

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 9 July 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 LAU WONG-FAT, G.B.M., G.B.S., 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, S.B.S., 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.

MEMBER ABSENT:

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

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE HENRY TANG YING-YEN, G.B.S., J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION

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 DENISE YUE CHUNG-YEE, G.B.S., J.P.
SECRETARY FOR THE CIVIL SERVICE

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

CLERKS IN ATTENDANCE:

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

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

PRESIDENT (in Cantonese): Honourable Members, under Item III on today's Agenda, Members have a total of five bills to consider. The second bill was the Independent Police Complaints Council Bill, to which Members have proposed about 100 amendments. I have to study the amendments very carefully because the Government has put forward different views on most of the amendments. As I wish to make a ruling that is in compliance with the Rules of Procedure and do not wish to give rise to any ambiguities, I have decided to change the order of the bills to be considered at the meeting by deferring the above Bill, which is originally the second bill, to be the last one with other bills being advanced in order. In other words, consideration of the Independent Police Complaints Council Bill will follow that of the Product Eco-responsibility Bill.

I have informed the Government of the arrangement. The Government initially responded that it might have some difficulties but has not yet given me a formal reply. But on my part, it is imperative for me to make such an arrangement. If there are really insurmountable difficulties on the part of the Government, I would not rule out suspending the meeting if necessary so that I could finish my ruling before the meeting will continue.

The meeting today now begins. Addresses.

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>
Country Parks (Lantau North (Extension) Country Park Designation) Order 2008	190/2008
Public Health and Municipal Services (Designation of Public Markets) Order 2008	191/2008
Public Health and Municipal Services (Designation of Public Markets) (No. 2) Order 2008	192/2008

Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) (No. 2) Order 2008	193/2008
Public Health and Municipal Services Ordinance (Amendment of Tenth Schedule) (No. 3) Order 2008	194/2008
Mainland Judgments (Reciprocal Enforcement) Ordinance (Commencement) Notice.....	195/2008

Other Papers

- No. 107 — Sir Robert Black Trust Fund
Signed and Audited Financial Statements together with the
Auditor's Report and Report by the Trustee on the
Administration of the Fund for the year ended 31 March
2008
- No. 108 — Construction Industry Training Authority
Annual Report 2007
- No. 109 — Construction Industry Council
Annual Report 2007
- No. 110 — Report by the Commissioner of Correctional Services on
the administration of the Prisoners' Welfare Fund for the
year ended 31 March 2008
- No. 111 — Sir David Trench Fund for Recreation
Trustee's Report 2007-2008
- No. 112 — The Twentieth Annual Report of The Ombudsman,
Hong Kong (June 2008)
- No. 113 — Report of the Public Accounts Committee on Report
No. 50 of the Director of Audit on the Results of Value for
Money Audits
(July 2008 — P.A.C. Report No. 50)

No. 114 — The Government Minute in response to the Report No. 49A of the Public Accounts Committee dated April 2008

Report of the Committee on Members' Interests of the Third Legislative Council

Committee on Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region — Progress Report for the 2007-2008 session (12 July 2007 to 9 July 2008)

Report of the Panel on Manpower 2007-2008

Report of the Panel on Public Service 2007-2008

Report of the Panel on Administration of Justice and Legal Services 2007-2008

Report of the Panel on Home Affairs 2007-2008

Report of the Panel on Transport 2007-2008

Report of the Panel on Development 2007-2008

Report of the Panel on Information Technology and Broadcasting 2007-2008

Report of the Bills Committee on Race Discrimination Bill

Report of the Bills Committee on Independent Police Complaints Council Bill

Report of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2008

Report of the Bills Committee on Air Pollution Control (Amendment) Bill 2008

Report of the Bills Committee on Product Eco-responsibility Bill

ADDRESSES

PRESIDENT (in Cantonese): Addresses. Dr Philip WONG, Chairman of the Public Accounts Committee, will address the Council on the Committee's Report No. 50.

Report of the Public Accounts Committee on Report No. 50 of the Director of Audit on the Results of Value for Money Audits (July 2008 — P.A.C. Report No. 50)

DR PHILIP WONG (in Cantonese): Madam President, on behalf of the Public Accounts Committee (PAC), I have the honour to table our Report No. 50 today. Our Report corresponds with the Director of Audit's Report No. 50 on the results of value for money audits (Audit Report).

The Committee has, as in previous years, selected for detailed examination only those chapters in the Audit Report which, in our view, contained more serious allegations of irregularities or shortcomings. The Report tabled today covers our deliberations on the two chapters selected.

I first report the Committee's main conclusions and recommendations on the subject of "Commercialization and utilization of government properties".

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

Regarding the commercialization of government properties, the Committee has thoroughly examined the basis of comment made in the Audit Report that the Government Property Agency (GPA) should have conducted a cost-benefit analysis of converting all or portions of the lower floors to retail use before allocating the surplus areas of the Trade and Industry Department (TID) Tower to the Student Financial Assistance Agency in 2007.

The Committee notes that at that time, the GPA followed the general principle of Accommodation Circular No. 1/97 (Accommodation Circular) and the procedures on allocation of surplus accommodation contained therein. The relevant principle is that government-owned premises are to be used for

providing accommodation for public facilities or used as government offices, and by reducing the shortfall in government accommodation, the leased accommodation used by government departments will be minimized. The relevant procedures are as follows: once surplus accommodation is available, the GPA will try to identify alternative government users. Failing this, the GPA will assess the commercial viability of the premises, and dispose of those with commercial potential, either through commercial leasing or by sale.

In addition, the Committee also notes that the Audit Commission (Audit) has always taken the view that government departments should strictly follow all government policies, regulations, guidelines and procedures, unless exemptions are obtained from the relevant authorities. In view of this, the Committee considers that Audit's view, that in this case the GPA should not "mechanically" follow the existing principle and procedures on allocation of surplus accommodation, may cause difficulties for government departments in deciding whether to comply with all applicable government policies, regulations, guidelines and procedures.

The Committee agrees with the GPA that in allocating surplus areas of the TID Tower in 2007, it should follow the general principle and procedures of the Accommodation Circular mentioned above, and if the lower floors of the TID Tower are not required for government use, then in considering whether such floors should be converted to the use of retail, the GPA should take into account the results of its cost-benefit analyses that the conversion is likely to incur a financial loss.

With respect to the utilization of vacant and surplus government properties, the Committee is concerned that three government premises in Building A, Building B and Building C, reserved as Mass Transit Railway entrance/exit areas, had remained vacant for a long period of time. The Committee urges the Government Property Administrator and the Director of Buildings to expeditiously consult the Department of Justice and other relevant government departments, with a view to putting those vacant government premises to gainful uses. The Committee also urges the Government Property Administrator to resolve the dispute over the legal responsibility for the water seepage and rectify the water seepage problem in the vacant government premises in Building A and Building B without further delay.

I now turn to the subject of The Society for the Aid and Rehabilitation of Drug Abusers (SARDA). On the management and control of government subvention, the Committee is concerned that in the past few years, there had been prolonged discussions and arguments between SARDA and the Department of Health (DH) about the legitimacy of the DH's authority in giving directions to SARDA on administrative matters.

The Committee is also concerned that under the Financial Circular, Controlling Officers were advised to enter into a Memorandum of Administrative Arrangements (MAA) or a similar instrument (such as a funding and service agreement (FSA)) with each organization receiving recurrent government funding under their purview. However, as at May this year, the DH had still not entered into an MAA or FSA with SARDA. In this regard, the Committee urges the DH and SARDA to expeditiously conclude the new funding mode and establish an FSA without further delay. At the same time, both parties should strive to foster a harmonious working relationship and co-operative partnership necessary for the provision of quality services for the treatment and rehabilitation of drug abusers.

Furthermore, the Committee is seriously concerned and has reservations about SARDA's not conducting an open recruitment exercise for the post of Executive Director (ED) before offering the ED an extension of service, beyond the retirement age of 60, for two years in late 2006. The Committee notes that SARDA has accepted the DH's direction to conduct an open recruitment exercise for the post of ED.

On corporate governance, the Committee is surprised that SARDA and the Administration were unclear whether or not the three government representatives (from the Narcotics Division (ND), the DH and the Social Welfare Department) on the Executive Committee (EC) of SARDA were full members with voting rights. In this regard, the Committee recommends that the DH and SARDA should clarify whether the government representatives on the EC of SARDA are full members with voting rights, taking into account the respective roles of different government parties, and clearly stipulate such in the FSA to be concluded between the DH and SARDA.

In addition, we are seriously concerned that the attendance of some members at various committee meetings of SARDA was low.

Regarding strategic management, the Committee is also seriously concerned that the proposal put forward by SARDA in June 2004 to the ND to establish a Centre for Anti-drug Education and Disciplinary Training at Shek Kwu Chau to provide training to the youth that emphasized the prevention of drug (including psychotropic substance) abuse was still under examination by the ND and the DH as at May this year. The Committee recommends that the Secretary for Security should make an early decision on the proposal without delay.

Deputy President, as always, the Committee has made its conclusions and recommendations in this Report with the aim of ensuring the achievement of value for money in the delivery of public services by the Administration and organizations which receive government funding.

I wish to register my appreciation of the contributions made by members of the Committee. Our gratitude also goes to the representatives of the Administration and SARDA who have attended before the Committee. We are grateful to the Director of Audit and his colleagues, as well as the staff of the Legislative Council Secretariat, for their unfailing support and hard work.

Deputy President, today is the last time I table the report of the PAC in the current term of the Legislative Council. I have been the Chairman of the Committee since October 2004. Over the past four years, I dealt with and tabled a total of nine reports, which involved a number of controversial issues. I am pleased that although members sometimes held different views on certain issues, the Committee could reach unanimous conclusions eventually.

While the work of the Committee could be very difficult at times, which often entailed many lengthy public hearings and internal meetings, the active participation of all members has made possible the successful accomplishment of the Committee's work. I would like to express my heartiest thanks to all of them.

Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): The Chief Secretary for Administration will address the Council on "The Government Minute in response to Report No. 49A of the Public Accounts Committee dated April 2008".

The Government Minute in response to the Report No. 49A of the Public Accounts Committee dated April 2008

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Deputy President, laid on the table today is the Government Minute responding to Report No. 49A of the Public Accounts Committee (PAC).

When presenting the PAC Report No. 49A on 30 April, the Chairman of the PAC set out in detail the comments of the PAC on two chapters of Report No. 49 of the Director of Audit concerning the Hong Kong Tourism Board (HKTB). The Administration is grateful for the time and effort that the PAC has devoted. Details of the Government's response to the conclusions and recommendations in the PAC Report are set out in the Minute. Today, I would like to highlight the key measures taken in the relevant areas.

The Administration and the HKTB agree that there is room for improving corporate governance, internal control as well as management of the HKTB. The Administration has formulated additional systemic arrangements with the HKTB to improve its business planning and budget approval process. The Secretary for Commerce and Economic Development has appointed 28 February as the date before which the HKTB has to forward its annual programme of activities and estimates of its income and expenditure for his approval every year. The HKTB has also strengthened its long-term strategic planning process which includes annual assessment of its long-term plan and the preparation of a rolling three-year business roadmap every year.

In response to the PAC's recommendations, the Administration has, together with the HKTB, implemented four additional measures to strengthen the HKTB's internal control as well as corporate governance.

- First, we have asked the HKTB to report quarterly to the Controlling Officer on its work and use of subvention. Such regular reporting would help bring the Controlling Officer's attention to major issues or challenges besetting the HKTB for timely intervention and support if necessary. This will also help her to ensure the proper and prudent use of public funds.
- Second, the Administration has urged the HKTB to review the operation of the four committees established under the Board with a

view to strengthening corporate governance and the mechanism for the Committees to advise the Board. The HKTB aims at completing the review in this financial year.

- Third, to raise awareness of the HKTB's senior management on the prudent use of public funds, the Tourism Commission will conduct briefings for senior staff of the HKTB at General Manager level or above on the Government's expectation relating to the compliance of due procedures governing the use of public funding and provide them with relevant government documents and guidelines.
- Lastly, the Administration has urged the HKTB to stipulate, as a core competence, reasonable knowledge of corporate governance and management of organization in its future recruitment of senior management.

As regards the 75 improvement measures that the HKTB drew up in the light of the Director of Audit's recommendations, the HKTB has made satisfactory progress in their implementation. These measures encompass all the major areas of the HKTB's work, including strategic planning, performance measure and reporting, remuneration and recruitment, planning of marketing activities as well as execution and evaluation of mega events. So far, the HKTB has completed 63 of them. Another 12 improvement measures are in progress and will be fully completed within this financial year. We will continue to closely monitor the HKTB's progress in implementing these improvement measures.

The PAC has considered in detail the provision of the executive medical plan to the former Executive Director of the HKTB. It has recommended the HKTB to consider whether it can recover the difference in premium between the executive medical plan and the medical and dental insurance plans specified in the Employees' Handbook. In response, the HKTB has followed up this recommendation and announced on 20 June 2008 that its former Executive Director had paid to the HKTB the difference in premium. The PAC has also recommended the Administration to consider whether the case should be referred to law enforcement agency for follow-up action. In view of the PAC's recommendation and information provided by relevant personnel at the PAC

hearings, we have already referred this case to the law enforcement agencies to consider whether to take any further follow-up action.

Now, let me turn to the recommendations of the PAC on roles and responsibility of government officials sitting on the governing bodies of publicly-funded statutory organizations. The report on the review of the role and responsibility of government officials sitting on the governing bodies of publicly-funded or government-owned statutory bodies and companies is being finalized and will be submitted to the PAC soon. The coverage of the limited review, which was undertaken originally in response to the PAC report on Hong Kong Applied Science and Technology Research Institute Company Limited, initially included government-owned statutory corporations, government-owned companies, and non-government-owned companies. As a positive response to the PAC's recommendation in the HKTB report, the scope of the review is expanded to include statutory bodies which are government-owned or under recurrent funding from the Government, and companies which are partly or wholly funded by the Government. The review is also expanded to examine measures to ensure that good corporate governance and management are in place in publicly-funded statutory organizations.

The Administration took note of the PAC's recommendation about ensuring that Controlling Officers for publicly-funded organizations effectively perform their roles and responsibilities. In accordance with the Public Finance Ordinance, Controlling Officers are responsible and accountable for the proper use of public funds under their control. To help Controlling Officers discharge their funding control responsibility over subvented organizations, including publicly-funded statutory organizations, the Administration promulgates a set of guidelines on the management and control of government funding for subvented organizations with a wide range of measures which Controlling Officers may use to carry out their roles and discharge their funding control responsibility. We believe that the guidelines can effectively help Controlling Officers exercise funding control over the subvented organizations under their purview.

Deputy President, the tourism industry is one of the major pillars of Hong Kong's economy. The HKTB is tasked to promote Hong Kong globally as a leading international city in Asia and a world class tourist destination. Sound corporate governance framework, stringent business planning procedures and

strengthened internal control will empower the HKTB to perform these important functions more effectively, attaining value-for-money and performance.

Finally, I would like to thank the PAC for its constructive comments and recommendations. These comments and recommendations are useful in ensuring value for money in the delivery of public services. The Administration is pleased to accept these criticisms and comments. As always, we stand ready to provide positive response promptly. Thank you.

DEPUTY PRESIDENT (in Cantonese): Mr LAU Chin-shek will address the Council on the report of the Panel on Manpower 2007-2008.

Report of the Panel on Manpower 2007-2008

MR LAU CHIN-SHEK (in Cantonese): Deputy President, in my capacity as Chairman of the Panel on Manpower, I submit the Report of the Panel for the Session of 2007-2008 and I will briefly speak on a number of major items of work of the Panel.

Some members were of the view that the Wage Protection Movement (WPM) had proved to have failed, given the small number of participating entities. Instead of further promoting the WPM and wasting government resources, the Administration should immediately proceed with the preparatory work for introducing a statutory minimum wage for cleaning workers and security guards so that a bill could be submitted to the Legislative Council as early as possible.

Concerning the legislation on the minimum wage, some members considered that the definitions of cleaning workers and security guards should be as wide as possible to provide cover to as many workers as possible. They queried how the Administration would determine the rate of minimum wage given that there was no standard working hours in Hong Kong. They considered that the level of minimum wage should not be lower than the monthly allowance under the Comprehensive Social Security Assistance Scheme or the median wage, and should enable the low income groups to maintain basic living standard.

Regarding the mechanism for reviewing the level of statutory minimum wage, some members suggested that a review should be conducted at least once a year. Some members suggested that an independent statutory body should be established for conducting such reviews. On the issue of enforcement and penalty, they considered that sufficient penalty level should be imposed to deter non-compliance with the requirements under the minimum wage.

