification, the SAR Government must keep abreast of the times. The authorities have to understand that the more closed a political system is, the less the number of radio

stations as this can facilitate speech control by those in power. Conversely, the more politically open a place is, the more open its airwaves. The authorities really cannot cling to the mentality of speech control practised by the colonial government in governance. For example, even in respect of urban planning, which has been much criticized by the public, there is also a mechanism in the Town Planning Board for dissenting people to voice their objection and lodge an appeal, so in respect of the licensing regime for radio stations, why is it that only the Chief Executive has the say, such that the rejection of an application by the Chief Executive is final and any dispute is not allowed? I hope very much that the SAR Government can be pragmatic and review the TO right away.

Of course, the Legislative Council has also debated the issue of opening up the airwaves a number of times. However, the Government has all along turned down such requests categorically on the ground of limited spectrum, believing that as Hong Kong is a small place, conventional broadcasting can already satisfy the needs of the public, so there is no need to establish community channels or community radio stations. In fact, this involves at least two fundamental issues: first, whether the opening up of the airwaves is technically feasible and second, whether the public has such a need.

For one thing, how many radio stations can the existing FM frequency spectrum accommodate? In the past, due to less advanced technology, in order to avoid interference among stations, only a smaller number of radio stations could be accommodated. However, with technological advances, the Government is entirely capable of increasing the number of radio stations that can be accommodated by re-allocating the existing frequencies and introducing radio stations for local communities that do not have total coverage. As in the case of the newly introduced digital television broadcasting, it is in fact possible to accommodate more television and radio channels.

For another, is the audience content with the existing conventional broadcasts? This is a fairly subjective issue and in a setting of closed airwaves, it is impossible to judge and still less is it possible for senior officials to make decisions simply by discussing this issue in abstract without looking at the reality. From the vibrant development of the Internet in Hong Kong, it can be seen that the public wish to learn about the pluralistic views expressed nowadays and there is also a demand to learn about and express pluralistic views.

In view of this, the grounds cited by the Government in refusing to open up the airwaves cannot hold water. I hope that the Government will cease to evade the aspiration of the public, and it had better review and amend the relevant legislation in earnest and expeditiously, so as to make more community radio stations available.

With these remarks, Deputy President, I support the motion.

**DEPUTY PRESIDENT** (in Cantonese): Does any other Member wish to speak?

**MR LEE CHEUK-YAN** (in Cantonese): Deputy President, I think all Members have made one point very clear in this debate, that is, the airwaves are a public asset and should belong to the people in the first place. The Government has the responsibility to open up the airwaves so that people can use the airwaves readily for the purpose of broadcasting.

What Hong Kong should be ashamed of and feel disgraced is that it turns out the number of radio stations in Hong Kong is the same as that in North Korea. I now know that there are just six radio stations in North Korea. If Members look at some open societies, they will find the numbers of radio stations in them are really stunning. After the democratization of South Korea, the number of radio stations increased from several to over 200. After the lifting of the curfew in Taiwan in 1988, the number of radio stations has increased drastically, from 33 in 1993 to 178 now. Members can see that the freer a place is, the more readily available for use by the public the airwaves are. I will cite another example. In India, after economic planning was abandoned, it was announced in 1995 that the law regulating radio stations at that time was unconstitutional — that is right, it was also declared unconstitutional — and the airwaves were opened up. In India, non-government radio stations increase by the hundreds each year and it is just impossible to tell how many there are now, all in all, they increase by the hundreds each year. It can be seen that in a free society, the opening up of the airwaves is actually a very usual thing and with a radio set in their hands, people can listen to whatever they like. They can tune in to FM102.8 if they like and if they do not, they can turn it off. This is as simple as that. In fact, this is how a free society functions. However, unfortunately, so far, the Government is unwilling to open up the airwaves.

Some people say that even if the Government does not open up the airwaves, we should still abide by the law and conduct ourselves in accordance with the law. First, I personally think and I also call on all people and everyone in this Chamber to consider this: If the debate today had taken place a couple of years ago, when the issue of Citizens' Radio had not arisen, if Members had debated this motion at that time and if it had been passed, the Government would not have done anything despite the passage of the motion. This is how the situation would be like and this is how this Government is like. If this incident had not happened and aroused controversy, so much so that the supporters and opponents are duelling with one another and the whole society is simmering, the Government would have felt very complacent and it just would have done nothing for several years. Rightly as Members pointed out, in fact, this debate is conducted not just on this day, instead, a debate was also held more than a decade ago. Why has the law not been amended throughout these 10-odd years? This is simply how this Government works. Therefore, had it not been for a battle royal between the "horse (馬)" and the "bull (牛)" or the "dragon (龍)" and the "bull (牛)", nothing would have happened and we would only see the Government stalling. However, after the battle royal, things are different. Therefore, this time around, the charging mad bull has stumbled upon a track. "Ah Ngau" is indeed mad, however, in the end, he found a way. What sort of way did he find? He made the entire society reflect on why our airwaves are so closed? After that, the Court also ruled that the Government had acted in an unconstitutional manner.

Of course, the worst thing that the Government did was to drag its feet for some time and then said it wanted to lodge an appeal after the Court had ruled the law unconstitutional. I think a very wrong thing that Secretary MA did and one that the Government was not justified in doing was to apply for an injunction. I think that applying for an injunction is tantamount to dragging the Court into the mire. This action shows the greatest contempt of the Court and it degrades the Court into a political tool of the Government. If the Court becomes a political tool of the Government, what dignity does the Court still have? Of course, the Court also knows how to salvage its dignity. Subsequently, Mr Justice HARTMANN also said that the Government should not do such a thing. However, in the final analysis, the Government has taken such a course of action and contrived such a method to tackle those people. I consider this most

inappropriate. Frankly speaking, one major reason that I joined the forum on that day was precisely my learning that the Government was going to apply for an injunction. The "horse (馬)" and the "dragon (龍)" conspired together to tackle the "bull (牛)", so there is no reason that I, as a "human being (人)" should not come out to make justice prevail by trouncing the bully and helping the weak. There is really no justification for the Government to do so, so I had to be present to raise the stakes.

It is not the case that I want to be at loggerheads with the Government over everything, however, Secretary Frederick MA, had the Government reviewed the law properly, such incidents involving "Ah Ngau" would not have occurred. Had the law been amended long ago, the airwaves would have been opened up and the law would not have remained like that it has been since the colonial era. The Chief Executive in Council has complete control and it can impose prohibitions without any ground. Had the law been amended long ago, this incident would not have happened at all. In fact, the present situation arose because the Government had been stalling in its review of the law. If the Government keeps stalling like this, the only way we can make the Government enact legislation is to challenge these draconian laws of the Government. If we do not challenge them, the Government will not amend them. I also hope the public will understand that the greatest problem lies in the fact that it is impossible for us to table any private Member's bill before the Legislative Council. Had this been possible, we would have done so long ago as it would be a good thing to get the job done. However, the Government wants to maintain a tight grip on our power to table bills and pays no heed to the motions with no legislative effect moved by us. Frankly speaking, this is to "force the Bull to do something desperate like the Liangshan Mountain rebels" and this is how the situation is like.

Therefore, sometimes, we resort to civil disobedience because there are draconian laws. Finally, I hope that genuine improvements will be made to the law so that the airwaves in Hong Kong can really be returned to the people. Thank you, Deputy President. *(The buzzer sounded) .....*

**DEPUTY PRESIDENT** (in Cantonese): Your speaking time is up. Does any other Member wish to speak?

**MS AUDREY EU** (in Cantonese): Deputy President, the whole incident over Citizens' Radio or the opening up of the airwaves has in fact highlighted the great difference between the rule of law and the rule by law. When the Deputy President spoke, she pointed out that the Hong Kong Bar Association and The Law Society had lost no time in making a statement, saying that the judgment of the Court had to be complied with, unfortunately, their statements did not mention the underlying issues of the whole incident. Today, Mr CHAN Kam-lam's amendment also passed a judgment on the nature of this incident from the outset by saying that according to existing legislation, the broadcasts were illegal. However, he also failed to see the issues underlying the incident.

Recently, Mr Justice HARTMANN delivered a judgment concerning the injunction. He pointed out in paragraph 35 that the most pressing issue in this application is not compliance with the law for the law itself is in doubt. The most pressing issue is whether the continued broadcasts undermine the public right to have a radio spectrum managed in a way that ensures the safety, well-being or interests of the community. There is no sufficient evidence to show that Citizens' Radio affects any public interest — although some 3 000 complaints are received a year about broadcasting, that Citizens' Radio has not been proven to be the cause of any complaints — therefore, Mr Justice HARTMANN discharged the injunction.

In fact, the Deputy President queried when speaking just now why some Members sounded as though they were delivering a judgment in their speeches even before a hearing had been conducted. Deputy President, in fact, this is not passing a judgment before the hearing, rather, the hearing has ended but the judgment is only one delivered by a Magistrate. Of course, the judgment may be overturned on appeal. However, before it is overturned, we are now indeed looking at the judgment of a Magistrate and the hearing conducted by him has already ended. Apart from concluding the hearing, he also looked at the existing Telecommunications Ordinance (TO). Concerning the Ordinance, I think one can say that this is a piece of law with practically nothing in it because there are neither checks and balances on the power nor any channel for appeal. Even though Mr Albert CHENG said just now that it was possible to seek a judicial review, in fact, a judicial review cannot serve any purpose because a judge cannot exercise the Chief Executive's absolute power on his behalf, therefore, no challenge is possible at all. Moreover, no time limit for making a decision is imposed on the Chief Executive, nor are there any criteria, forms,



guidelines or subsidiary legislation. There are also no provisions on the technical requirements in the legislation. Moreover, no one has been successful in applying for a licence in the past 16 years.

In fact, the various speeches delivered by Honourable colleagues just now have highlighted the fact that the existing TO has caused many problems. Recently, when the Chief Executive came to the Legislative Council, Honourable colleagues also asked him if he would amend the TO since it was obviously a very outdated piece of legislation. However, at that time, Donald TSANG still maintained in his reply that we enjoyed a high degree of freedom in Hong Kong and we also had the freedom of speech, so there was no need to amend the TO.