Non-compliance of the Labour Tribunal (LT) awards by employers was one of the major concerns of the Panel. Some members considered that the Administration should draw up concrete proposals to improve the enforcement of the LT awards and such measures should be implemented without delay. These members supported the proposal to make non-compliance of the LT awards a criminal offence. They also pointed out that there was a need for a subrogate to represent employees of defaulting employers to recover the sums owed. Under the existing operation of the Protection of Wages on Insolvency Fund (the Fund), the Fund Board could exercise its subrogation right to act on behalf of employees against defaulting employers. The option of extending the coverage of the Fund to defaulted sums awarded by the LT was viable and practical.

A member considered that the proposal to make non-compliance of the LT awards a criminal offence, if implemented, would have significant impact, and it would only be fair if employees would similarly be held criminally liable should they fail to comply with the court's ruling. The member also pointed out that it was stipulated in the Protection of Wages on Insolvency Ordinance that the Fund was to provide *ex gratia* payment to employees of insolvent employers and not defaulting employers. The Administration should ensure the proper use of the Fund.

The Administration subsequently advised that the following three measures were considered viable and effective: to make non-compliance with the LT awards a criminal offence; to empower the LT to order defaulting employers to pay additional sums to the employees; and to empower the LT to order disclosure of the financial details of defaulting employers. Some members welcomed the proposal and urged the Administration to submit an amendment bill to this Council expeditiously in order to implement these measures.

Some members expressed concern that the findings of a survey on the welfare of employees under the Employment Ordinance (EO) indicated a

substantial increase in the total number of non-"4-18" employees working less than 18 hours per week in comparison with that of 2001. These members urged the Administration to plug the loopholes of the EO to minimize unscrupulous employers' exploitation of part-time workers. A member suggested that the Administration should consider removing the "4-18" threshold and extending the rights and benefits of "4-18" employees under the EO to part-time employees on a pro-rata basis.

The Panel passed a motion urging the Government to proceed immediately to amend the EO for the protection of non-"4-18" employees so that they would be entitled to the statutory employment rights and benefits.

Members welcomed the proposed relaxations under the Transport Support Scheme (TSS). But some members considered that the Administration should extend the TSS to low-paid workers not living in the four designated districts (that is, Yuen Long, Tuen Mun, North and Islands Districts). Besides, the Administration should remove the requirements of personal asset value at no more than \$44,000.

The Administration explained that the TSS's objective was to provide a time-limited transport subsidy as an incentive to encourage the job seekers in need and low-income employees living in the designated remote districts to seek employment and work across districts. To relax the TSS to cover all low-paid workers in the territory would be a departure from the objective of the TSS. The Administration would consider reviewing the personal asset limit one year after the implementation of the proposed relaxations of the TSS.

Finally, members urged that the TSS be further relaxed so as to cover the low-income workers not living in the four designated districts.

I would like to take the opportunity to thank members for their support to the Panel. I also take this opportunity to thank colleagues of the Secretariat, Mrs TONG and other colleagues who have assisted in the work of the Panel. Regarding the colleagues providing simultaneous interpretation service, our speeches which were mixtures of Cantonese and English had added to the difficulties of their work. I also express my thanks to stewards who served us tea and water, and passed on paper slips for us. For security staff who had to shelter us from the rain with umbrellas apart from taking care of our safety, I

also express my gratitude to them here. Should anyone be omitted in my mention, I would like to offer my apology. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): Mr Howard YOUNG will address the Council on the report of the Panel on Public Service 2007-2008.

Report of the Panel on Public Service 2007-2008

MR HOWARD YOUNG (in Cantonese): Deputy President, in my capacity as Chairman of the Panel on Public Service, I submit the Report of the Panel for the Session of 2007-2008 and I will speak on a number of major items of work of the Panel.

During the Session, the Panel had reviewed the overall strength, and the retirement and resignation situation of the civil service over the past 25 years. The Panel noted that through the implementation of two rounds of service-wide Voluntary Retirement schemes, the imposition of a general civil service open recruitment freeze and with the concerted and continuous efforts of bureaux and departments in reengineering operations, streamlining procedures and pursuing other modes of service delivery, the civil service establishment has been reduced from 198 000 in early 2000 to 160 000 in 2007. I believe this aspect meets the demand of Members and the general public.

However, the Panel noted with concern about the aging profile of the civil service. The Panel had reviewed with the Administration the arrangements in relation to the resumption of open recruitment for grades included in the Second Voluntary Retirement Scheme, the employment of non-civil service contract (NCSC) staff and replacement of NCSC positions by civil service posts, the entry system for new appointees to the civil service and the grade structure views of selected grades in the civil service.

The Panel was worried about the succession plan in the civil service and urged the Administration to impart vigour into the civil service so as to ensure that there would be adequate staff to continue providing the public with high quality service.

The Panel continued to closely monitor the employment situation of NCSC staff. As the Administration had identified only 4 004 NCSC positions for conversion into civil service posts, and there was no "through train" arrangement for the NCSC staff concerned, many of them would lose their jobs. In this connection, the Panel passed a motion urging the Government to make its best endeavour to offer appointment to those NCSC staff who had not been able to be converted to civil servants, so as to prevent them from becoming jobless. The Panel also passed another motion, urging the Government to consider setting up an inter-departmental platform to enhance the communication with NCSC staff, so as to improve employee-employer and staff-management relations in order to boost the morale of NCSC staff.

The Panel was concerned about the implementation of the "3+3 entry system" for new appointees to the civil service whereby recruits would be appointed to basic ranks in civil service grades on three-year probationary terms, to be followed by three-year agreement terms, before they were considered for appointment on the prevailing permanent terms. Some members of the Panel considered that this arrangement was too harsh and had seriously affected the morale of new appointees. It might result in a drain of talents in the civil service. The Panel passed a motion urging the Government to abolish the "3+3" policy and practice for recruiting civil servants.

In November 2007, the Administration briefed the Panel on its plan to conduct grade structure reviews (GSRs) for the disciplined services grades, directorate grades and selected non-directorate civilian grades. Some members of the Panel also held the view that GSRs should not be conducted simply for the sake of review, and that GSRs should not be seen as a means to make way for upward pay adjustments of civil service. The Panel also urged the Administration to analyze the reasons for the high wastage rate of the Government Counsel grade, and whether the "3+3 entry system" and the posting arrangements had any adverse impact on the recruitment and retention of officers.

During the Session, the Panel had discussed the civil service pay adjustment proposed by the Administration. Some members opined that when conducting the civil service pay adjustment exercise, the morale and stability of the civil service should be taken into account in determining the pay adjustment level for civil servants, and efforts should be made to avoid a higher pay adjustment for senior officers than that for junior officers. Members also

considered that NCSC staff should enjoy the same pay adjustment and pay increase as their counterparts in the civil service. Besides, when injecting financial resources to subvented bodies for pay adjustments of their staff, the Administration should adopt measures to closely monitor that the resources are spent on adjusting the remuneration of their staff instead of other activities.

Deputy President, as other work of the Panel has been detailed in the Report, I am not going to repeat it. Finally, I would like to take this opportunity to thank members, the Administration as well as the Secretariat for their contribution to the work of the Panel during the past year. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): Ms Margaret NG will address the Council on the report of the Panel on Administration of Justice and Legal Services 2007-2008.

Report of the Panel on Administration of Justice and Legal Services 2007-2008

MS MARGARET NG: Deputy President, in my capacity as Chairman of the Panel on Administration of Justice and Legal Services (the Panel), I would like to briefly report on the major work of the Panel in the 2007-2008 Session.

Mediation services

The Panel was in support of developing mediation which provided an alternative means of settling disputes. The Panel welcomed the Administration's proposal to provide funding for mediation in legally-aided matrimonial cases on a permanent basis, and to introduce legislation to give effect to the proposal in the next Legislative Council term. The Panel was briefed on the work plan of the Working Group on Mediation chaired by the Secretary for Justice. The Panel requested the Administration to explore ways to facilitate and encourage community mediation such as mediation of building management disputes which concerned ordinary people, and to address the legal profession's concern about the availability of suitable venues for conducting

community mediation, pending the outcome of the review of the Working Group which would only be available in two years' time.

Legal aid

The Panel was briefed on the progress of the Administration's five-yearly review of criteria for assessing the financial eligibility of legal aid applicants, and requested it to report the outcome in due course. Given the success of the Supplementary Legal Aid Scheme in widening access to justice, the Panel reiterated its support for the expansion of the Scheme on a gradual and incremental basis. This was also a recommendation in the Law Reform Commission's Report on "Conditional Fees" issued in July 2007.

Prosecution policy and procedure arising from the case of Mr CHUNG Yik-tin

Arising from the public concern about the prosecution of Mr CHUNG Yik-tin who was charged with publishing an obscene article contrary to the Control of Obscene and Indecent Articles Ordinance and the ultimate withdrawal of the charge against him, the Panel had a discussion on the relevant issues. These included the role of the Department of Justice in the proceedings against Mr CHUNG, whether an interim classification should be obtained from the Obscene Articles Tribunal before charge, and whether it was appropriate for the prosecution to oppose bail submitted in relation to an offence charged on the ground that further investigation had to be conducted on other suspected offences allegedly committed by Mr CHUNG.

Pre-trial interviewing of witnesses by prosecutors

In light of the developments on pre-trial witness interviews by prosecutors in other common law jurisdictions, the Director of Public Prosecutions set up a working group to conduct a nine-month monitoring exercise with effect from 1 April 2008 for the purpose of examining the feasibility of introducing such a scheme in Hong Kong. The Panel noted that during the monitoring period, the prosecutors' Case Report Form would be revised to require prosecutors, in a case where the defendant was acquitted, to assess whether it would have been beneficial for a prosecutor to have interviewed the witness prior to trial in order to make an assessment of the witness's evidence, thereby weeding out weak cases at an early stage.

Some members expressed concern that the Administration had not consulted the two legal professional bodies before the launch of the monitoring scheme. They also expressed reservation about the introduction of the scheme which was a drastic departure from the existing practice. A major concern was the potential risk of coaching or contaminating the evidence of the witness in the course of the interview. Some other members considered that the adoption of this scheme could advance the interests of justice as weeding out weak cases at an early stage would provide an additional safeguard to suspects who might otherwise have to stand trial. The Panel was assured that the working group would make recommendations in 2009 and all interested bodies would be consulted if it was decided that the scheme should be taken forward.

System for the determination of judicial remuneration

The Panel welcomed the Administration's decision on the new system for the determination of judicial remuneration, including the provision of a standing appropriation to meet the payment of judicial salaries to be enacted by statute, and the fixing of judicial remuneration by the Executive after considering recommendations by an independent advisory body. However, some members expressed disappointment that the Judiciary's recommendation for a statutory prohibition against reduction in judicial salaries was not accepted by the Administration for the time being. They pointed out that such a prohibition by law was a common safeguard for judicial independence in all common law jurisdictions except Canada.

Issues concerning the legal profession

During the Session, the Panel discussed a number of other issues concerning the legal profession. For example, the Panel noted that the Administration would introduce legislation to extend higher rights of audience to suitably qualified solicitors. In response to members' request, the Administration agreed to provide the code of conduct for solicitor-advocates for discussion by the Panel before the introduction of the proposed legislation in the next Session.

The Panel had closely monitored the progress of the review of the system of payment of fees to criminal legal aid lawyers engaged by the Legal Aid Department. The Panel noted that while the Administration had reached a broad consensus with the two legal professional bodies on the proposed structure

of the criminal legal aid fee system, the Law Society and the Administration held divergent views on the proposed level of fees on the various payment items. The Panel urged the Administration to negotiate with the Law Society to resolve differences and report to the Panel in due course.

Other matters

Members had expressed disappointment about the progress of a number of issues discussed by the Panel. These included the issue of recovery agents, the applicability of Ordinances to the offices of the Central People's Government in Hong Kong, and the effectiveness of the existing mechanisms for enforcement of civil judgments. The Panel will follow up the relevant issues in the next Session. Deputy President, it only leaves me to record my heartfelt thanks to the Clerk of the Panel, Mrs Percy MA. She has served the Panel long, faithfully and with great competence. Thank you.

DEPUTY PRESIDENT (in Cantonese): Miss CHOY So-yuk will address the Council on the report of the Panel on Home Affairs 2007-2008.

Report of the Panel on Home Affairs 2007-2008

MISS CHOY SO-YUK (in Cantonese): Deputy President, in my capacity as Chairman of the Panel on Home Affairs, I submit the Report of the Panel for the Session of 2007-2008 and I will highlight our deliberation on heritage conservation, and culture and the arts.

The Chief Executive announced a series of new initiatives on heritage conservation in the 2007-2008 policy address. A new policy statement on heritage conservation was subsequently published by the Development Bureau.

The Panel discussed the new policy statement and initiatives on heritage conservation with the Secretary for Development. Members in general were supportive of the policy objective of enhancing heritage conservation work, but were dissatisfied with the progress made. In their view, the new policy failed to provide concrete measures to prevent privately-owned historic buildings from being demolished. These members also considered that the threshold for preservation qualifying a building as a monument was quite high under the

Antiquities and Monuments Ordinance. They opined that the Administration should consider revamping the legislation to provide for different levels of statutory protection for different grades of historic buildings, or setting up a fund for buying those privately-owned historic buildings which were under threat of demolition.

The Administration indicated that it would expedite the heritage assessment for the some 1 400 historic buildings (including 495 already graded buildings), which was expected to be completed by the end of 2008. The Administration would also study overseas experience to assess the suitability of setting up a heritage conservation trust in Hong Kong.

Regarding culture and the arts, the Panel, in November 2007, discussed the package of measures to strengthen the software and humanware for culture and the arts proposed by the Administration. The Panel subsequently held three meetings to discuss the subject with the Administration and received views from deputations at two of these meetings.

Members were of the view that it was important to widen the audience base for the development of culture and to implement more arts education programmes at school to raise young people's cultural literacy. They urged the Administration to explore actively the provision of a television channel for cultural and arts programmes and more public space for the display of the artistic and creative works.

Some members expressed concern that 80% of the Government resources on culture and the arts were allocated to the Leisure and Cultural Services Department, whereas the Hong Kong Arts Development Council, which provided funding support for medium and small arts groups, only received less than 3% of the Government resources. These members also expressed concern as to whether the policy of subsidizing the nine major professional performing arts groups had led to unfair competition between them and the non-subsided arts sector.

The Administration has given assurance that it would examine the need for support to the non-subsided sector in its current review on a new funding mechanism for the major professional performing arts groups. The Panel subsequently held a special meeting with the Administration and organizations

concerned to discuss matters relating to subsidizing local performing arts groups and cultivating talents in culture and arts.

Besides, the Panel also urged the Administration to enhance training opportunities for script-writers, composers and musicians in the field of Cantonese Opera, as well as funding and venue support for the development of Cantonese Opera and other Chinese Xiqu.

Members considered that, as private museums contributed to enhancing the cultural life of Hong Kong people, the Administration should expedite the development of a standard mechanism for supporting private museums in order to enhance support for them. In response to members' views, the Administration agreed to formulate a proper framework for supporting the development of private museums.

Deputy President, finally, I would like to take this opportunity to thank members and the Secretariat for their contribution to the work of the Panel during the past year. I also thank all Honourable colleagues who have showed support to our meetings.

Deputy President, I so submit.

DEPUTY PRESIDENT (in Cantonese): Mr Andrew CHENG will address the Council on the report of the Panel on Transport 2007-2008.

Report of the Panel on Transport 2007-2008

MR ANDREW CHENG (in Cantonese): Deputy President, in my capacity as Chairman of the Panel on Transport, I submit the Report of the Panel for the Session of 2007-2008 and I will speak on a number of major items of work of the Panel.

Deputy President, road safety had always been the primary concern of the Panel. The Panel generally supported increasing the penalties for the traffic offences of causing death by dangerous driving and drink driving so as to enhance road safety.

The Panel was particularly concerned about a speeding case which had led to public misgiving at the reliability of laser guns used by the police. The Panel had met three times to discuss the circumstances surrounding the case and reviewed the expert evidence given by the prosecution and the defence. The Panel had also reviewed the internal guidelines and procedures on operation of laser guns so as to enhance public confidence in the speed check operation conducted by the police.

Deputy President, in respect of enhancing bus safety, the Panel continued to monitor the progress of various efforts made by the Administration. In this regard, members noted the progress made in the provision of seat belts at the exposed seats on buses, and the proposal to add additional horizontal guard rails across the upper deck windscreen.

Deputy President, the Panel felt great regret at the two fatal traffic accidents at the New Hiram's Highway near Nam Pin Wai Roundabout in Sai Kung on 1 May and at Garden Road on 29 June respectively. We would like to express our deepest sympathies to the victims' families and sincerely hope that the injured would recover as soon as possible. The Panel had conducted a site investigation with members of the Sai Kung District Council at Nam Pin Wai Roundabout. We had also reviewed the safety of lengthy downhill roads together with the Administration and urged the Administration to install a speed enforcement camera system at the relevant road section and red-light cameras in front of the traffic lights at all lengthy downhill roads.

Deputy President, the Panel was gravely concerned about the application for rising fuel prices and fare increases put up by various transport operators. We urged the Administration to fully consider public acceptability and affordability in their deliberations of the relevant applications.

The Panel was also concerned about the tunnel toll increase and the resultant knock-on effect on public transport fares and increasing burden on motorists. We also passed a motion strongly opposing the application for toll increases at over 20% on average by Tate's Cairn Tunnel Company Limited.

The Panel urged the Administration to provide the necessary assistance to ensure that islanders can enjoy proper and efficient outlying island ferry services at reasonable prices. We also urged the Administration to expedite the

construction of an additional floor at Central Ferry Piers Nos. 4 to 6 so as to increase the non-fare box revenue of the operators.

Deputy President, the Panel decided at its meeting on 12 October 2004 to form a subcommittee to oversee matters relating to railways. Over the past few years, the subcommittee had been closely monitoring the planning, implementation and operation of railway projects.

With the opening of the Tseung Kwan O Line in August 2002, West Rail in December 2003, East Rail Tsim Sha Tsui Extension in October 2004, Ma On Shan Rail Link in December 2004, Disneyland Resort Line in August 2005 and Lok Ma Chau Spur Line in August 2007, the railway network in Hong Kong had been significantly improved.

During the current Legislative Session, the subcommittee had reviewed the planning and design of the Kwun Tong Line Extension, the Shatin to Central Link, the West Island Line, the South Island Line and the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link, as well as the financial arrangements of the relevant projects.

Regarding the operation of railways, the subcommittee had been monitoring the performance of the MTRCL after the Rail Merger so as to ensure its reliability, safety and efficiency.

Deputy President, the above is a brief description of the work of the panel during the current Session.

Finally, I would like to take this opportunity to thank members as well as the Administration for their contribution to the work of the Panel.

Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): Mr LAU Wong-fat will address the Council on the report of the Panel on Development 2007-2008.

Report of the Panel on Development 2007-2008

MR LAU WONG-FAT (in Cantonese): Deputy President, in my capacity as Chairman of the Panel on Development, I submit the Report of the Panel for the Session of 2007-2008. In the following paragraphs, I will briefly explain a number of major items of work of the Panel.

During the Session, the Panel had held discussions on a number of projects. The Administration recommended the development of Kwu Tung North, Fanling North and Ping Che/Ta Kwu Ling and the Hung Shui Kiu New Development Area (NDA) to address the long-term housing demand and provide employment. Members generally supported that the Planning and Engineering Study be carried out on these NDAs and considered that a comprehensive and proper planning on the housing mix, medical and community facilities, employment opportunities available and transport ancillary facilities should be made.

The Panel had also discussed with the Administration on the planning issues concerning the proposed Liantang/Heung Yuen Wai new control point, the Lok Ma Chau Loop, the land to be released at the Frontier Closed Area and the new promenade at Central.

Given the mounting public concern about the "wall effect" of new developments, the Panel had explored any such measures that were adoptable with the Administration. Members noted that the Administration had commenced the review of Outline Zoning Plans of various districts in a gradual manner and would suitably revise the relevant planning parameters to lower the density of the development. Moreover, the Administration had observed the Technical Circular on Air Ventilation Assessment in deciding whether to undertake Air Ventilation Assessment for individual land sale sites from the 2007-2008 Application List onwards.

Meanwhile, members noted that green features might be exempted from gross floor area and site coverage calculations, leading to increase in height, bulk and density of the buildings concerned. Members urged the Administration to prudently review the exemption arrangement and considered that in undertaking the review, the Administration should take into account the aggregated effect of

various gross floor area exemptions and bonuses that might be granted under the relevant legislation.

The provision of public facilities in private developments has led to public concern. The Panel had discussed with the Administration and concern groups on the existing policy and arrangements. Members were particularly concerned that the location, design and management arrangement of certain space designated as public space might render it not easily accessible to the public. The Administration assured members that the relevant policy would be reviewed in detail and the views of the public and developers would be solicited in order to strike the right balance.

The Panel had urged the Administration to conduct a comprehensive view of the Urban Renewal Strategy so as to respond to the public demand in recent years for heritage conservation, preservation of community networks, a change to the redevelopment model and provision of quality living environment. In June 2008, the Administration briefed the Panel on the overall approach, *modus operandi* and public engagement process of the review of the Urban Renewal Strategy. It was expected that the review would take about two years to complete. Members generally welcomed the review and made a number of proposals on the future direction of urban renewal.

Some members also expressed grave concern that certain redevelopment projects that had been commenced by Urban Renewal Authority (URA) were far from satisfactory in terms of planning and compensation arrangements. These members urged the Administration and URA to adopt a flexible approach and consult the stakeholders to identify alternative arrangements acceptable to them as far as possible.

As the deliberations on other areas by the Panel have been outlined in the Report, I am not going to describe the details here.

I would like to take this opportunity to thank members, the Administration as well as the Secretariat for their contribution to the work of the Panel during the past year.

Deputy President, I so submit. Thank you.

DEPUTY PRESIDENT (in Cantonese): Mr Albert CHENG will address the Council on the report of the Panel on Information Technology and Broadcasting 2007-2008.

Report of the Panel on Information Technology and Broadcasting 2007-2008

MR ALBERT CHENG (in Cantonese): Deputy President, in my capacity as Chairman of the Panel on Information Technology and Broadcasting, I submit the Report of the Panel for the current Session and I will briefly speak on a number of major items which have been deliberated by the Panel.

(THE PRESIDENT resumed the Chair)

The Panel discussed the outcome of the public consultation on the provision of radio spectrum for Broadband Wireless Access (BWA) services and the legislative proposal to enable the release of the frequency spectrum by auction. Members supported the Administration's proposal as BWA spectrum would support fixed services, mobile services and converged services. Members considered that since the auction would be open to existing operators and new market entrants alike, market forces and economic principles would be given a full play, thus ensuring an efficient market regulation and healthy competition for the provision of quality telecommunications services to consumers.

The Administration also briefed the Panel on the outcome of public consultation on the proposed creation of unified carrier licence under the Telecommunications Ordinance (TO) and the legislative proposal to introduce the new type of carrier licence. While some members supported in principle the Administration's legislative proposal, some other members expressed concern about the proposed number fee in the proposed licence fees and the divergent views among industry players. A subcommittee was formed to study the two amendment regulations.

The Panel welcomed the initiatives of the Administration and the Internet service providers (ISPs) in establishing performance pledges on residential

broadband use and best practice indicators, and also the quarterly release of actual performance statistics for public information, so as to safeguard the rights and interest of consumers. Some members suggested that a "call centre" be set up to provide a manned hotline service so as to handle public enquiries and complaints about broadband services, including providing appropriate assistance. The Panel welcomed the pilot customer dispute settlement scheme for voluntary participation by ISPs and hoped that it could be launched as soon as practicable. Members urged the Administration to consider the funding arrangements when assessing the cost-effectiveness and the feasibility of maintaining the scheme on a long-term basis.

In view of the pervasiveness of Internet service and its popularity in Hong Kong families, the Panel expressed concern about the prevalence of indecent and obscene Internet content and urged the Administration to adopt measures so as to protect the youth from being exposed to objectionable materials. Members urged the Administration to consider strengthening the deterrent effect of the Control of Obscene and Indecent Articles Ordinance by increasing the maximum penalty on repeated offenders, in particular media organizations which had repeated records of publishing indecent articles.

Concerning the regulation of radio broadcasting policy, members expressed concern about the deferral of the review of the TO pending the outcome of the appeal on the magistrate's constitutionality ruling arising from the incident on unlicensed broadcast by Citizens' Radio. Members considered that the outdated TO and the licensing regime of sound broadcasting were no longer effective in regulating the telecommunications industry. The Panel therefore called for an early review of the TO to enhance the fairness and transparency of the licence processing procedures regardless of the outcome of the appeal.

On the review of public service broadcasting, the Panel expressed regret about the delay in the release of the long-awaited consultation paper. Some members were concerned that the bundling of public service broadcasting consultation, the future of Radio Television Hong Kong and the opening up of airwaves for community radio stations with the legal proceedings against Citizens' Radio would hold up all the issues. In this connection, the Panel urged the Administration to formulate a consultation timetable so as to expeditiously address wide public concern instead of waiting for the court's ruling. The Secretary for Commerce and Economic Development assured

members that the consultation would not be shelved indefinitely and the Administration would make the best effort to finalize the consultation paper within a reasonable timeframe.

Regarding the implementation of digital terrestrial television (DTT) broadcasting, members urged the Administration to target at completing the five transmission stations by June or July 2008 the latest, thus allowing time for the electronic manufacturers to produce sufficient DTT receivers for the Hong Kong market and for the public to purchase and install the set-top boxes. Members hoped that the Administration could expedite the roll-out of transmission network to achieve close to 99% digital coverage by the 2008 Beijing Olympics. After taking follow-up actions, the Administration advised that the two domestic free television (TV) broadcasters had brought forward their plan to complete construction of the transmission stations to extend digital coverage to 75% of the population to early August 2008, so as to enable more people to enjoy viewing of the Beijing Olympics with DTT.

The Panel expressed concern over the lack of progress in the development of digital audio broadcasting (DAB) despite years of discussion. In the light of competing demand for frequency spectrum, some members had pointed out that the future development of DAB would be significantly restricted by the deployment of frequency spectrum for mobile TV services. The Administration assured members that it was the Government's intention to take the opportunity of developing mobile TV services to facilitate the roll out of DAB. In this connection, the Panel would continue to follow up the progress of DAB in the future.

The Panel expressed extreme concern about the recent repeated leakage of personal data by the Government and public organizations and urged the authorities to adopt measures to protect electronic data and step up awareness of all staff on data security. The Panel would follow up the matter in the next Session.

President, other areas of work of the Panel in the current Session have been detailed in the Report. I so submit. Thank you.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Impact of Labour Contract Law on Hong Kong Enterprises on the Mainland

1. **MRS SOPHIE LEUNG** (in Cantonese): *President, in early May this year, the State Council promulgated the Draft Implementation Regulations of the Labour Contract Law (the Draft Regulations) and consulted the public on the Draft Regulations. I have learnt that the Hong Kong Special Administrative Region (SAR) Government has also gauged the views of various trades and industries on the Draft Regulations through different channels and relayed them to the mainland authorities concerned. In this connection, will the Government inform this Council:*

- (a) *of the channels through which or the means by which the SAR Government has gauged the views of the factory operators, in particular Hong Kong businessmen who have investments on the Mainland, and the sectors concerned on the above Draft Regulations;*
- (b) *of the total number of comments on the Draft Regulations received so far by the SAR Government and how it has dealt with such comments; according to such comments, what problems the Labour Contract Law has created for the factory operators concerned; and*
- (c) *apart from setting up the "Task Force to Support the Processing Trade", whether the SAR Government will, focusing on the impact of the Labour Contract Law on the factory operators, formulate long-term measures and policies to support the factory operators concerned?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President,

- (a) The Labour Contract Law came into effect on 1 January this year. The SAR Government is aware of the significant impact of the Law

on Hong Kong businessmen who have investments in the Mainland, and has therefore been in close liaison with the trade through various means during the drafting, consultation and implementation of the Law, and reflected their views to the mainland authorities.

The Legislative Affairs Office of the State Council issued the Draft Regulations on 8 May for public consultation. The SAR Government took proactive actions to inform the trade at once of the consultation exercise and collect their views through different means, including letters to major trade associations, websites, emails and the Task Force to Support the Processing Trade, and so on.

- (b) We have received submissions from 10 trade associations, as well as a submission consolidated by the office of the Honourable Mrs Sophie LEUNG, and have relayed them to the relevant mainland authorities. We have also received submissions made to the Legislative Affairs Office and copied to the SAR Government.

We understand the major concerns of Hong Kong businessmen are mainly the increase in labour costs, reduction in enterprises' flexibility in managing human resources and the operational problems encountered in complying with the Law. The trade has also raised problems related to the compatibility of the Labour Contract Law with existing legislations (such as those on social security), the lack of flexibility of some requirements (such as the limitations on overtime and working hours), as well as the lack of clarity in calculating severance payments and in terminating non-fixed term labour contracts, and so on. The trade also hopes that longer adaptation and transition periods could be provided in the formulation or adjustment of policies. We have reflected the above views to the relevant Central authorities.

- (c) Besides the Task Force to Support the Processing Trade, the Government has been, through different channels, actively reflecting the views of the trade to the relevant mainland authorities during the various stages of consultation of the Labour Contract Law. Some of the views have been accepted. We will continue

to liaise with the relevant mainland authorities to reflect the trade's views and assist the trade to understand the Labour Contract Law. For example, after implementation of the Law, we have organized a number of exchange sessions and seminars.

President, the objective of the Labour Contract Law is to provide greater protection to the working population in the Mainland. The Labour Contract Law is an important national policy and it follows the general trend of our country's development. I call on Hong Kong businessmen to facilitate its implementation, rather than to hope for its withdrawal or non-implementation. In fact, in the past 30 years, our businessmen have been the Mainland's main investors and have actively followed the country's strategy in economic development, resulting in unprecedented success of the reform and opening up of the mainland. I am sure that they will continue to actively support the national policy regarding the Labour Contract Law. I understand some Hong Kong-owned enterprises would like to see more certain and clearer implementation details of the Law. I therefore urge the Mainland authorities to take into account the interest of Hong Kong businessmen in implementing the policy, adopt an incremental approach and strike a good balance in protecting the interests of both the employers and employees. Most importantly, it will be necessary to strength publicity and education of local governments, enterprises and workers, and enhance the supporting measures. In this respect, the SAR Government will continue to liaise with various parties, and will actively reflect the problems encountered by Hong Kong businessmen to mainland officials.

MRS SOPHIE LEUNG (in Cantonese): *President, I agree very much with the Secretary that this Labour Contract Law seeks to provide greater protection to the working population in the Mainland. However, although we have moved onto the 21st century, greater capacity is still not available in what the United Nations referred to as "capacity building".*

The Secretary indicated in part (b) of the main reply that views collected include those concerning the reduction in enterprises' flexibility in managing

human resources, operation problems encountered in compliance, or even the incompatibility of the Labour Contract Law with existing legislations, or the lack of clarity and so on. Regarding these issues, may I ask whether the Bureau and the Government will organize exchange sessions and seminars with Hong Kong factory operators, that is, factory operators with investments in the Mainland, in the near future and analyze more clearly the difficulties faced by them and advise them on how to interpret and overcome these difficulties in the light of the views collected?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, as I said in the main reply, the Government has tried to understand the difficulties encountered by the trade through different channels and has organized some seminars.

Of course, when needs arise in the future, we are more than willing to continue to play the role of a bridge to foster communication in order to reflect and also explain the problems encountered by Hong Kong businessmen to the mainland authorities, including the Central Authorities and local government officials. As I said in the main reply, since Hong Kong businessmen have made huge investment in the Mainland and have great significance in the mainland economy, the mainland authorities also hope that Hong Kong businessmen can give play to their economic role.

Therefore, I believe we will certainly play this important role to foster communication in this regard.

MR ANDREW LEUNG (in Cantonese): *From the Secretary's main reply, I can clearly see that the Government can grasp the problem of the Labour Contract Law. However, as all of us can see, the Labour Contract Law came into effect on 1 January this year, but the consultation on the Draft Regulations did not begin until May, the timing of which did not really tie in with each other. For Hong Kong businessmen, in particular small and medium enterprises (SMEs), the impact created is tremendous.*

May I ask the Secretary whether the authorities will examine such impact and establish a platform through the Guangdong Economic and Trade Office

(ETO) to provide more information to SMEs so that they will know how to cope with, facilitate the implementation of and comply with this legislation?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, Mr LEUNG actually knows very well that according to the legal proceedings of the Mainland, consultation of the Draft Regulations should be carried out only now. Therefore, as I said in my reply to Mrs Sophie LEUNG's supplementary question, the Guangdong ETO and the Bureau under my ambit are more than willing to play the important role to foster communication and provide a platform for liaising with local government officials for a better understanding of all the problems faced by SMEs.

Actually, discussion on this Labour Contract Law begun many years ago and the existing Draft Regulations is a stage of setting out the details. We understand that the details are very important. Given the resource constraints of SMEs investing in the Mainland, we will definitely make every effort to assist them through the Guangdong ETO and this Bureau.