I find that the attitude of the Government is mentioned in paragraph 14 of the judgment of the Magistrate and I wish to read it out in particular. It says, "We note your proposed service is very similar to what is generally regarded as community radio services in some overseas economics. The Government's position is that we do not consider there is a need for such services in Hong Kong." The place mentioned most frequently by Honourable colleagues today is Tin Shui Wai and they said that some community radio stations should be established in Tin Shui Wai. Many Honourable colleagues also talked about ethnic minorities and they hoped that there could be broadcasts, mainly in the languages of these minorities, in local communities. Mr LEUNG Yiu-chung also mentioned the broadcast of Cantonese operas. In fact, Hong Kong absolutely needs community radio stations. Here, I am not talking about Citizens' Radio operated by "Ah Ngau", but channels for local communities or the public to express themselves or radio stations that serve minority groups. However, it turns out that the attitude of our Government is that of "there is no need".

Just now, Mr LEE Cheuk-yan also pointed out in his speech that our number of radio stations is the same as that of North Korea. He also said that the number of radio stations in some other very small places was also many times greater than that of Hong Kong. In the international community, there is also a World Association of Community Radio Broadcasters and at least 110 countries have opened up their airwaves and an international association has been established. I do not know why Hong Kong is so backward and this is unjustifiable. Even if you try to explain to anyone, they still cannot understand.

Because just as many Honourable colleagues have said, the reason is not a technical one and obviously, the reason is political. In this regard, I think Secretary Frederick MA can give us an explanation when he replies later.

What I also wish to say now is that I think the application for an injunction in this instance is a very wrong course of action. This is because this constitutes a double blow or double risk. Generally speaking, in a place with the rule of law, such a course of action would not be taken. It is only in very rare circumstances that civil injunctions would be used to aid existing legislation. If the Government has confidence in its legislation, it can initiate prosecution. Every time someone makes a broadcast, the Government can make arrests and each time it make arrests, it can confiscate the equipment of the defendants because the Government is bringing prosecution against them. However, when other people are challenging the legislation, the Government should not continue to bring prosecutions on the one hand and apply for a civil injunction on the other, since this will make the defendants face challenges on two fronts for the same act. Not only do they have to face criminal prosecution, they also have to face civil proceedings. This is a wrong course of action.

I am very pleased to see that Mr Justice HARTMANN has discharged the injunction and I am also happy to learn from the newspapers that there will be a three-month period. I hope very much that the Government will spend these three months on putting in place a new piece of legislation, carrying out consultations and opening up the airwaves as soon as possible. Some Honourable colleagues said that this issue had been discussed for over a decade. In the short span of seven years or less than eight years that I have served in the Legislative Council, this motion has been debated on two occasions, that is, in 2004 and 2006.

In fact, the views of Honourable colleagues are very uniform, however, I do not know why the Government would say each time that there were a lot of problems. I hope Secretary Frederick MA will discuss some new ideas with us. Thank you, Deputy President.

**DEPUTY PRESIDENT** (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

**DEPUTY PRESIDENT** (in Cantonese): If no other Member wishes to speak, Mr James TO, you may now speak on the three amendments. You have up to five minutes to speak.

**MR JAMES TO** (in Cantonese): Deputy President, first of all, perhaps let me give a response on Mr CHAN Kam-lam's amendment. Some Honourable colleagues said that as a modern society, the present degree of openness of the broadcasting industry in Hong Kong is really strange. Mr LEE Cheuk-yan mentioned the situation in North Korea and it really makes one feel ashamed on hearing it. It is not difficult to appreciate the reason for this. In fact, historically, this piece of legislation drawn up in the colonial era several decades ago was indeed once used as a draconian law to restrict the freedom of the people. I conjecture that the DAB spokesman, Mr Christopher CHUNG, as a senior member of the leftist camp, probably would share the same view. This is just like the past legislation relating to societies and the interception of communications. In fact, they are all cognate. Unfortunately, Mr CHAN Kam-lam may have different ideas, so it is difficult to comment on this.

I believe that in order to set the record straight, it is worthwhile for me to clarify on behalf of the people who established Citizens' Radio. They did not engage in illegal broadcasting. I am particularly disappointed by the views of some Honourable colleagues from the legal sector. I do not know if this is because they cannot get it or there are some other reasons. If a regime of control is justified and the law on it is clear cut, then it is a legal control regime. However, if the law is unclear, difficult to comply with, if the power is centralized or arbitrary, then this is imposing restrictions on freedom in contravention of the constitution. That is to say, a legal control regime and restrictions on freedom in contravention of constitutional laws are a dichotomy.

(THE PRESIDENT resumed chair)

The friends who established Citizens' Radio include "Ah Ngau". According to the Court, several points are apparent: Firstly, they do not cause any interference to any other essential services like the police and ambulance services, or even air navigation services. There is absolutely no interference to these services. Secondly, Citizens' Radio has absolutely nothing to do with the

3 000 complaints each year lodged by legitimate users of telecommunications. Three thousand complaints a year is not a small number. Citizens' Radio has made broadcasts on a set frequency of 102.8 Mhz since 2005. It has not surreptitiously moved from location to location to avoid detection and arrest by the Government. In the past and in other places, community radio stations would try to avoid detection when it started to violate the laws, that is, when what is called draconian laws were in place. However, Citizens' Radio did not do that. It has been broadcasting at a specific location.

Furthermore, it even went one step further by making an undertaking to the Government that it would state clearly where it would make broadcasts and under what conditions it would make broadcasts. It stated everything clearly, that is, it makes broadcasts in an open, upright and legitimate way. Frankly speaking, if we talk about truly illegal broadcasts that do not do things in this way, those that may affect social order, I have some idea of them because 30 years ago, I was once the chairman of the radio society of my secondary school. At that time, we tried to use those wavelengths of the public, that is, 27 Mhz, to make broadcasts in Tsz Wan Shan and we tried this for several months. At that time, we had to be on the run and we also had our own football team. At that time, I did this together with a group of very good friends, so I know how this is like. However, Citizens' Radio really did not do anything of this sort. It only wants to facilitate the pluralistic expression of views and put its beliefs into action by challenging a piece of draconian law.

Moreover, in challenging the draconian law, it has its justifications, approach and method, unlike the claims by Honourable colleagues, who said that if everyone did this sort of thing, the world would end up in chaos. I hope those Honourable colleagues can withdraw such a claim. In fact, there are people who are doing this sort of thing and the Office of the Telecommunications Authority also takes prosecution action against such acts every day, but this is not what Citizens' Radio is doing. It has indeed adopted a very clear, rational and peaceful approach to force the Government to open up the airwaves.

I hope the Government can bear in mind the lesson it learned in dealing with the Interception of Communications Ordinance. If it does not begin to make amendments now and only requests the judge to give it another half year's time only, when that time has run out, I think this will only be counter-productive.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Madam President, first of all, I very much thank Members for their input.

Freedom of speech is the cornerstone of stability and prosperity in Hong Kong. It is expressly protected by the Basic Law which provides that members of the public enjoy the right to express different opinions. I must declare solemnly that the Government absolutely does not agree to the claim made in Mr James TO's motion and the amendments proposed by Mr Albert HO and Mr LEUNG Kwok-hung that the public has been deprived of the right to express opinions through different channels. This is not a true picture of the current situation in Hong Kong. Like all the people of Hong Kong, the Government of the Hong Kong Special Administrative Region (SAR) regards freedom of speech as a core value of Hong Kong that we have always cherished.

Although Hong Kong is a small city, the broadcasting service that our people can enjoy and receive, whether in terms of the number of channels or the varieties of programmes, is no less favourable than that in many cosmopolitans and countries. The two broadcasters of free television service and three pay television operators provide over 280 pay television channels for the public. The 13 radio channels operated by Radio Television Hong Kong (RTHK) and the two commercial radios broadcast information, current affairs and entertainment programmes and also provide an open platform and channels for the public to exchange and express their views.

If a foreigner who is in Hong Kong for the first time sits in this Chamber today listening to the remarks made by many Members, he would think that the broadcasting service in Hong Kong is in its entirety the mouthpiece of the Government. But Hong Kong people will not agree to this, because they can listen to radio programmes which satirize the ills of society. For instance, the "18th Floor Block C" which has been on the air for decades; and every evening (except Wednesday horse race meets) there is "The Tipping Point" during which members of the public often express their opinions by making phone calls to the programme. For current affairs programmes, there is the "City Forum", which has remained on the air. When members of the public wish to air their feelings or views, they are accustomed to calling in to such "talkshow" programmes as the "Talkabout" and "On a Clear Day" to express different views, including making criticisms of the Government. All broadcasters, be it RTHK or commercial radio stations or television stations, must ensure impartiality in their programmes. The voices of the Government's critics have never been subject

to any restriction and so, I think it is wrong to give people the impression that freedom of speech in Hong Kong is restricted.

Let us look at the figures. The three radio stations alone provide close to 340 hours of "personal view programmes" weekly, or 48 hours daily. Broadcasting service aside, Hong Kong has 44 newspapers and 689 periodicals. Added to this is the new media (such as the Internet) which has become increasingly pervasive. This is proof of free flow of information in Hong Kong and unobstructed channels for the public to express their opinions.

I very much agree with a number of Members who said earlier that the airwaves are a public resource of the people. This is correct. This is why this valuable resource must be used and allocated in the public interest and be fully brought into play through effective co-ordination and management. Apart from general broadcasting and communications services, the use of limited radio spectrum is also required for the purpose of air traffic management and by various law-enforcement agencies and emergency relief services. To ensure that all these services operate smoothly and do not interfere with each other, the Telecommunications Authority must make stipulations on the technology and power of transmission for respective services and regulate the use of spectrum through a licensing regime, in order to maintain the order of airwaves.

To put it more specifically, apart from putting in place a licensing regime for effective allocation of spectrum usage, it is also our duty to curb unlicensed broadcasting in accordance with the law, in order to ensure that legitimate communications and broadcasting services will not be interfered.