MR CHAN KAM-LAM (in Cantonese): *President, the Secretary made two pleas in his main reply, one of which was that Hong Kong businessmen should facilitate the implementation of the Labour Contract Law rather than hoping for its withdrawal or non-implementation.*

Does the Secretary know that competition in the market is very keen and Hong Kong businessmen invest in the Mainland because of its more favourable investment environment? Nevertheless, they have made some recommendations because they are all concerned about the implications of this Labour Contract Law on aspects such as costs. May I ask the Secretary how many consultations and discussions have been conducted, and after acquiring an understanding of their problems, which aspects of the Labour Contract Law does he think can be amended or what better measures can be requested of the Legislative Affairs Office of the State Council to alleviate the concerns of Hong Kong businessmen?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): We fully understand the basic background of the enactment of this

Labour Contract Law. I made this plea in the hope that everyone can understand that there is a legislative intent behind the policy of the State, and Hong Kong businessmen should appropriately make adjustments to cope with it.

We certainly also understand why Hong Kong businessmen have reacted so strongly to this legislation. Undeniably, the business environment has become more difficult over the past 12 months. Factors such as the economic recession in the United States, the appreciation of Renminbi and the pressure of the overall salary increase have also made factory operators think that the implementation of this Labour Contract Law has made business operation even more difficult. Besides, regarding the details, the explanation I got from my contact with factory operators is that they are a bit dissatisfied as they think that a lot of problems relating to workers' benefits, for example, under this Labour Contract Law cannot be solved. However, some other Hong Kong businessmen told me that the established policies of their companies are already in line with the Labour Contract Law because this legislation was not launched just yesterday and so, they have been able to make preparation accordingly. Therefore, it depends on the preparation made by individual Hong Kong businessmen.

Of course, factory operators know better than I do in this regard. However, concerning the details, that is, the point raised by Mr CHAN Kam-lam just now, it really depends on the circumstances of individual Hong Kong businessmen. As different proposals have been put forward by different Hong Kong businessmen, I am not going to explain them in detail here. However, if Mr CHAN Kam-lam is interested, I can provide him with a detailed table setting out the areas of dissatisfaction of Hong Kong businessmen. (Appendix I)

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

MR CHAN KAM-LAM (in Cantonese): *President, I hope the Secretary will provide a written reply on what he has mentioned just now.*

PRESIDENT (in Cantonese): Do you mean the issues of concern to Hong Kong businessmen?

MR CHAN KAM-LAM (in Cantonese): Yes.

MISS CHOY SO-YUK (in Cantonese): *President, the Secretary indicated in part (b) of the main reply that they understand the difficulties encountered by and the concerns of the trade. However, he also indicated that "we have reflected the above views to the relevant Central authorities".*

President, I believe when the trade discussed this with the Secretary or the Government, they did not only hope that the Secretary or the Government would reflect their views because they themselves would also do so through various channels. On the contrary, they hoped the Government would proactively discuss with the Central Government on their behalf on how to alleviate — even if complete solution may not be possible — at least to alleviate some of the problems or clarify some uncertainties they were facing.

Regarding the various difficulties encountered by the trade set out in part (b) of the Secretary's main reply, what approaches have he adopted to solve or alleviate them?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, as with many State policies which will have an impact on the trade, first of all, we will reflect our views to the relevant mainland authorities. Miss CHOY may still remember that in July last year, the State proposed the new processing trade policy. At that time, the first step we took was to reflect the views of factory operators to the State, after which we also proposed some solutions. Subsequently, the State heeded sound advice and introduced adaptation arrangements which have made many Hong Kong businessmen think that compared with the original proposal, the impact of this processing trade policy on them has been reduced.

Under this circumstance, the first thing we have to do is to reflect our views to the State. If they think that our views are reasonable after going through them, they will discuss them with us, and then we can take further

follow-up actions. This is the established procedure for communicating with the Mainland, which has been very effective.

As shown in the example I provided to Miss CHOY just now, problems relating to the processing trade policy implemented in July and August last year were also solved in this way. Therefore, under this circumstance, we have already taken the first step, that is, to reflect the views of Hong Kong businessmen to them. We must bear in mind that this policy was not launched just yesterday, and has been discussed for a long time. Therefore, the focus now is on the details, which require more time for discussion. While the broad principle can be considered from a macro perspective, the details require more time for consideration. As I said just now, different factory operators may have different requests, and some may think that they are not affected at all while others may think that problems will arise.

Therefore, we will definitely take follow-up actions pending the response of the mainland authorities.

PRESIDENT (in Cantonese): This Council has spent more than 17 minutes on this question. We will now proceed to the second question.

Primary Health Care Services

2. **DR JOSEPH LEE** (in Cantonese): *President, the Government recommends enhancing primary health care services in the health care reform consultation documents published in the past and this year. Yet, the existing allocation of resources for public health care services focuses primarily on the provision of treatment services, with 85% of the resources being spent on treatment of diseases and only 15% on disease prevention and health promotion. In this connection, will the Government inform this Council:*

- (a) *of the authorities' plans to promote the development of primary health care services, and the specific ways to change the existing situation in which treatment services are given more weight in the allocation of resources for health care services;*

- (b) *apart from implementing the electronic patients' record system to assist private medical practitioners and public medical institutions in treating patients, how the Government will promote the development of community and primary health care services through implementing the system; and*
- (c) *of the specific plans to utilize the expertise of the health care teams so that they can make an impact on the community in the provision of primary health care services as proposed by the Government?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, first of all, I would like to provide some background information. Our public health expenditure stands at some \$38 billion a year, accounting for some 55% of the total health expenditure in Hong Kong with the remaining 45%, that is, about \$30 billion, being private health expenditure (based on Hong Kong's Domestic Health Accounts 2004-2005). About 12% of the public health expenditure is spent on primary care, mainly on the provision of preventive public health services including disease prevention, health education and general out-patient services. Meanwhile, about 70% of the ambulatory care services are provided by the private sector with many of them being primary care services. Given the relatively low level of fees charged for primary care services, most members of the public can afford such services provided by the private sector. We should strive to instil into members of the public a sense of self-responsibility and commitment for their own health. Therefore, we should give due regard to the respective roles of both the public and private sectors in examining the development of primary care services.

My reply to various parts of Dr Joseph LEE's question is as follows:

- (a) In the Healthcare Reform Consultation Document "Your Health, Your Life" (the Consultation Document), enhancing primary care services is one of the major areas of our health care reform as it could help improve the health of the whole population and contain general health care needs and expenditure growth in the long run. To achieve the objective of enhancing primary care services in the long run, we will put in place the following initiatives detailed in the Consultation Document:

- Developing models and standards for primary care services;
- Establishing a Family Doctor Register;
- Subsidizing patients for preventive care;
- Purchasing of subsidized public health care services from the private medical sector; and
- Strengthening public health education and promoting healthy lifestyle.

The Working Group on Primary Care under the Health and Medical Development Advisory Committee (HMDAC) chaired by me will take forward the above initiatives shortly. Besides, we have already launched pilot projects for the purchase of primary care services from the private sector in Tin Shui Wai as well as the elderly health care voucher scheme. We will make use of the additional health funding provided by the Government in the coming few years to carry out the reform in this respect. However, in the face of ageing population, increasing health care needs and rising medical cost, in order for the primary care services reform to be sustainable, especially in relation to subsidizing the public to receive preventive care and improving the public primary care services, we need to address and reach an early consensus on the issue of long-term health care financing to ensure the availability of adequate resources to take forward the primary care reform on a continuous basis.

- (b) Primary health care is the first point of contact in a continuing health care process for individuals and families and constitutes the first level of care in the context of the health care system. Our vision for developing electronic health record sharing is to enable health care providers, including primary care practitioners, to enter, store, retrieve and access health-related data of individuals subject to the individuals' authorization for provision of holistic care, referral of patients in need to different levels of care for treatment, and effective follow-up of patients. This can help enhance the

continuity of care and improve the integration of different health care services. Our long-term objective is to extend the coverage of electronic health record sharing to all primary care practitioners, including doctors, nurses and other allied health professionals and health care personnel providing primary care services, so as to promote the development of community and primary health care services and foster collaboration between different health care professions in the provision of primary care.

- (c) Whole-person care requires comprehensive and thorough understanding of the patient's problems that affect his or her health and deriving solutions that resolve these problems. In Hong Kong, as we mentioned in the consultation paper "Building a Healthy Tomorrow" as early as in 2005, the emphasis of primary care is often put on treatment of episodic diseases only. Problems beyond the patient's physical condition are seldom dealt with fully. If there can be more collaboration between health care professionals and other professionals (such as community nurses, dietitians, occupational therapists, and so on) in the investigation and resolution of the patient's overall problems, better results will be achieved.

For the above reasons, besides Western medicine practitioners, Chinese medicine practitioners, dentists and chiropractors, nurses, physiotherapists, occupational therapists, radiographers and medical laboratory technologists are also eligible to register for participation in the Elderly Health Care Voucher Pilot Scheme. Elderly persons can use the vouchers for services provided by allied health professionals and laboratory test services (the use of such services is subject to the current referral arrangement) as well as curative or preventive medical services. In developing our future models of primary care services and expanding our subsidized primary care services, we will also study the roles of different health care professionals in the provision of primary care services. As for public general out-patient services, the Hospital Authority has progressively pooled together various allied health professions to offer a host of integrated health care services (such as the services of

nurse clinics or allied health professions) for further enhancement of the public primary care services through the health care teams.

In sum, our target is to join hands with various health care professions, be they in the public or private sector, to take forward the primary care services reform and develop models and standards for primary care services. We aim to raise the quality of public primary care services while fostering the healthy development of private primary care services.

DR JOSEPH LEE (in Cantonese): *President, from the conceptual perspective, I can say that the main reply does not contain any answers to my main question. The reason is that while the topic of my question is about primary health care services, the main reply is basically about primary medical care services. I am therefore very disappointed. In part (a) of the main reply, it is mentioned that the five proposals detailed in the Consultation Document will be put in place. Two of these measures, namely, subsidizing patients for preventive care and strengthening public health education and promoting healthy lifestyle, can still be regarded as remotely related to the topic of primary health care I have raised for discussion. But in regard to these five measures, how much money will the Secretary spend on medical care and health care services in the future? The Secretary now says that it is 12%. But according to our statistical analysis, it should be 15%. In other words, the Secretary has given us a lower percentage.*

In the long run, if these two of the five measures will be taken as the key initiatives for promoting primary care, what is the percentage of resources that the Secretary plans to inject into this area of work?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, I must first point out that we do not express the investment of resources in terms of percentages. Rather, we will consider the modes through which primary medical care or preventive services are provided. In the course of computations, we must consider the factor of costs before making any decisions. The Working Group on Primary Care under the Health and Medical development Committee will be responsible for putting in place all these specific measures. We will do computations on the required costs and the resources to be provided annually on a continuous basis. We will also make a decision on the mode of service delivery, that is, whether the Government should assume responsibility of service delivery or simply provide subsidy for the purpose, for example. Therefore, we do not make any decisions on the basis of percentages.

MS LI FUNG-YING (in Cantonese): *President, I wish to ask a question from another perspective. Part (a) of Dr Joseph LEE's main question is about whether there are any specific ways to change the existing situation in which treatment services are given more weight. Since Dr Joseph LEE is concerned about disease prevention and health promotion, can the Secretary tell us whether he has any specific plans in these two respects?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): *Madam President, as I have mentioned, we have set down five broad directions, and some pilot schemes have already been put in place. We must therefore make other plans on the basis of the responses to and effects of the pilot schemes. But I must emphasize that as mentioned in the first paragraph of the main reply, health expenditure is incurred both under the public-sector health care system and the private-sector system. A certain percentage, or a substantial percentage, of the expenditure is incurred on primary health care services. The question is how we can utilize the resources effectively to ensure more co-ordination and co-operation among different service-providers, so that overlapping of services and wastage of resources can be avoided. This is precisely the aim of the five measures mentioned just now.*

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, despite the Secretary's explanation, I still cannot grasp the point. In regard to the two points on primary health care, I agree with the Secretary. Since the purchase of primary health care services from the private sector in Tin Shui Wai is mentioned in the beginning part of the Secretary's main reply, I may as well talk about Tin Shui Wai. If the elderly health care voucher scheme proves to be successful in Tin Shui Wai, the Government may need to extend the scheme to the many other districts in Hong Kong, and this will require financial input. Therefore, our greatest worry is that the Secretary may then say that if the Government does not receive any support for its health care financing proposals, it will not launch any primary health care schemes. But I must point out that as mentioned by the Secretary, primary health care is of very great importance. If the pilot scheme proves to be successful and must be implemented on a territory-wide basis, will the Government have enough resources for the purpose? If there is a shortage of resources, will it be necessary to use the \$50 billion?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, I have had several opportunities to communicate with Miss CHAN, and I have told her that we must promote the development of primary health care services. But I must add that the pace of development and the amount of services must depend on the resources we can make use of on a sustainable basis. In the next two or three years, that is, over the next four years, the Government will surely increase the allocation of resources. If the increase in resources can continue, new services can of course be sustained. However, owing to the ageing of the population and other needs, the increase may not necessarily be able to remain at the same level in the next few years. In view of the ageing of the population in the next 20 to 30 years and also the increasing demand for preventive services, we must increase the allocation of resources. We must therefore make health care financing plans. The problem cannot be solved simply by making use of the \$50 billion. The \$50 billion is just meant for making a start. In the long run, it cannot solve the resource problem related to primary health care services.

DR FERNANDO CHEUNG (in Cantonese): *President, it is mentioned in the main reply that primary care services in Hong Kong are not comprehensive enough, and the emphasis is often put on the treatment of episodic diseases only. It is proposed that the objective should be set on the comprehensive understanding of patients' problems, so that preventive measures can be taken. However, under the existing health care system of the Government, at both out-patient clinics and specialist clinics, a patient may not necessarily be able to consult the same doctor every time. In regard to the present elderly health care voucher scheme, The University of Hong Kong and Caritas have conducted a survey, which discovers that half of the elderly respondents do not plan to use these vouchers. Why? The reason is that the face value of these vouchers is too small. These elderly persons have all along been using public-sector health care services. If they switch to the private sector, they will use up all their vouchers after two consultations. They will have to switch back to the public sector, and they find this too much trouble. As a matter of fact, this also runs counter to the principles of primary care. Since elderly health care vouchers are related to primary care, will the Secretary consider substantially increasing the face value of these vouchers, so that they can serve the desired purposes of diverting long-time elderly users of public-sector health care services to the private sector and bringing forth long-term patient-doctor relationship?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, when introducing the elderly health care voucher scheme, I already explained very clearly that the aim of the scheme is to provide elderly persons with subsidies, so that they can choose the primary care services providers they want. But the subsidy covers only part of, not all, the costs. Therefore, following the implementation of the scheme, we will analyse their demands and choices. For example, we will find out whether they like to consult Western medical practitioners or Chinese medicine practitioners, and whether they still want to look for other services. If the scheme is successful, we think that it will be possible to increase the allocation of resources and provide more satisfactory services. The scheme is scheduled for implementation in early 2009. Its effectiveness will be examined some time after its commencement. Therefore, we do not plan to increase the amount of subsidy for the time being.

MR WONG KWOK-HING (in Cantonese): *President, it is pointed out in the main reply that our public health expenditure stands at \$38 billion a year. However, President, members of the public seeking treatment in government dental out-patient clinics can only receive two kinds of services: pain-killing and extraction. Members of the public cannot receive other types of dental services. Such services are exclusive to civil servants. Since the \$38 billion public health expenditure is paid by all taxpayers in Hong Kong, why can't the general public enjoy the same government dental services as those available to civil servants? Will the Government review its provision of dental treatment and care services to the general public? Is there any timetable of making the required improvements?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, I have already explained that in the next six months, the Working Group on Primary Care will consider which types of preventive and primary care services should be promoted or given subsidy. We will consider all services, including dental services and other kinds of services.

PRESIDENT (in Cantonese): Third question.

Selection and Appointment of First Batch of Under Secretaries and Political Assistants to Directors of Bureau

3. **MR LEE CHEUK-YAN** (in Cantonese): *President, regarding the selection and appointment of the first batch of Under Secretaries and Political Assistants to Directors of Bureau, will the Government inform this Council whether:*

- (a) *nominations or referrals of candidates for such posts have been made by members of the Appointment Committee and the two Interviewing Panels; if so, whether the members concerned had declared interests, and whether they had withdrawn from the meetings at which the appointment of the candidates nominated or referred was discussed and made; and*
- (b) *any guideline or code of practice on the avoidance of conflict of interests was drawn up for the selection and appointment of candidates for such posts; if so, of the details; if not, the reasons for that?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, following the approval of the Finance Committee of the Legislative Council on the creation of the Under Secretary and Political Assistant posts in December 2007, the Government indicated that all interested parties could put forward their nominations. The nominations or referrals received by the Government came from political parties, think tanks, government sources (including Secretaries of Department, Directors of Bureau and Head of the Central Policy Unit). By January 2008, the Government had received over 100 nominations or referrals and self-nominations. We will not comment on the details of the number of nominations or referrals received from different sources.