I would like to talk about the licensing system, as a number of Members have expressed their views in this respect earlier on. Like the relevant legislative provisions in advanced places worldwide, a licensing system is set out under Part IIIA of the Telecommunications Ordinance in Hong Kong to ensure that broadcasters allocated with frequency spectrum will use the spectrum for broadcasting purposes in an orderly and responsible manner, while requiring compliance by television and radio broadcasters with some basic principles in service provision, including ensuring impartiality of programmes, giving the party being criticized the right to respond, having regard to the standard of decency recognized in society, not inciting hatred and not upsetting law and order and public security, protection of youth and children, and so on. To ensure compliance with these principles, licensed broadcasters shall assume

editorial responsibilities. In considering applications for broadcasting licence, the Chief Executive in Council, being the licensing authority, will assess the applicant's management, financial and technical capabilities as well as the programmes to be delivered under the licence by making reference to the analyses and recommendations made by the Broadcasting Authority (BA) on the application concerned. The BA will, in accordance with the administrative guideline, make public the relevant information on the application for public comment. Before the submission of the application and recommendations to the Chief Executive in Council, the Government will invite applicants to make representations for the consideration of the Chief Executive in Council before a decision is taken. I wish to point out that the Basic Law has express provisions protecting the freedom of speech, of the press and of publication for Hong Kong residents. The SAR Government must process all applications for a licence in accordance with the law.

On curbing unlicensed broadcasting, I wish to point out that in order to protect public interest, ensure effective spectrum management and uphold the rule of law, the Government must act in accordance with the law and take enforcement actions against unlicensed broadcasting.

This is also what advanced places in all parts of the world will do. In the United Kingdom, under the Wireless Telegraphy Act and the Communications Act, the maximum penalty of operating and participating in illegal broadcasting is an uncapped fine and imprisonment of two years, and offenders are prohibited from working in legitimate broadcasting stations for a period of five years. The British Office of Communications launched a total of 1 085 enforcement actions against unlicensed broadcasting in 2006, resulting in 63 convictions. In Australia, the maximum fine for illegal broadcasting is AUD\$220,000 (about HK\$1.3 million), and in 2006, there was a case in which the offender was fined AUD\$4,000 plus confiscation of the equipment. In the United States, illegal broadcasting is also a criminal offence, and the offender is liable to a daily maximum fine of US\$75,000 (about HK\$600,000). The Federal Communications Commission launched a total of 20 enforcement actions against illegal broadcasting in 2007.

Earlier on many Members mentioned the case of Citizens' Radio. As judicial proceedings have commenced on this case, it is inappropriate for me to make further comments here. However, I can provide some background information for reference by Members and members of the public.

Some Members opined that the Government rejected the application of Citizens' Radio for policy reasons or because of the latter's political views, which is absolutely not true. The Government rejected its application after detailed consideration of the capabilities of the applicant. The factors taken into consideration include the feasibility of the applicant's technical proposal on the use of radio frequency spectrum, and the management, financial and technical capability of the applicant to establish and maintain a sound broadcasting service. These factors are openly published for public information. On 12 December 2006, through a Legislative Council Brief — I can provide this information to Members in case they do not have it — in this paper we explained this decision to Members of the Legislative Council and the public. So, I take exception to the allegation of "black-box operation". In this connection, Members can take a look again at one of the paragraphs in this paper and they will see that this is explained very clearly as it is stated that "The factors which the Chief Executive in Council took into account before reaching the decision include the feasibility of the applicant's technical proposal on the use of radio frequency spectrum, and the management, financial and technical capability of the applicant to establish and maintain a sound broadcasting service." This is written very clearly in paragraph 8 and explains why the Chief Executive in Council rejected this application.

As regards the comment made by some Members that the existing licensing system may be unconstitutional, in view of the importance of the licensing system to effective regulation of communications and broadcasting spectrum, the Department of Justice has lodged an appeal against the ruling on the constitutionality of the licensing system for broadcasting service and the appeal will be proceeded with expeditiously. I reiterate that the Magistrate has issued a suspension order on his judgment on the unconstitutionality of the licensing system pending results of the appeal. In the interim, any person who engaged or participated in unlicensed broadcasting commits an offence and is liable to prosecution. The Government has the duty to continuously enforce the law to uphold the rule of law and ensure proper management of broadcasting spectrum, with a view to protecting public interest in terms of public safety and well-being.

The ultimate decision on the constitutionality of this licensing system rests not with individual Members or government officials. But before the Court makes a final determination, the existing legislation will remain in force. I can assure Members here that in handling the entire issue, the Government will



certainly adhere to the principle of serving the interest of the people and upholding the rule of law.

In the debate earlier, Mr Ronny TONG and Ms Emily LAU questioned the motive behind the application for an injunction order. I wish to point out that the organization concerned said after the issue of injunction by the Magistrate that their broadcasting activities would continue. To uphold the spirit of the rule of law, we must take actions. As judicial proceedings have already commenced, it is inappropriate for me to make too many comments. But as the barrister representing the Department of Justice said in the Court, the Department of Justice had applied for an injunction in the public interest. As Mr Justice HARTMANN pointed out in his judgment, the Telecommunications Ordinance creates a public right to have the radio spectrum managed in a way that ensures the safety and well-being of the community, and the Secretary for Justice is the guardian of that right. The defendants also said in the Court that they fully accepted that there must be an orderly and rational control of the radio spectrum. For these reasons, the allegation and criticism are unsubstantiated.

**MR MARTIN LEE** (in Cantonese): President, I would like to seek an elucidation. The Secretary said that he would not comment on this case for which judicial proceedings had commenced but he did mention this case subsequently. He said something but not some other things. He said something but withheld some other things. I would like the Secretary to elucidate why he can say something but not some other things. Is it that he would say what is to his advantage and withhold what is not to his advantage?

**PRESIDENT** (in Cantonese): You may sit down. Secretary, you have the right to choose whether to continue or answer the question raised by Mr Martin LEE.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Madam President, I am not a barrister and so, I will continue with my speech.

Mr Albert HO's amendment mentioned the opening up of the airwaves. Some Members also proposed that the Government should consider setting up channels for use by the community or the public. I wish to point out that insofar

as radio broadcasting is concerned, all existing FM frequency bands with territory-wide coverage, as explained very clearly by Mr Albert CHENG earlier, have already been allocated, and only two AM frequencies are available but the reception quality of AM broadcast is less satisfactory. So, the Government will carefully consider whether it is appropriate to introduce community broadcasting or public channels in Hong Kong, having regard to radio spectrum usage as explained above. I will further explain this later on.

I also wish to say that a major purpose of setting up public channels is to allow individuals or organizations to express and exchange their views. As I stressed earlier, there is absolutely no lacking of channels for the public to express their opinions, as radio programmes for expression of personal opinions alone, as I said earlier, already add up to 340 hours in Hong Kong. Meanwhile, there are many other ways, such as the Internet, for your opinions to reach the public.

Earlier on Mr Albert CHENG, who is not in the Chamber now, mentioned that community organizations may not have the financial strength to provide broadcasting service and consideration can be given to making public broadcasters allocate timeslots for involvement of community organizations and the public. This is a constructive proposal which, I think, warrants more discussion and consideration by the Government and the public.

An objective of the broadcasting policy in Hong Kong is to increase the number of channels for broadcasting through the introduction of state-of-the-art technology in broadcasting, thereby providing the public with more choices of programme.

In fact, insofar as television broadcasting is concerned, we all know that pay television currently provides as many as 270 pay television channels. Hong Kong has even pioneered the application of Internet Protocol Television (IPTV) in the world with over 1 million subscribers, which is second to none in the world in terms of the penetration rate.

Mr SIN Chung-kai mentioned digital audio broadcasting service earlier. He cited examples in overseas countries. In fact, the Hong Kong Government has adopted a market-oriented approach after the consultation exercises in 2000 and 2003. The Government has reserved spectrum in Band III and L Band as mentioned by Mr SIN Chung-kai for the purpose of digital audio broadcasting in

Hong Kong. Companies interested in operating this service can apply to the Telecommunications Authority for conducting technical trials. However, I wonder if it is because digital receivers still cost higher than analogue receivers that no application has been received. Coupled with the fact that digital radio stations can only provide limited additional features to the audience, the response to digital audio broadcasting has all along been moderate among the audience and in the industry throughout the world, and digital radio stations have yet to replace traditional analogue radio stations. Even in the United Kingdom where digital radio stations are promoted most vigorously, the penetration rate only stands at 13%. Some Nordic countries have decided to suspend or even withdraw further investment in digital radio stations.

In fact, we have also made a lot of efforts in respect of digital broadcasting. Last year the Government conducted consultation on mobile television services and the response of the industry was positive. We are following up the promotion of the development of mobile television services in Hong Kong and so, it is evident that the Government has been consistently making improvement. Mobile television service operators can consider using part of the spectrum that they have been allocated to provide radio service on their own or by a third party. I believe this is conducive to promoting digital radio broadcasting in Hong Kong.

I understand that as the broadcasting technology develops continuously, the public will have increasingly higher expectation for broadcasting service. On the principle of ensuring that legitimate broadcasting and communications will not be interfered, the Government will review the policy and the relevant legislation from time to time in the light of the needs of society, in order to progress with the times.

Mr Albert HO's amendment mentions the long-term aspirations of the community for public service broadcasting.

Last year, the Government set up an independent committee which has submitted a report consisting of a full range of recommendations on public service broadcasting in Hong Kong. In brief, the committee concluded that there is a need for public service broadcasting in Hong Kong and proposed the establishment of a new statutory public service broadcaster to discharge specific public missions. The committee recommended that the new broadcaster should be funded from the public purse and be independent in its editorial and

programming decisions, and that its board shall be appointed by the Chief Executive. The committee also recommended that the broadcaster be operated according to stringent governance and accountability practices and shall exercise all due financial prudence as it expends public money.

These recommendations are sensitive and complicated especially when it comes to the future of RTHK. They also bear far-reaching implications on Hong Kong in respect of broadcasting, society, culture, finance and other aspects.