The process for appointing Under Secretaries and Political Assistants was fair and vigorous. Each of the relevant candidates had to go through both the interviewing panels and the Appointment Committee (AC). The AC was chaired by the Chief Executive, and comprised the three Secretaries of Department, the Secretary for Constitutional and Mainland Affairs (SCMA), and

the Director of the Chief Executive's Office (D/CEO). As regards the interviewing panels, the one for Under Secretaries was chaired by the Chief Secretary for Administration, typically with a number of Directors of Bureau and D/CEO as members; and the one for Political Assistants was chaired by D/CEO or SCMA with one to two other Directors of Bureau as members. The interviewing panels would compile assessments at the end of each interview and these were presented to the AC for consideration. All key decisions on the appointment procedures were made by the AC on a collective basis.

The AC, when considering individual candidates, was aware of whether a candidate was self-nominated or nominated/referred through other channels, and if the latter, information about the party making the nomination or referral. There was, therefore, no question of any conflict of interest arising.

As the Chief Executive stressed earlier in the Legislative Council, throughout the entire appointment process, from formation of interviewing panels, consideration of candidates, to determination of their remuneration levels and postings, and so on, all decisions were made with the AC's approval after careful consideration. No single member of the AC could rule alone on these matters.

MR LEE CHEUK-YAN (in Cantonese): *When the Chief Executive attended that Question and Answer Session in the Legislative Council, he told us that there was not a culture of "stables" or a "Norman CHAN's stable"; this question is actually intended to find out how he would avoid a culture of "stables". President, it is stated in the Secretary's main reply that there is no question of any conflict of interest arising, but I would like to ask the Secretary this: if a person is a member of the AC and also a member of the interviewing panel (with Norman CHAN being an obvious example) but the nominator does not need to be withdrawn from meetings during the selection process, why is this not a conflict of interest? President, perhaps you may wonder why I said that he did not need to withdraw from meetings. A point has been concealed in the main reply, that is, there is no system under which the members should withdraw from meetings; thus, I believe that he definitely had not withdrawn from meetings, and he must have taken part in the selection process. Although it is stated in the main reply that decisions are made on a collective basis, obviously he had not withdrawn from meetings. So, my supplementary question is this: if Norman CHAN had not*

withdrawn from meetings, how can there be no conflict of interest when he screened the candidates who included those nominated by him in the selection process?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, concerning the arrangement as a whole, the AC is responsible for all the appointment and recruitment procedures, and for making a final decision about whether a candidate would be appointed as an Under Secretary or a Political Assistant. The AC is composed of the D/CEO, the three Secretaries of Department, the Chief Executive and me. Insofar as other interviewing panels are concerned, interviews were usually conducted by a number of principal officials. After each interview conducted by the interviewing panel for an Under Secretary or a Political Assistant, the Secretaries of Department and Directors of Bureau present would discuss together whether the candidates were suitable, and whether they were competent for the posts of Under Secretaries or Political Assistants. Thus, no single member could rule alone whether a candidate will be appointed because decisions and discussions made on a collective basis would ensure that personal conflicts of interest would not arise.

MR LEE CHEUK-YAN (in Cantonese): *The Secretary has not answered my supplementary question: why was there no conflict of interest? If a person is a nominator and he has taken part in the selection process, though the Secretary has said that the decision was made on a collective basis, not by one single member, how can there be no conflict of interest if this person did take part in the discussion? I am highlighting the point that the person has taken part in the relevant discussion. The Secretary has not answered this point.*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, actually, in the interviewing panel, Secretaries of Department and Directors of Bureau would discuss together whether the candidates were suitable, and by whom they were nominated. And in the AC, we also know clearly which principal officials or colleagues had nominated the candidates, or whether they were nominated by the Central Policy Unit or various political parties before decisions were made on a collective basis. Hence, all of us were quite clear about the situation.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, he has not answered the part of my question about withdrawal from meetings.*

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

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, the system under which decisions are made by the interviewing panels and the AC on a collective basis can sufficiently ensure that no single person would have an influence which can override that of a collective decision.

MR LEE WING-TAT (in Cantonese): *President, about the appointment process, the Chief Executive has referred to an internal supervision system in this Council. However, internal supervision is tantamount to no supervision at all because a system whereby people are supervised by his own people basically cannot work. I have suggested that the Government should consider including persons other than officials or even Legislative Council Members, including the so-called opposition Members, when it appoints the next batch of Under Secretaries and Political Assistants, so that the meaning of "supervision" can be more precisely reflected. President, I see the Secretary frowning but I do think that this is relevant to the question because this is also about appointment. President, I think there is a link between my question and this question.*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, in fact, I think the remarks made by Mr LEE Wing-tat are rather novel, so I have to think about them, and I was not frowning just now. Honourable Members often say that the Legislative Council should monitor government operation, and under the Basic Law, we have to be monitored by the Legislative Council and we have to attend meetings of the Legislative Council to answer questions and explain our policies, as well as solicit Members' support for legislative and funding proposals.

The appointment of principal officials, their deputies and other assistants by the executive authorities is a function performed by the executive authorities

under the Basic Law. In explaining our policies to the Legislative Council, we have performed our duties under the Basic Law. Thus, about the appointment of officials, if they are principal officials, they are nominated by the Chief Executive and appointed by the Central People's Government; if they are Under Secretaries and Political Assistants, the decisions are first made by the interviewing panels and the AC while the final appointment is approved by the Chief Executive.

MR HOWARD YOUNG (in Cantonese): *President, as widely reported in the media, during the appointment process, some think tanks had organized forums on constitutional reform outside the Government. As far as I know, besides think tank members, many persons nominated by political parties had taken part in these forums too. I would like to ask if these activities constituted a part of the selection and interviewing procedures just mentioned, or they did not constitute a part of the process. Also, if they did constitute a part of the relevant procedures, would the relevant persons be regarded as candidates recommended by think tanks?*

PRESIDENT (in Cantonese): Mr Howard YOUNG, I do not quite understand your supplementary question.

MR HOWARD YOUNG (in Cantonese): *OK, the Secretary has just said that there is a mechanism for the selection process. There have been extensive media reports that these think tanks had organized forums on Political Assistants and Under Secretaries outside the government structure. I would like to ask whether these activities constituted a part of the selection process or they did not constitute a part of the selection mechanism at that time.*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, as I have just explained to Honourable Members, concerning the selection process, after the proposed establishment was approved by the Finance Committee of the Legislative Council in December last year, we publicly expressed that people interested in working in this sector could submit self-nominations. Nominations by political parties or other organizations would

also be accepted. As to the formal selection process, the AC first made a decision to set up two interviewing panels, and the selection process commenced after nominations and self-nominations were accepted.

Regarding the occasions mentioned by Mr Howard YOUNG, such as the forums on policy development in Hong Kong in which principal officials and colleagues from the CEO participated, we would certainly take part in these forums because we could get to know more young people interested in politics. However, this was unrelated to the formal selection process of the selection committee.

DR KWOK KA-KI (in Cantonese): *Madam President, some people said that there is a difference depending on the affinity with the Government and a culture of "stables". I have heard of a Norman CHAN's stable but I have not yet heard of a Stephen LAM's stable. Yet, I would like to ask a question about conflict of interest and the guideline. Everybody knows that there is a stable called Bauhinia Foundation; I would like to ask: when the procedures were formulated, was there a guideline requiring that the sources of the important think tanks be specified? Did the guideline require the clear specification of these stables or think tanks which are treated differently based on their affinity with the Government?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, actually, in the course of making an appointment decision, we needed to recruit talents extensively, and we will consider people with different political ideologies, be they leftists, middle-liners or rightists. The reason is that constitutional development still has not reached the universal suffrage stage, and the development of political parties is still at a fledging stage at present. We need to absorb talents from different think tanks, groups and sectors; hence, we do not have in mind any particular think tanks for priority consideration. If Dr KWOK Ka-ki has taken a closer look at our 17 new colleagues, he will find that we have actually absorbed quite a number of young people with aspirations and interests in participating in politics from such groups as the Group of Thirty, Roundtable and other groups. Thus, there is no particular group to serve as a source of nominations.

DR KWOK KA-KI (in Cantonese): *I was asking the Secretary about the selection aspect and conflict of interest; has he considered specifying in the guideline these different sources (including the sources of the think tanks)? Would the Secretary please answer yes or no?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, when we formulate the selection procedures, we must ensure that the candidates recommended by different think tanks, political parties, organizations or groups would be taken into consideration, and this can ensure a sufficient balance.

DR FERNANDO CHEUNG (in Cantonese): *When the Secretary answered Mr LEE Cheuk-yan's question a while ago, he said that they did not have the practice of withdrawal from meetings. As far as I understand it, in recruiting civil servants, if an official concerned personally knows a candidate, disregarding whether he nominated or recommended the candidate, or he is a relative of the candidate, he should withdraw from meetings throughout the interviewing and decision making process. In this connection, I would like to ask why similar practices were not adopted in the selection of the Political Assistants and Under Secretaries in order to avoid a conflict of interest.*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, throughout the recruitment process, the AC knew from the very beginning which organizations, political parties, think tanks or principal officials had nominated the candidates under its consideration. Therefore, the AC knew clearly the sources of the nominations, and the members of the interviewing panels would make decisions on a collective basis. In my opinion, this arrangement would sufficiently ensure that all suitable candidates for the posts of Under Secretaries and Political Assistants would be considered during the recruitment process.

DR FERNANDO CHEUNG (in Cantonese): *President, when recruiting civil servants, the relation between the applicant and the officials concerned is also made known beforehand. Also, in the process of civil service recruitment, a*

decision is made on a collective basis but not by a single person. I do not think the Secretary has answered my supplementary question. I have put my question very clearly just now, that is, why practices similar to those for the recruitment of civil servants were not adopted.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, when we designed this process comprising the AC and two interviewing panels, we put the greatest emphasis on participation and decision making on a collective basis, to facilitate joint assessment of whether the candidates are suitable for the posts of Under Secretaries and Political Assistants. We think this is the focal point.

PRESIDENT (in Cantonese): This Council has spent more than 16 minutes on this question. We will now proceed to the fourth question.

Assistance for Home Purchases

4. **MR TAM YIU-CHUNG** (in Cantonese): *President, property prices have been rising continuously in recent years, and the lending rates for mortgage loans have also started to pick up recently. Many members of the public have relayed to me that they can hardly afford to purchase properties for self-occupation. In this connection, will the Government inform this Council:*

- (a) *of the respective amounts of loan repayments received so far in respect of the Home Purchase Loan Scheme, Sandwich Class Housing Loan Scheme and Home Starter Loan Scheme; and*
- (b) *whether it has any plan to introduce new loan scheme(s) for home purchases so as to assist members of the public (especially young people who cannot afford the downpayment but have the repayment capability) who need such assistance in purchasing properties for self-occupation; if so, of the details; if not, the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, my reply to the two-part question is as follows:

- (a) The total amounts of loans provided under the Home Purchase Loan Scheme, Sandwich Class Housing Loan Scheme and Home Starter Loan Scheme are about \$26.8 billion, \$2.7 billion and \$14.85 billion respectively. Of these amounts, about \$18.5 billion, \$2.39 billion and \$9.46 billion have been repaid respectively to date.
- (b) In the past, when the Government implemented various home ownership loan schemes through the Hong Kong Housing Authority (HA) and the Hong Kong Housing Society, the objectives were mainly to assist middle-to-low income persons to purchase their homes and to encourage capable public rental housing (PRH) tenants to return their flats for allocation to people more in need. According to the repositioned housing policy in 2002, assisting the public to purchase their homes is no longer an objective of the Government's housing policy. The existing housing policy of the Government is to concentrate resources to address the basic housing need of low-income families. Any subsidized home ownership scheme will inevitably impact on the property market and will also divert resources from and affect the HA's ability in implementing the public housing programme. Therefore, we need to carefully consider the matter. On a number of occasions in the past, including at the Legislative Council, we explained that at least three issues would need to be considered before examining whether subsidized home ownership schemes or any schemes that would deviate from the repositioned housing policy in 2002 should be relaunched. The first issue is whether there is a serious imbalance in the private property market. The second is whether there is a problem in the turnover of PRH flats such that the waiting time for PRH has been seriously affected. The third is whether there is public consensus to vary the existing housing policy.

According to the latest information we have gathered, the property market in general has been developing steadily and flats of various types and prices are still available in the residential property market.

As far as the transaction figures for middle to lower priced flats are concerned, the number of property transactions of flats at less than \$2 million accounted for close to 60% of the total number of transactions on average since 2004. As regards the prices of private domestic properties in general, as at the first quarter of 2008, the price index for flats with saleable areas between 40 to 69.9 sq m was still about 30% lower than that at the peak of 1997. Besides, as for the mortgage-to-household income ratio, assuming that a household with the median private domestic household income purchased a domestic unit of a saleable area of about 40 sq m with a 70% loan-to-value ratio and a repayment period of 20 years, the mortgage-to-household income ratio was 32% as at the first quarter of 2008, which was much lower than the 77% at the peak of 1997 and roughly similar to the level between 2005 and 2007.

At present, there is also a certain degree of turnover of PRH flats. Over the past few years, there has been a steady number of recovered PRH flats, which constitute an important source of public housing supply and account for about half of the PRH flats allocated by the HA on average each year. Given that there are over 110 000 applicants on the Waiting List for PRH, and based on the projection of about 2 000 to 3 000 new applicants registering every month, we consider that the existing turnover of PRH flats can meet the demand for the next five years.

In addition, we note that various competitive mortgage schemes with preferential terms are already available in the market. Prospective home buyers can choose the schemes that suit their needs. With respect to the downpayment, through the Mortgage Insurance Programme of the Hong Kong Mortgage Corporation Limited, home buyers can borrow up to 95% of the value of their properties. In fact, home ownership is a very important decision for many people. We consider that it should be a matter of personal choice and affordability. Neither the Government nor the HA should assume again the role of a lending institution and influence people's decision over home ownership which should be based on their affordability.

At this stage, the Government will continue to monitor the development of the property market and the turnover of PRH flats with care and listen to the views of the community regarding the relaunch of various subsidized home ownership schemes.

MR TAM YIU-CHUNG (in Cantonese): *President, many people have recently expressed their earnest hope for the resumption of the construction of Home Ownership Scheme (HOS) flats and sale of PRH flats and the launch of loans schemes for promoting home purchases as I mentioned earlier. Now I have some signatures collected, and I will hand them to the Secretary later.*

In part (b) of the main reply, the Secretary pointed out that "According to the repositioned housing policy in 2002, assisting the public to purchase their homes is no longer an objective of the Government's housing policy." According to the information I have acquired, however, the Chief Executive responded, in answering a question raised during the Question and Answer Session on 5 July last year on the resumption of the construction of HOS flats, that — I wonder if the President still recalls it, and I would like to draw the Secretary's attention to the Chief Executive's remarks. He said, "We consider that the SAR Government should no longer take on the role of a developer, for the market is now functioning satisfactorily. We can — please pay special attention to this part — provide assistance through other channels to enable these people to purchase better housing instead of playing as the developer." These were the comments made by the Chief Executive during the Question and Answer Session on 5 July last year, whereas what was quoted by the Secretary just now was the repositioned policy in 2002. So, is it the case that the policy quoted by the Secretary has become outdated or the Chief Executive's comments on that day were inaccurate?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, both the repositioned policy and the Chief Executive's comments are accurate. Our policy objective is based on the policy promulgated in 2002. Certainly, the Chief Executive was saying that we will continue to listen to the voices of the community. However, it is very clear that we should no longer take on the role of a developer because the property market is already developing steadily and healthily, and there is no longer a need for initiatives to be

introduced to prop up the market and so on. As a healthy and stable property market is vital to the overall economy, we will certainly listen to the views put forth by Mr TAM today. However, we must act carefully in reintroducing any form of subsidy or taking steps to intervene in the market as the housing policy has been adjusted since 2002 and we consider that it has been functioning satisfactorily. Notwithstanding this, we will continue to monitor the situation and keep the development of the property market in view.