The Government originally planned to conduct public consultation on public service broadcasting this month. But in view of the recent proceedings concerning radio broadcasting, Members and the public have expressed many opinions on radio broadcasting, such as the criteria of licensing and ways to utilize radio broadcasting spectrum effectively. RTHK at present provides seven of the 13 radio channels with territory-wide coverage. The future public service broadcaster can also consider providing timeslots for greater public involvement. In this connection, when we have to consider these issues relating to public service broadcasting and ensure that radio spectrum is utilized more effectively, we must at the same time consider the scope of service of RTHK and also that of future public service broadcasting.

To consider the relevant issues in a more comprehensive manner, the Government has to spend more time than that as originally planned before we can make recommendations on public service broadcasting and commence the process of public consultation.

Madam President, the Government reiterates that there is absolutely no question of the forum of speech being narrowed in Hong Kong. Both conventional and new media have provided a wide variety of choices which enable various sectors of the community to express their views in multifarious ways.

Broadcasting is one of the most effective and influential media, providing us with information, education and entertainment and allowing room for us to greatly enrich our social and cultural life. The Government is more than willing to listen to Members' views on the broadcasting policy. On the principle of protecting the public's freedom of speech and ensuring that legitimate communications will not be interfered, the Government will certainly

review the broadcasting policy and the relevant legislation from time to time and promote the introduction of innovative broadcasting technology and service by the industry, with a view to ensuring that society will progress with the times continuously.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now call upon Mr CHAN Kam-lam to move his amendment to the motion.

**MR CHAN KAM-LAM** (in Cantonese): President, I move that Mr James TO's motion be amended.

**Mr CHAN Kam-lam moved the following motion: (Translation)**

"To delete "restricts the setting up of community radio stations by the public and the Government has unrestricted power to reject the applications from members of the public" after "That existing legislation" and substitute with "stipulates that members of the public and organizations must, prior to the setting up of radio stations, apply to the Government"; to delete "which has led" after "operate a radio station," and substitute with "members of the public who conduct and participate in illegal broadcasting are liable"; to delete "against members of the public for setting up and participating in community radio stations, thus depriving the public of the right to express opinions through different channels and violating human rights" after "criminal prosecution"; to add "to make the public fully aware of the factors that the Government will take into consideration in issuing licences and to allow them to express opinions through different channels," before "this Council"; to delete "Government to amend" after "urges the" and substitute with "Administration to, under the principle of protecting freedom of speech of the public while ensuring that legitimate communications will not be interfered, review"; and to delete "to open up public service broadcasting, including setting up channels for digital television and radio broadcasting for use by the public and allowing the community to set up and operate radio and television broadcasting services, so as to safeguard the freedom of speech of the public" immediately before the full stop."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr CHAN Kam-lam to Mr James TO's motion, be passed.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr Albert HO rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted for the amendment.

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted against the amendment.

Geographical Constituencies:

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted for the amendment.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mrs Anson CHAN voted against the amendment.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 22 were present, 16 were in favour of the amendment and six against it; while among the Members returned by geographical constituencies through direct elections, 25 were present, nine were in favour of the amendment and 15 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

**MS MIRIAM LAU** (in Cantonese): President, I move that in the event of further divisions being claimed in respect of the motion on "Introducing legislative amendments to open up community radio stations" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Miriam LAU be passed.

**PRESIDENT** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members who are present. I declare the motion passed.

I order that in the event of further divisions being claimed in respect of the motion on "Introducing legislative amendments to open up community radio stations" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

**PRESIDENT** (in Cantonese): Mr Albert HO, you may move your amendment.

**MR ALBERT HO** (in Cantonese): President, I move that Mr James TO's motion be amended.

**Mr Albert HO moved the following motion: (Translation)**

"To add "face up to the long-term aspirations of the community for opening up the airwaves and public service broadcasting, and immediately" after "this Council urges the Government to"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Albert HO to Mr James TO's motion, be passed.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)



**PRESIDENT** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr CHAN Kam-lam rose to claim a division.

**PRESIDENT** (in Cantonese): Mr CHAN Kam-lam has claimed a division. The division bell will ring for one minute, after which the division will begin.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Ms LI Fung-ying, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Dr Philip WONG, Mr WONG Yung-kan, Mr Abraham SHEK, Mr WONG Kwok-hing, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted against the amendment.

Mrs Sophie LEUNG, Mr Howard YOUNG, Ms Miriam LAU, Mr Tommy CHEUNG, Mr Daniel LAM, Mr Jeffrey LAM and Mr Andrew LEUNG abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mrs Anson CHAN voted for the amendment.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

Mr James TIEN and Mrs Selina CHOW abstained.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 22 were present, seven were in favour of the amendment, eight against it and seven abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 15 were in favour of the amendment, seven against it and two abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, you may move your amendment.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, I move that Mr James TO's motion be amended.

**Mr LEUNG Kwok-hung moved the following motion: (Translation)**

"To add "immediately undertake to expeditiously" after "this Council urges the Government to"; and to add "and abolish the existing privilege enjoyed by the Chief Executive in the issue of licences which is contrary to protecting freedom of speech as provided in the Basic Law," after "public service broadcasting,"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr LEUNG Kwok-hung to Mr James TO's motion, be passed.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr LEUNG Kwok-hung rose to claim a division.