MR TAM YIU-CHUNG (in Cantonese): *The Secretary has not responded to my question. At that time, the Chief Executive said that assistance could be provided through other channels, but the Secretary has not mentioned through what channels assistance could be provided. Instead, she has merely reiterated the relevant policy. May I request the Secretary to explain this again?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, I already stated in the main reply just now that we need to carefully consider the matter if we are to examine the relaunch of subsidy schemes, such as subsidized home ownership schemes, or any scheme that would deviate from the repositioned housing policy in 2002. Moreover, there are several policy considerations. The first consideration is whether there is a serious imbalance in the private property market. The second is whether there is a problem in the turnover of PRH flats such that the waiting time for PRH has been seriously affected. As regards the third consideration, discussions must be allowed in the community and we consider that a consensus must be reached. We must carefully consider all these issues.

MR LAU KONG-WAH (in Cantonese): *President, many young newly-wed couples actually feel very distressed as they cannot afford the downpayment and are not eligible for PRH, and yet the Government has decided not to resume the construction of HOS flats. Although the Secretary has considered the several points mentioned above, given that property prices have continued to rise, what measures are there to meet the needs of those people who are not eligible for PRH and cannot buy HOS flats?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, we can already see the supply of a certain quantity of flats for first-time home buyers in the market. Insofar as small to medium sized flats are concerned, 880 000 units, or 82% of the total number of units available in the private residential property market, have an area of less than 70 sq m. Of these residential units, more than 350 000, or one third of these units, available in the market have saleable areas measure less than 40 sq m. As for the property prices, nearly 60% of the private residential units have been sold for less than \$2 million on average since 2004. Just now, a Member also mentioned the young people are under a heavier burden of downpayment. Of course, there are mortgage insurance programmes provided by mortgage insurance companies to assist young people to borrow up to 95% of the value of their properties from banks, and they are required to pay for the premium only. For instance, for a \$4 million-worth property with a 30-year repayment period, a 90% mortgage loan can be obtained with a one-off payment of approximately \$128,000, or 3.55% of the value of the property. So, other tools are available in the market for helping people in need.

MR LEUNG KWOK-HUNG (in Cantonese): *President, the Secretary suggested in her reply that something similar to subprime mortgages could help the public purchase their first properties and a specific example had been cited as well. May I ask the Secretary whether the Government has learned from the experience of the property bubbles in 1996 and 1997? Given the excessively high mortgage rate, will a new bubble be created should the Hong Kong economy run into trouble again? Has the Secretary considered the subprime mortgage issue, which has already aroused grave concern around the world?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, it is precisely for this reason that the home buyers must have the mortgage repayment capability. The properties purchased must be for self-occupation, not investment purposes, and they must pass an asset test. By "taking out insurance", I mean that banks can actually just offer a 70% loan-to-value ratio, and with the mortgage insurance programmes provided by mortgage insurance companies, even if the loan-to-value ratio is raised by 25% to 95%, the risk involved will not be borne by banks. This is a matter of risk management. So, we consider this method healthy and safe, for not only can

assistance be provided to home buyers, the overall borrowing risks or the risks borne by the banks will not be increased.

MR LEE WING-TAT (in Cantonese): *The Secretary has reiterated, in many parts of the main reply, that the current property prices are lower than those at the peak before. Was the Secretary implying that the frantic prices of properties in urban areas, which were above \$10,000 per sq ft at that time, should be used as an indicator for measuring the current property prices?*

My supplementary question is: Despite the Secretary's comments in the last paragraph that she would listen to the views of the public on the development of the market, I feel that the Secretary would only listen to the views and thoughts of property developers. What approach will the Secretary adopt in listening to the views of PRH and HOS residents as well as the public in general?

PRESIDENT (in Cantonese): Mr LEE Wing-tat, in the first part of your supplementary question, you asked the Secretary if she was aware of the situation. I will only treat it as your personal comment

MR LEE WING-TAT (in Cantonese): *It is only a comment.*

PRESIDENT (in Cantonese): And the latter part is your supplementary question. Secretary, please reply.

MR LEE WING-TAT (in Cantonese): *Nevertheless, the Secretary is also welcome to respond to the first part as well.*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, insofar as this issue is concerned, we will definitely not be biased in listening to opinions. We can listen to views through a lot of channels, such as the Panel on Housing of the Legislative Council, currently chaired by Mr LEE Wing-tat, and the HA or its subcommittees. Furthermore, I have often visited

housing estates to meet with the public. There are different channels for us to listen to views.

Regarding the issue of property prices raised by Mr LEE just now, we were merely making a comparison between the property prices at present and those at the peak. Indeed, a group of people entered the market at that time, and their voices must be listened. As the current property prices have yet to be reverted to the 1997 level, these people who entered the market at that time are still under a certain degree of burden. The stable development of the property market should also be good news to them. Hence, we must act carefully, and any moves to intervene in the market must be carefully taken because not only those people who have entered the market, but also the overall economic conditions, will be affected by the property market. This is why we think that some factors warrant careful consideration. I can tell Mr LEE Wing-tat that we will definitely listen attentively to views from all sides and will not only listen to the views of one group of people.

MISS CHAN YUEN-HAN (in Cantonese): *President, I have absolutely no doubt about the Secretary's earlier remark that she would visit districts to listen to opinions because I had visited districts with her before, and she was really very willing to listen to opinions. However, President, I am worried that the grievances of young people aged about 30 are not taken seriously by the entire SAR Government (including the Chief Executive) because it is not the case that, as stated by the Secretary just now, it costs first-time buyers only \$100,000 or so for a property. Regarding the \$4 million-worth flat mentioned by the Secretary just now, Mr WONG Kwok-hung said that there was no way for these young people to afford a \$4 million-worth flat. Their grievances would only continue to grow.*

In replying to Mr TAM earlier, the Secretary mentioned three considerations, including whether there is a serious imbalance in supply, whether the waiting time for PRH will be affected, and the need for a consensus. Frankly speaking, it is extremely difficult for a consensus to be reached. But, I agree with the Secretary that people who bought properties before 1997 are in an extremely difficult situation. However, I think the percentages must be examined carefully before the problem of home purchases currently faced by young people can be resolved, as they do not know what to do because they

cannot take up residence in or purchase HOS flats. Even PRH tenants do not know what to do because of the suspension of the sale of HOS flats. Although the monthly income of these people, who can earn some \$10,000 to \$20,000, is by no means meagre, they still cannot resolve the problem, Secretary. Given the three considerations mentioned by the Secretary, and the failure of the supply and demand of the property market to reflect the gravity of the problem, may I ask whether the Secretary has undertaken studies in this regard, including consulting young people on the resumption of sale of HOS flats? Has she undertaken such studies?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Actually, Madam President, as I mentioned just now, we can listen to views through different channels. As regards units for first-time home buyers, there is a supply of 880 000 small units of below 70 sq m, or 82% of the total supply of new completions, with more than 350 000 units having saleable areas below 40 sq m. Furthermore, many people may also consider other units for first-time home purchase. For instance, 250 000 HOS flats are available in the secondary market. With other complementary measures, I think there is an ample supply of flats. As for the question raised by Miss CHAN regarding whether young people will make investments in this regard, in addition to the supply of small units or the 250 000 HOS flats offered on the secondary market as mentioned by me just now, we can certainly take care of them through the Waiting List should such need arise, because our policy is to concentrate resources to take care of the people most in need. So, insofar as the people in need or prospective home buyers are concerned, we think that the supply or overall turnover is, generally speaking, developing steadily.

MISS CHAN YUEN-HAN (in Cantonese): *The Secretary has not replied as to whether she is prepared to, for instance, make use of websites to collect the views of these young people. As it is not accurate enough to listen to views in the existing ways, may I ask if the Secretary is prepared to learn more about how these young people, who have very strong views, think about the current properties prices which are exceedingly high?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, we are willing to collect and listen to views through various channels.

PRESIDENT (in Cantonese): Fifth question.

Impact of Total Cessation of Business of Live Poultry Trade

5. **MR VINCENT FANG** (in Cantonese): *Madam President, some workers in the live poultry trade have relayed to me that in June this year the Food and Health Bureau proposed to the live poultry trade an option of permanent cessation of business and offered a fairly attractive buyout package to live poultry retailers. In this connection, will the Government inform this Council:*

- (a) *whether it has assessed the respective numbers of trades, operators and employees, including monthly-rated employees and temporary employees, in the entire supply chain of live poultry to be affected when the live poultry trade ceases business permanently;*
- (b) *of the number of government posts the duties of which are related to the supply chain of live poultry and the government departments to which they belong; whether such posts will be deleted following the total cessation of business of the live poultry trade; if so, of the number of posts to be deleted and the government departments involved; if not, how the work of the government officials concerned will be deployed; whether the scope of duties of the Agriculture, Fisheries and Conservation Department will thus be substantially reduced, and have to merge with the Food and Environmental Hygiene Department; and*
- (c) *whether the local poultry farmers have rented government land at present; if they have, how the Government will deal with such land after the live poultry trade ceases business permanently; whether the Government will accept the trade's proposal to convert the Cheung Sha Wan Temporary Wholesale Poultry Market into a chilled poultry wholesale centre, and how it will make use of the live poultry retail stalls in the government markets?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, the detection of avian influenza virus in environmental samples collected from retail markets last month proves the effectiveness of our preventive and surveillance measures. But this also indicates the need to further strengthen our preventive efforts by promptly implementing precautionary measures against avian influenza at various levels, in particular the retail level, of the supply chain of live chicken. In this connection, we have put in place the requirement of no overnight stocking of live chicken since 2 July.

We understand that some traders are concerned about the prospect of the live poultry trade and hope the Government would come up with a buyout package. To address their concern, we offered a buyout package to local farmers, wholesalers, retailers, transporters and affected workers in late June. Our proposal submitted to the Finance Committee of the Legislative Council for funding approval involved an amount exceeding \$1.1 billion. Our reply to the three parts of the question is as follows:

- (a) As at June 2008, there are 52 poultry farmers (including 50 chicken farmers and two pigeon farmers), 71 wholesalers, 469 retailers and some 250 transporters in the live poultry trade of Hong Kong. The number of affected workers is about 2 550.
- (b) As to current regulation of the live poultry trade, the Agriculture, Fisheries and Conservation Department (AFCD) is responsible for the management of the Cheung Sha Wan Temporary Poultry Wholesale Market, surveillance on local farms and conduct of laboratory tests for avian flu. The Food and Environmental Hygiene Department (FEHD) oversees the management of live poultry retail outlets (that is, live poultry market stalls and fresh provision shops selling live poultry) and enforcement of import control.

According to the information provided by the trade, most of the retailers will choose to wind up their business, whilst some may still wish to stay in the trade. Some farmers, wholesalers and transporters may also choose to stay in the trade. As there is still time before the deadline for the trade to consider the buyout

package, we at the present moment do not know how many people in the trade will accept the offer in the end. Hence, we can only assess the manpower implications of the buyout package for the Government departments at the next stage.

However, the FEHD staff responsible for inspecting live poultry market stalls and fresh provision shops are also concurrently carrying out other environmental hygiene duties. Besides, the FEHD needs to retain manpower for inspecting the few market stalls and the fresh provision shops which choose to continue the retail business to ensure compliance with the requirement of "no overnight stocking of live chickens". If any live poultry market stalls and fresh provision shops switch to the sale of chilled/frozen meat or food, they also come under FEHD's regulation. As for the AFCD staff responsible for the surveillance of local farms, they are concurrently carrying out duties such as the surveillance of backyard poultry farming and animal trader licensing. The implementation of the buyout package, therefore, will not significantly reduce the workload of the FEHD and AFCD staff.

- (c) Of the 52 poultry farmers in Hong Kong, 21 are operating on government land. If they choose to leave the trade, the AFCD will notify the District Lands Offices in the respective districts to follow up on the use of the government land concerned.

The Cheung Sha Wan Temporary Wholesale Poultry Market is a wholesale market for live poultry trade. If it is no longer used by the trade, the property concerned will be, under the normal procedure, returned to the Lands Department for other land use purpose. At present, the Government does not require the chilled poultry wholesale business to operate at specific locations. Traders are free to decide the mode of operation and location of business as long as they have obtained a fresh provision shop licence as required by laws. There is no need for the Government to grant land for the chilled poultry wholesale business.

As at July this year, 90 live poultry stalls in FEHD markets are allowed to sell chilled poultry as well. If tenants of the other 170 live poultry stalls wish to switch to the sale of chilled poultry, they may submit their applications as soon as possible. The FEHD will provide them with appropriate assistance in relation to the tenancy of the market stalls and process their applications promptly. Moreover, subject to actual demand in the market, the FEHD will also consider letting out the existing vacant live poultry stalls for the chilled poultry trade.

MR VINCENT FANG (in Cantonese): *Madam President, in part (a) of the main reply, the Secretary pointed out that there were only four trades in the entire supply chain of live poultry. But I have received a lot of complaints from the feed trade and the day-old chick trade that they are not included in the compensation package of the Government. May I ask the Secretary whether or not the problem has been underestimated in his assessment of the situation? Besides, why are these two industries not included?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, regarding the buyout package, we have considered the industries which are indirectly affected. Our buyout package will mainly take care of four directly affected trades, including farmers, wholesalers, retailers and transporters. This is also fully consistent with our voluntary licence surrender package offered in 2004 and 2005.

As for members of the day-old chick and feed trades, we will conduct a more in-depth study of their problems. But at this stage we do not know how many people in the trade have decided to wind up their business. Nor do we know the impact on them. If some farm operators have decided to stay in the trade, members of the day-old chicks and feed trades will also continue to operate their business. In addition, chicken feed may only be part of the business of these enterprises and so, we have to conduct a detailed study carefully on the impact on them and whether some operators have to wind up as a result. So I think we should carefully contemplate the matter instead of making a decision at this stage.

MR TOMMY CHEUNG (in Cantonese): *President, I can understand part (b) of the main reply because the number of people who will surrender the licences remains unknown and it is difficult to make an assessment. But in the following paragraph, the Secretary said that assuming many staff members are involved, the implementation of the buyout package would not significantly reduce the workload of the FEHD and AFCD staff. President, I think this is self-contradictory, especially as the Secretary said in the remaining part of the reply that the wholesale market would be closed in its entirety and the property would be returned to the Government. I hope that the Secretary will really take a look at the matter clearly, instead of just giving us a vague remark that the workload will not be reduced. He should take a look seriously at each venue. For example, how many veterinaries will be assigned to inspect the farms and how many people will work in the wholesale market? If the wholesale market will be closed in the future, the argument that the workload of the workers there will not be reduced simply does not stand to reason. When the entire market has shut down and all work types have disappeared, how can the Government retain the same level of manpower? To me, such a practice would be most imprudent and negligent because the money spent on the employees is public money. President, should the Secretary provide some data to us — perhaps in the next term of the Legislative Council — explaining the workload reduced in each work type and projecting the number of staff to be reduced on the basis of such data?*

PRESIDENT (in Cantonese): What is your supplementary question then?

MR TOMMY CHEUNG (in Cantonese): *Will the Secretary*

PRESIDENT (in Cantonese): Are you asking the Secretary whether he "will or will not" do it?

MR TOMMY CHEUNG (in Cantonese): *Will the Secretary make an assessment on the manpower of each venue or each work type so as to grasp the number of the existing staff? In future when the relevant work types will be eliminated or staff will be reduced, they can be reduced through natural wastage, and the Secretary for the Civil Service who is also in the Chamber can monitor the*

situation. I am not asking the Government to lay off its staff, but manpower should at least be reduced by means of natural wastage.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, the Civil Service Bureau will certainly monitor our manpower.

As I said earlier, we have no idea how many people will wind up their business, such that the closure of the wholesale market would become really necessary. We will certainly conduct the relevant work at a later stage. I agree that we will be able to see a clearer picture of the number of people in various sectors who are willing to wind up their business after 24 September. Moreover, our work can be proceeded with only after our funding application has been approved by the Finance Committee by Members of the Legislative Council next Monday. Depending on the decisions of the industry, we will make the relevant arrangement for the next step.

In respect of public money, if some markets have to be completely shut down, we will certainly consider how to redeploy and reduce the staff responsible for market management. Regarding the surveillance and control of avian influenza, I would like to remind Members that there is a need to increase the resources for inspection of chickens, especially local chickens, after avian influenza virus was found in the markets in June. In respect of sources, farms, wholesale markets or retail markets, as long as members of the industry will continue to operate, we have to strengthen supervision and there is a need to increase resources.

MR FRED LI (in Cantonese): *President, the Secretary's reply is based on the assumption that most people will surrender their licences. Has the Government formulated different packages for different scenarios, including the surrender of licence by all members, some members, or none of the members of the trade, meaning that the whole trade will continue to operate? Given that the implementation of central slaughtering and complete segregation of humans from live poultry is the ultimate policy objective of the Government, could the Secretary inform this Council of the road map towards this goal?*

PRESIDENT (in Cantonese): Mr Fred LI, I would advise you not to use the word "assumption" because this is not in line with the Rules of Procedure. You can simply ask the Secretary whether different packages will be proposed to meet different scenarios.