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for one minute, after which the division will begin.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Dr Philip WONG, Mr WONG Yung-kan, Mr Abraham SHEK, Mr WONG Kwok-hing, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted against the amendment.

Mrs Sophie LEUNG, Mr Howard YOUNG, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Daniel LAM, Mr Jeffrey LAM and Mr Andrew LEUNG abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mr Ronny TONG voted for the amendment.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

Mr James TIEN, Mrs Selina CHOW and Mrs Anson CHAN abstained.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 22 were present, six were in favour of the amendment, eight against it and eight abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 14 were in favour of the amendment, seven against it and three abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

**PRESIDENT** (in Cantonese): Mr James TO, you may now reply and you have four minutes two seconds.

**MR JAMES TO** (in Cantonese): President, just now, the Secretary said that he wanted very much to listen to Members' views more often. Although 20 Members have spoken in the debate, I think the voting on the amendments just now has given the Secretary some revelations and me, too. Why? I found that Mr LEUNG Kwok-hung's amendment proposes the abolition of the existing prerogative enjoyed by the Chief Executive in the issue of licences, which is contrary to the protection of the freedom of speech as provided for in the Basic

Law, and I also found that the Liberal Party had abstained. I also found that Mr Albert HO's amendment proposes that we should face up to the long-term aspirations of the community for opening up the airwaves and public service broadcasting and the Liberal Party has also abstained.

In view of this, I hope the Secretary will note that Honourable colleagues have thought long and hard about whether they should support this motion or not. In fact, concerning pure and simple illegal broadcasting, one example is that now many taxi drivers have created communication devices of their own that cause interference to many people and even to normal broadcasts by radio stations. Such incidents happen every day and some people have also been arrested. However, what we are discussing now is something on which people in society have really made demands. Hong Kong is an advanced city and it should be able to enjoy the great freedom of the airwaves. In fact, amending the legislation will enable more people to enjoy even greater freedom of access to information through the airwaves.

The comments made by the Secretary just now were really odd. He said that if foreigners came to Hong Kong and heard us debate like this every day, they would think that something was very wrong with Hong Kong. In fact, I believe that apart from maintaining the *status quo*, there can be greater room for progress. We should not feel complacent about everything, thinking that we are so very perfect. I ask Members to remember that in the case of commercial broadcasting, due to the need to make profits, of course, the intention is to serve a broad spectrum of audiences — the greatest number of people, so that the general public can receive the broadcasts and advertising revenue can be generated to maintain the operation. However, in the case of community radio stations (it seems more examples of this kind can be found overseas), greater emphasis is placed on niche markets. In this case, minority interest groups try to attract people with the same interests and ideas in a broadcasting venue or hope that through this venue for broadcasting, they can have the freedom of speech to advocate their beliefs and viewpoints.

Members, in the magistracy and even in the High Court, the prosecution, that is, the Government Counsel in fact also agreed that to require the application for a licence to make broadcasts was to restrict the freedom of speech. Of course, what the Government meant was that this restriction was nevertheless reasonable. Therefore, if licensing is carried out through an unreasonable licensing regime, the freedom of speech will indeed be restricted. In view of

overseas examples, doing so will at least restrict the freedom of minority groups in advocating their beliefs. It seems that this point is always valid because overseas experience shows that broadcasts directed at minority groups can become broadcasts directed at the majority and a broadcasting channel for minority groups can evolve into a commercial radio station. This is possible.

Even so, lastly, I hope that the Government ..... among the comments made by the Government just now, one of them was that "the Government will surely conduct reviews from time to time". I wonder if this means that it would actually conduct reviews. In fact, if the Telecommunications Ordinance follows the footsteps of the Interception of Communications Ordinance and we have to reach the point of getting a final judgment of the Court before we are asked to work together in great haste — I do not know what month that will be but I hope it will not be May or June, still less do I hope that it will be at a time when Honourable colleagues are working on their electoral campaigns — if the Government acts in such a way, it will surely run into problems.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

**PRESIDENT** (in Cantonese): Mr James TO has claimed a division. The division bell will ring for one minute, after which the division will begin.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Ms LI Fung-ying, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the motion.

Dr Raymond HO, Dr Philip WONG, Mr WONG Yung-kan, Mr Abraham SHEK, Mr WONG Kwok-hing, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted against the motion.

Mrs Sophie LEUNG, Mr Howard YOUNG, Ms Miriam LAU, Mr Tommy CHEUNG, Mr Daniel LAM, Mr Jeffrey LAM and Mr Andrew LEUNG abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mrs Anson CHAN voted for the motion.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the motion.

Mr James TIEN and Mrs Selina CHOW abstained.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 22 were present, seven were in favour of the motion, eight against it and seven abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 15 were in favour of the motion, seven against it and two abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

#### **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 11 am on Wednesday, 30 January 2008.

*Adjourned accordingly at eleven minutes past Eight o'clock.*