MR FRED LI (in Cantonese): *Yes, thank you, President. As the Government has reiterated the segregation of humans from live poultry, how can the Government achieve the ultimate goal of segregating humans from live poultry as far as the buyout package is concerned?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, in our understanding, particularly after communication with the trade, I believe the chance of a complete cessation of operation of the trade will be very slim because some workers in the retail/wholesale markets and farms are particularly eager to stay in the trade. In our opinion, if there are still a small number of people in the trade who want to stay, we will continue to assist them and carry out certain work in relation to avian influenza. We do have considered problems in this regard.

Meanwhile, if we have decided to implement the policy of segregating humans from live poultry, we will reconsider the mode of slaughtering or central slaughtering. Our decision on the scale and mode of operation will depend on the number of farms and retail outlets that remain in business. We need information on the exact figures in order to make a decision in this aspect.

MR TAM YIU-CHUNG (in Cantonese): *President, a number of local chicken farmers have pointed out to me that the Government's buyout package is "vicious" because the retailers are offered better compensation as an incentive to encourage them to close down. This is why the Government said in the main reply that most of the retailers have chosen to wind up. If the retailers have closed down, the local chicken farmers will not have any sales outlets for their chickens even though they want to stay in the chicken rearing trade. Hence, they consider that the compensation for chicken farmers are unfair. How will the Government respond to this problem? If most retailers have really wound up their business while chicken farmers continue with their operation, how can*

they sell their chickens? Will Government formulate policy so that local chicken farmers can enjoy "one-stop" services?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, as far as we understand it, some chicken farmers and retailers have entered into a co-operation agreement so that chickens can be sold using a so-called "one-stop" approach. Alternatively, they may continue to operate their business through the wholesalers or in the form of partnerships. So, we believe it is highly probable that some chicken farmers can maintain their operation in Hong Kong. We also see that not all retailers plan to close down. So, we believe the "one-stop" option can continue for a period of time. But we must emphasize that the segregation of humans from live chickens, or in the long run, the total ban of sale of live chicken in the market must be considered. As to how chickens of local brands can be sold in the market in the form of fresh chickens, chilled chickens or freshly slaughtered chickens, this is also an important consideration.

MR HOWARD YOUNG (in Cantonese): *President, in part (a) of the main reply, the Secretary said that the number of affected workers is around 2 550. May I ask the Administration whether or not it has assessed, among these 2 000-odd people, how many of them have possessed skills that cannot be adapted to other trades, which means that they will be totally unemployable and become jobless after the recovery of licences? Has special consideration been given to these people in the buyout package?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, when the voluntary licence surrender package was put in place in 2004, we could see that many workers would first change jobs or take up jobs in agriculture-related fields, and many employees, especially those at an older age, might consider early retirement. So, we can envisage their needs from this. This is why we have provided additional payments to increase the compensation for each worker. Besides, I am also aware that the Employees Retraining Board has also provided some free training courses so that they can acquire other new skills. They will receive a certain amount of subsidy if they have attended the courses for a week with an attendance rate of more than 80%. We hope they can take a look at such information and realize that they actually have

certain choices. We can see that most of the employees are working in the retail sector while some of them are working in the transport and wholesale sectors.

PRESIDENT (in Cantonese): Last oral question.

Appointment of Under Secretaries and Political Assistants to Directors of Bureau

6. **MS EMILY LAU** (in Cantonese): *President, as indicated in the Report on Further Development of the Political Appointment System published in October last year, a Civil Service Code (the Code) applicable to civil servants will be drawn up. The Code will clearly delineate the roles and responsibilities of civil servants under the political appointment system to avoid uncertainty about the responsibilities of politically appointed officials and civil servants, and safeguard the integrity and political impartiality of the civil service. Although the Administration had issued a circular at the end of March on how civil servants should complement Under Secretaries and Political Assistants, the Code is not yet available and some civil servants have indicated that they are at a loss as to what to do. In addition, some former high-ranking officials have pointed out that the Administration has made a number of mistakes in the process of appointing the first batch of Under Secretaries and Political Assistants, and the situation is so deplorable that it has not only agitated the community at large and dealt a blow to the morale of civil servants, but has also made an impact on the integration between these politically appointed officials and civil servants. In this connection, will the executive authorities inform this Council:*

- (a) *whether they have assessed the impact of the further development of the political appointment system on the morale of civil servants; if so, of the results;*
- (b) *when the Code will be published and the reasons for the delay in its publication, and whether they have assessed if civil servants will find it difficult to properly carry out their responsibilities in the absence of a code providing clear guidelines; and*
- (c) *apart from the executive authorities' five points of response at this stage to the request made by Members of this Council that the*

authorities should review the political appointment system, as mentioned by the Secretary for Constitutional and Mainland Affairs at the meeting of this Council on 26 June, whether the authorities will also conduct an in-depth and comprehensive review, in particular, of the criteria and procedure for appointing and selecting Under Secretaries and Political Assistants, and whether the authorities will appoint the second batch of Under Secretaries and Political Assistants after announcing the results of the review?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, regarding part (a) of the question, under the political appointment system, the Civil Service remains the backbone of the Government, and the Government attaches much importance to civil service morale. One of the purposes of the introduction of the political appointment system in July 2002 was to separate the political leadership from the Civil Service for upholding the integrity of the Civil Service and maintaining a professional, permanent and politically neutral Civil Service. With the further development of the political appointment system, increasing the number of political appointments by the Government can provide stronger support to the Secretaries of Department and Directors of Bureau concerned in handling political work, and provide better assurance that the core value of political neutrality of the Civil Service can be maintained.

In pursuing the further development of the political appointment system, the Government has also put in place various measures to ensure that the operation of the Civil Service will not be adversely affected. For example, the Report on Further Development of the Political Appointment System (the Report) published in October last year has stipulated that Under Secretaries will have no direct line of command *vis-a-vis* Permanent Secretaries who will, for the purpose of organizational structure and performance appraisal, continue to report to the Directors of Bureau. The internal General Circular concerning the organizational changes in the Government Secretariat arising from further development of the political appointment system issued at the end of March this year has also recapped such information as well as the job descriptions of the Under Secretaries and Political Assistants. Furthermore, in the Code for Officials under the Political Appointment System, the Government has made clear that at all times politically appointed officials should uphold and promote a clean, permanent, professional, meritocratic and politically neutral Civil Service.

They should give fair consideration and due weight to the advice from civil servants, and have due regard to rules and regulations which are applicable to civil servants or otherwise regulate the operation of the Government. The Civil Service Bureau (CSB) will also issue the Code applicable to civil servants to mirror this arrangement.

As a matter of fact, when introducing changes to any governance system, there is bound to be a period of transition. The Administration has all along through the existing staff consultative machinery maintained close communication with the staff consultative bodies, staff unions, staff associations, staff representatives, and so on, at various levels. We will continue to make good use of various communication channels and keep a close watch on the collaboration and working relationship between the politically appointed officials and the Civil Service under the expanded political appointment system. I strongly believe that the Civil Service will uphold their professionalism, and continue to contribute to the effective governance of the Government and provide quality services to the public in close collaboration with all politically appointed officials.

Regarding part (b) of the question, the Code is being drafted by CSB. As the Code will be applied to the entire Civil Service and involves the core values and principles that all civil servants should follow and uphold, as well as the roles and responsibilities of civil servants under the expanded political appointment system, and so on, we have to exercise prudence in the drafting work. The CSB will finish drafting the Code as soon as possible, and will consult the staff sides and the Legislative Council Panel on Public Service thereafter. Pending the promulgation of the Code, the CSB circular on "The Role and Responsibilities of Civil Servants in relation to Principal Officials appointed under the Accountability System" issued in 2002 will continue to provide guidance for civil servants. The Code for Officials under the Political Appointment System issued by the Administration has also set out the roles and responsibilities between the politically appointed officials and the Civil Service for reference by relevant parties.

Regarding part (c) of the question, as the Secretary for Constitutional and Mainland Affairs indicated at the Legislative Council meeting on 26 June, the Government will take the following measures when appointing Under Secretaries and Political Assistants in future:

- (1) When announcing the appointments, the Government will, subject to the consent of the newly-appointed Under Secretaries and Political Assistants, also make public whether they have the right of abode in any foreign country;
- (2) As to whether any Under Secretary or Political Assistant with foreign right of abode decides to renounce such a right, this is a personal decision which the Government will continue to respect;
- (3) In offering appointments to Under Secretaries and Political Assistants, the Government will make clear to them that their remuneration will be disclosed when announcing their appointments;
- (4) The Appointment Committee will consider offering starting salaries below the mid-point of the respective pay scales for any newly-appointed Under Secretaries and Political Assistants who have less working experience than those already recruited; and
- (5) When announcing the appointments, the Government will arrange for the newly-appointed Under Secretaries and Political Assistants to meet with the media, so that the public will have the opportunity to know them better.

The Government has made public the appointment process, the appointment criteria, and the criteria for determining remuneration for each appointee. The Government has also set out the information in writing to the Legislative Council Panel on Constitutional Affairs. Together with the five measures mentioned above, we consider that there is sufficient transparency about the appointment process in overall terms.

MS EMILY LAU (in Cantonese): *President, in the main reply, the Secretary said that "when introducing changes to any governance system, there is bound to be a period of transition." My question is precisely about the transition and the fact that some civil servants are at a loss as to what to do and they do feel the impact on the civil service system. President, the Report was released in October last year and it is already July now but the CSB has not drafted the Code as far. Why did the Administration make such an arrangement? Should*

appointment be made only after the Code has been promulgated? Or is it because some difficulties have arisen that the timing for the promulgation of the Code remains unknown even though the appointment has been made? The Administration was supposed to consult the relevant panel of this Council last month but it did not do that. Is there a major loophole in the whole arrangement? Why have such problems occurred?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, I thank Ms LAU for her supplementary question.

In fact, the CSB began preparations for the drafting of the Code in October last year. We have spent considerable amount of time on drawing reference to many government documents in this regard. We consider that the matter is very important and must be handled with care and prudence. According to my original schedule, the relevant panel can hopefully be consulted at the end of the first quarter or in the second quarter. But the progress of the CSB is a bit slower than I have expected, not because we have not carried out any work. The main reason is that we have discovered some new perspectives which we have not considered before when making reference to relevant codes of practice for civil servants of other governments. We think we should spend more time thinking about various factors more thoroughly before introducing a draft version of the Code for consultation with the civil servants and the Legislative Council. We have not run into any trouble internally as Ms LAU has said. Nothing has gone wrong at all. We simply think that we should be prudent as the matter will affect the whole Civil Service.

MS EMILY LAU (in Cantonese): *She has not answered my supplementary question. Should the authorities make the appointment after the Code has been announced instead of making such appointment in the absence of the Code?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, I thank Ms LAU for her follow-up question.

I do not see why we have to wait until the Code has been announced before the appointment can be made. In fact, as I said in the main reply, the political appointment system or system of accountability was introduced on 1 July 2002 before the Code had been put in place. In July 2002, the CSB issued civil

service regulations informing all civil servants of their roles and responsibilities under the political appointment system and how they should tie in with the political appointees. This is the first point.

Secondly, after the appointment of Under Secretaries and Political Assistants in March this year, we have, through a General Circular, explained to the civil servants the responsibilities of Under Secretaries and Political Assistants as well as the changes in the structure of each Bureau arising from the inclusion of Under Secretaries and Political Assistants. With these documents and guidelines issued to the civil servants, I do not think there is any need to defer the appointment of Under Secretaries and Political Assistants.

Of course, we agree that the Code should be compiled expeditiously for consultation with the Legislative Council and the staff side.

MR RONNY TONG (in Cantonese): *President, in item (4) of the fifth paragraph of the main reply, the Secretary said: "The Appointment Committee will consider offering starting salaries below the mid-point of the respective pay scales for any newly-appointed Under Secretaries and Political Assistants who have less working experience than those already recruited." According to my understanding, the qualifications, experiences and seniority of Under Secretaries and Political Assistants vary greatly. May I ask the Government whether it has set the minimum requirement of qualification and experience so that an appointee will be offered a starting salary below the mid-point of the respective pay scales if his qualification and experience are below the minimum requirement? Is there such a requirement? If yes, can the Secretary tell us the minimum qualification and experience?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, perhaps let me answer the question.

PRESIDENT (in Cantonese): Yes, Secretary for Constitutional and Mainland Affairs, please answer the question.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, when explaining to Members the philosophy behind this policy last year, we had not laid down the minimum qualification. But we believe those who aspire to participating in politics will meet certain requirements in terms of academic qualifications, and professional or political experiences.

In response to Mr Ronny TONG's supplementary question, I would like to say that 17 Under Secretaries and Political Assistants have been appointed. Item (4) of the fifth paragraph of the main reply is actually saying that we will consider offering a lower salary point to new recruits in future if they have lower qualifications, experience or seniority, and that is all.

MR RONNY TONG (in Cantonese): *President, the Secretary's reply is irrelevant. He has not answered my supplementary question, or is it that he does not understand my question? According to item (4) of the fifth paragraph of the main reply, new appointees with less working experience than those already recruited will be offered a starting salary below the mid-point of the respective pay scales. What does "less" mean? Where is the line to be drawn? The Secretary should tell us clearly the lowest qualification and experience of those who have been employed. Only in this way will we know whether the new recruits in future possess less experience or not.*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, I was actually telling Mr Ronny TONG the situation when we discussed this policy last year. Among the 17 colleagues we have appointed, the minimum working experience is three to four years and the minimum academic qualification is a bachelor's degree.

MRS ANSON CHAN (in Cantonese): *President, according to Secretary Denise YUE's reply to part (a) of the main question, there are three tiers of political appointees so that stronger support will be provided to the Bureau Directors concerned in handling political work, and there will be better assurance that the core value of political neutrality of the Civil Service can be maintained. May I ask the Secretary concerned what the Government will do so as to provide better assurance that the core value of political neutrality of the Civil Service can be*

maintained? For example, what kind of political work will not be handled by the civil servants in future?

PRESIDENT (in Cantonese): Which Secretary will answer the question? Secretary for Constitutional and Mainland Affairs, your reply please.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, perhaps let me answer the question. Last year, upon our submission of documents and reports, we had explained to the relevant panel of Legislative Council and Honourable Members that the Government very much cherished a professional and politically neutral Civil Service. We hope and plan that in the future after these Under Secretaries have been appointed, the Bureau Directors or Under Secretaries can attend the monthly meetings of various panels so that Members can put questions to these political appointees on the most important agenda items, or political or controversial issues on the agenda. As for issues with a greater policy component or technical issues discussed by the Bills Committee, they can continue to be explained by our colleagues in the Civil Service. Of course, many colleagues in the Civil Service are at very high position with many years of working experience. Apart from policy work, they may also assist the Bureau Directors or Under Secretaries to explain how government policies are formulated, which may involve some political elements. But regarding the political commitment and responsibility, it should be shouldered by the political team comprising the Bureau Directors and Under Secretaries.

MRS ANSON CHAN (in Cantonese): *President, I believe Secretary Stephen LAM has not answered my supplementary question. I hope he can explain what kind of political work will be done by Under Secretaries and Political Assistants in the future, so that civil servants will not have to do it? Otherwise, why should we spend so much public money in hiring them?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, I think the more sensitive issues and issues which are more political in nature to be handled in this Council in future will be mainly explained and dealt with by Bureau Directors and Under Secretaries. In

addition, they will also take the lead in dealing with issues related to the public and media. With the two tiers of political appointees comprising Bureau Directors and Under Secretaries, together with the third tier of Political Assistants, political pressure, responsibility and commitment will be handled by this political team. The civil servants can then be more focused on policy analysis, making recommendations and delineation of duties.

PRESIDENT (in Cantonese): Last supplementary question.

DR YEUNG SUM (in Cantonese): *I would like to ask Secretary Denise YUE a question. During the transitional period when the Code has not yet been drafted or consultation has to be conducted even though the drafting has been completed, will there be ambiguous division of responsibilities between the political appointees and civil servants? Will she worry about the impact on the recruitment of civil servants, especially the recruitment of Administrative Officers?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, I thank Dr YEUNG Sum for this supplementary question.

As the responsibilities of Under Secretaries and Political Assistants, as well as the roles and responsibilities of civil servants have been clearly laid down in the relevant documents, I think there will not be any problem in operation even though the Code has not yet been published. However, during this transitional period, I believe these newly appointed Under Secretaries and Political Assistants and civil servants who have to work closely with them will have to establish mutual trust and a partnership relationship with each other in the first few weeks. And this process is indispensable regardless of whether the Code has been published or not. Therefore, I do not see any major difficulty to be faced by the civil servants who have to work closely with these Under Secretaries and Political Assistants in the absence of the Code.

The recruitment exercise for Administrative Officers will begin in September this year. I need to take a look at the results of this year's

recruitment before I can answer Dr YEUNG's question based on objective data about the implication on the recruitment of Administrative Officers brought by the further development of the political appointment system. Last year's recruitment exercise was also conducted in September. I can only say that, as Members may recall, the public consultation on the further development of the political appointment system was conducted in mid-2006. Therefore, I believe at that time those who wished to join the Government as Administrative Officers should be aware of the Government's plan to create two additional tiers of political appointees in the political structure. Despite that, the number of applicants and the number of recruits successfully recruited in last year's recruitment exercise of Administrative Officers are not at all different from the numbers in the past few years.

PRESIDENT (in Cantonese): Oral question time ends here.

WRITTEN ANSWERS TO QUESTIONS

Recognition of Sick Leave Certificates Issued by Chiropractors

7. **MR WONG KWOK-HING** (in Chinese): *President, the legislation regulating chiropractors has been implemented since 1993. However, sick leave certificates issued by them have not been recognized so far. I, together with representatives of chiropractors, met with the then Permanent Secretary for Economic Development and Labour and the Commissioner for Labour on 23 April last year. At the meeting, the Commissioner indicated that a working group had been formed by the Labour Department in conjunction with the Department of Health to discuss matters concerning the issue of sick leave certificates by chiropractors, and that the group had already held seven meetings. The Bureau had also promised that conclusion would be available by the end of last year. In this connection, will the Government inform this Council:*

- (a) *of the membership list of the working group, the dates of its meetings held so far, and the contents of discussion at each of the meetings; and*

- (b) *whether the working group has so far reached a conclusion on matters concerning the issue of sick leave certificates by chiropractors; if so, of the conclusion, as well as the justifications for the conclusion; if not, when the conclusion will be reached?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, an inter-bureaux/departmental Working Group, comprising representatives of the Labour Department, Food and Health Bureau, Department of Health and Civil Service Bureau, was set up in November 2005 to study the feasibility of recognizing sick leave certificates issued by registered chiropractors under labour legislation.

So far, the Working Group has held nine meetings to examine and exchange views on a wide range of issues related to the subject. The issues considered by the Working Group include the regulatory framework of chiropractors, relevance of the professional training of chiropractors to medical functions performed under labour laws, codes of practice of registered chiropractors *vis-a-vis* those of other health care professionals recognized under labour laws, overseas experiences and practices in recognizing chiropractors under labour laws, as well as community knowledge and acceptance of chiropractic practice, and so on. Moreover, to tap the views of relevant stakeholders, the Working Group has held discussion sessions with representatives of chiropractors associations, members of the Chiropractors Council of Hong Kong, human resources practitioners and insurance practitioners underwriting employees' compensation insurance.

Noting that there are significant variations in the roles of chiropractors in different countries, the Working Group will soon undertake a study mission to learn at first hand the experiences and practices of countries with situations similar to Hong Kong on the roles of chiropractors in labour affairs and the related framework. It will also study in greater detail the latest development in those places. The Working Group will analyse the information thus collected in the study mission before formulating its views on the subject. The Administration will then consult the Labour Advisory Board on the findings of the Working Group.

Overnight Bus Routes Serving New Territories

8. **MR LAU CHIN-SHEK** (in Chinese): *President, will the Government inform this Council:*

- (a) *of the current overnight franchised bus routes between the urban areas and the North District, Tai Po and Tsuen Wan respectively, and list out information such as the frequency, destinations, fare, distance of the journey and estimated total journey time of each bus route; and*
- (b) *given that some residents in the North District have relayed to me that although the North District is farthest away from the urban areas among the above three districts, there are very few direct overnight franchised bus routes between the district and the urban areas, whether the Government will require the franchised bus companies concerned to operate additional direct overnight bus routes between the North District and the urban areas for the convenience of the passengers who need the service; if it will, of the details; if not, the reasons for that?*

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

- (a) There are at present a total of four overnight bus routes plying between the urban areas and the North District, Tai Po and Tsuen Wan. Information on these bus routes is set out below:

	<i>Route No.</i>	<i>Origin — Destination</i>	<i>Fare (\$)</i>	<i>Frequency</i>	<i>Journey Time</i>
North District	N270	Sheung Shui — Shatin Central	10.5	19-20 minutes	54 minutes
Tai Po	N271	Fu Hang — Hunghom Station	17.1	12-15 minutes	75 minutes
Tsuen Wan	N260	Tuen Mun Pierhead — Mei Foo (via Tsuen Wan)	9.6	10-20 minutes	about 30 minutes (Tsuen Wan to Mei Foo)
Tsuen Wan	N269	Tin Tsz — Mei Foo (via Tsuen Wan)	11.1	14-20 minutes	about 30 minutes (Tsuen Wan to Mei Foo)

- (b) Passengers from the North District can use overnight bus service no. N270 to go to Shatin Central for interchange with the following overnight routes to other districts:
- Bus route no. N170 (Shatin Central — Wah Fu);
 - Bus route no. N271 (Fu Hang — Hunghom Station);
 - Bus route no. N42 (Yiu On — Tung Chung Station);
 - Green minibus (GMB) route no. 61S (Wo Che — Mongkok Station); and
 - GMB route no. 482 (Shatin Central — Tsuen Wan Central).

In addition, passengers from the North District may use two overnight GMB routes to travel to and from Mongkok and Lam Tin directly.

Currently, the average utilization rate of bus route no. N270 (Sheung Shui — Shatin Central) is about 17%. Given that passengers from the North District can use the above overnight public transport services to travel to and from the urban areas and taking into account the effective use of bus resources, the Transport Department (TD) has no plans to introduce additional direct overnight bus routes plying between the North District and the urban areas. Nevertheless, TD will continue to monitor and review the supply and use of the overnight public transport services.

Services of Company Registry

9. **MISS TAM HEUNG-MAN** (in Chinese): President, at present, counters of the Companies Registry (CR) provide only limited services during the mid-day session (that is, between 12.30 pm and 2 pm) from Monday to Friday, during which each member of the public is allowed to only submit, for filing, a maximum of six documents at any one time. Some people who provide company secretarial services have told me that the arrangement is quite inconvenient for their operation. Moreover, the CR does not accept cash

payments during the mid-day session, which also causes them inconvenience. In this connection, will the Government inform this Council whether:

- (a) it will review the procedure adopted by the CR for handling the filing of documents, including abolishing the practice of providing only limited services during the mid-day session; if it will, of the details of the review; if not, the reasons for that; and
- (b) it will consider reviewing the existing shroff practice of the CR, including accepting cash payments during the mid-day session or switching to issuing payment notices to members of the public and allowing them to pay later through other means, such as credit cards, electronic fund transfers or PPS; if it will, of the details of the review; if not, the reasons for that?

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

- (a) At present, members of the public may file documents (such as Annual Returns) together with the prescribed fees with the CR by post or in person at the Shroff counters of the CR. They may also choose to deposit the documents together with cheques into a Drop-in box provided at the CR's office.

The CR's current performance pledge for queuing in relation to the submission of documents is no more than 20 minutes. During lunch hours (that is, from 12.30 pm to 2 pm), as the CR needs to carry out revenue reconciliation work while adhering to the performance pledge, given the manpower restraints, only limited services are provided and customers may submit up to six documents at a time. For customers who need to file more than six documents, subject to the prevailing circumstances, they may need to queue up again for submitting the remaining documents. The CR has reviewed the present procedure for the submission of documents and shroff officers have been instructed to accept and process all documents presented by the customer in one go if there is no other customer queuing for service. The CR will closely monitor the provision of service during lunch hours. It will keep

the operation procedure in constant review and remind officers concerned to handle the submission of documents in a flexible manner with a view to providing quality and efficient services to customers.

- (b) The CR does provide shroff services during lunch hours when members of the public may make payments by cash, cheque or EPS. As mentioned in (a) above, they may submit the documents for filing together with the prescribed payments by post or in person to the CR's office during office hours or deposit the documents and cheques into a Drop-in box.

Statistics on Salaries Tax Payers

10. **MR BERNARD CHAN** (in Chinese): *President, will the Government inform this Council of:*

- (a) *in the past three years of assessment, the average percentage of the amount of salaries tax paid by the tax payers (excluding those who paid at the standard rate) in their income, and the highest and lowest amounts of salaries tax paid by them; and*
- (b) *the latest data on salaries tax for the last year of assessment (using the table below to provide such data)?*

<i>Amount of salaries tax (HK\$)</i>	<i>Number of persons required to pay the salaries tax listed on the left for the last year of assessment</i>	<i>Percentage of such number of persons in the work force</i>
<i>Not required</i>		
<i>1 to 1,000</i>		
<i>1,001 to 2,000</i>		
<i>2,001 to 5,000</i>		
<i>5,001 to 10,000</i>		
<i>10,001 to 15,000</i>		
<i>15,001 to 20,000</i>		
<i>20,001 to 30,000</i>		

<i>Amount of salaries tax (HK\$)</i>	<i>Number of persons required to pay the salaries tax listed on the left for the last year of assessment</i>	<i>Percentage of such number of persons in the work force</i>
<i>30,001 to 40,000</i>		
<i>40,001 to 50,000</i>		
<i>50,001 to 60,000</i>		
<i>60,001 to 70,000</i>		
<i>70,001 to 80,000</i>		
<i>80,001 to 90,000</i>		
<i>90,001 to 100,000</i>		
<i>100,001 to 200,000</i>		
<i>200,001 to 500,000</i>		
<i>500,001 to 1,000,000</i>		
<i>over 1,000,000</i>		

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

- (a) The requested statistics are set out below:

<i>Year of Assessment</i>	<i>Taxpayers not paying tax at the standard rate</i>		
	<i>Salaries tax as an average percentage of total income (%)</i>	<i>Highest tax amount (\$)</i>	<i>Lowest tax amount (\$)</i>
2006-2007	4.7	593,000	1
2005-2006	6.2	400,000	1
2004-2005	6.3	406,000	1

- (b) The requested statistics for the year of assessment 2006-2007 are set out below:

<i>Salaries Tax (\$)</i>	<i>Number of taxpayers</i>	<i>Percentage in total working population (%)</i>
0	2 106 513	61.39
1-1,000	480 696	14.01
1,001-2,000	130 506	3.80

<i>Salaries Tax (\$)</i>	<i>Number of taxpayers</i>	<i>Percentage in total working population (%)</i>
2,001-5,000	177 834	5.18
5,001-10,000	146 302	4.26
10,001-15,000	89 423	2.61
15,001-20,000	33 923	0.99
20,001-30,000	50 518	1.47
30,001-40,000	36 079	1.05
40,001-50,000	27 225	0.79
50,001-60,000	20 770	0.61
60,001-70,000	16 407	0.48
70,001-80,000	13 265	0.39
80,001-90,000	10 941	0.32
90,001-100,000	8 997	0.26
100,001-200,000	47 215	1.38
200,001-500,000	26 218	0.76
500,001-1,000,000	5 514	0.16
Over 1,000,000	2 954	0.09
Total	3 431 300	100.00

Handling of Complaints by Medical Council of Hong Kong

11. **MR ANDREW CHENG** (in Chinese): *President, regarding the handling of complaints by the Medical Council of Hong Kong (MCHK), will the Government inform this Council whether it knows:*

- (a) *what criteria the Preliminary Investigation Committee (PIC) has adopted for determining whether to take up a complaint; whether MCHK will consider not disclosing the identity of the complainee to PIC members at the initial stage of the investigation to ensure that their decision will not be affected by their preconception about the complainee; if it will not, of the reasons for that;*
- (b) *the information that the complainant is required to submit to MCHK when lodging a complaint; whether MCHK will inform the complainant of the information required to be submitted, and*

whether it will assist complaints in verifying the credibility of such documents; whether MCHK will consult experts regarding the information submitted by the complainant and the complainee to facilitate the hearing and ruling; if not, of the reasons for that; and

- (c) *whether the complainant and the complainee can obtain all the information submitted by the other party to MCHK and the records of the meetings conducted by the PIC; if not, of the reasons for that?*

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

- (a) The MCHK and its PIC follow the procedures laid down in the Medical Registration Ordinance (the Ordinance) and the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (the Regulation) in handling complaints they have received against registered medical practitioners, conducting investigations into allegations of professional misconduct involving medical personnel and taking disciplinary actions.

To ensure that the PIC considers each and every complaint in a fair and impartial manner, the Regulation stipulates that if any member of the PIC is in any way interested in a case which has been referred to the PIC, he has to declare his interest. The PIC will determine, as appropriate, whether that member can continue to handle the complaint.

- (b) The MCHK has listed in the booklet entitled "How the Medical Council deals with Complaints" the event details and all relevant information and documents that a complainant has to submit to the MCHK. Any person who decides to lodge a formal complaint against a registered medical practitioner is required to furnish the MCHK with the following basic information:
- (i) the identity and contact details of the complainant;
 - (ii) the name of the medical practitioner involved;

- (iii) the details of what the medical practitioner has done wrong;
- (iv) the date and place the event took place;
- (v) copies of any relevant papers and any other evidence such as X-ray films, photographs, and so on; and
- (vi) the details of any other person who has witnessed the event or can support the complaint.

At the screening stage, the Chairman or the Deputy Chairman of the PIC may, depending on the circumstances of the case, require the complainant to make clarifications, provide supplementary information or sign a written consent to allow the PIC to have access to the relevant medical reports or records. In order not to influence the impartiality of the judgment, the MCHK will not assist the complainant or the complaine e to verify the credibility of the documents submitted by them. In the course of considering the complaint, the PIC will seek independent expert opinion if necessary.

If the case is subsequently referred to the MCHK for inquiry, the lawyers representing the Secretary of the MCHK and the complaine e may invite their own expert witnesses to give evidence and provide expert opinion at the inquiry for consideration by the MCHK.

- (c) As for the complainant, the Regulation stipulates that if the PIC decides not to refer the case to the MCHK for inquiry, the complainant has no right of access to any information or document relating to the case submitted by any other person to the PIC. If the PIC decides to refer the case to the MCHK for inquiry, the complainant may apply to the MCHK to obtain the abovementioned information after the inquiry. The MCHK will decide whether to accede to the request on the merits of each individual case.

As for the complaine e, if the PIC decides that the complaint should be considered, the Secretary of the MCHK has to provide the medical practitioner under complaint with the information obtained

so that he can submit an explanation in writing. While the case is being considered by the PIC, the Secretary will not disclose to the complainee any matters discussed by the PIC before the PIC has made a decision. If, after consideration, the PIC decides to refer the case to the MCHK for inquiry, the complainee may apply for a copy of the minutes of the PIC meetings in which the complainee's case was considered for the purpose of inquiry preparation.

Use of Natural Gas in Electricity Generation

12. **MS AUDREY EU** (in Chinese): *President, regarding the proposal to construct a liquefied natural gas receiving terminal in Hong Kong, the Government indicated last year that it had commissioned a professional energy consultant to assist in its studies by evaluating natural gas supply arrangements from different perspectives, which include analyzing the distribution of natural gas resources in the region, supply conditions of the Yacheng gas field, future electricity demand and environmental protection requirements in Hong Kong, and so on. In this connection, will the Government inform this Council:*

- (a) *of the progress and preliminary results of the above studies;*
- (b) *whether it will publish the reports of the studies; if it will, when they will be published; if not, the reasons for that; and*
- (c) *whether it will develop plans to increase the proportion of natural gas in the fuel mix for electricity generation, in order to reduce the emission of greenhouse gases (GHG); if it will, of the details; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT (in Chinese): President, since 1996, the CLP Power Hong Kong Limited (CLP) has been importing natural gas for power generation from the Yacheng 13-1 gas field near Hainan via a 778 km submarine pipeline. After conducting re-determination of the Economically Recoverable Reserves of the gas fields with the gas supplier, CLP anticipates that the existing Yacheng 13-1 natural gas field will be depleted by early 2010s. At present, about 30% of CLP's installed capacity is gas-fired. CLP reckons that a

replacement gas supply must be in place by end 2013 to ensure supply reliability and achievement of emission caps imposed by the Environmental Protection Department under the Air Pollution Control Ordinance.

With the assistance of a professional energy consultant, the Government is reviewing CLP's proposal. To ensure that the public can continue to enjoy reliable and safe electricity supply at reasonable prices, the Government is examining all relevant factors including the distribution and development of natural gas in the region, the feasibility of supplying gas to Hong Kong from other natural gas/liquefied natural gas (LNG) projects in the region, the supply situation of the Yacheng gas field, the forecast of future electricity demand, environmental requirements, estimated expenditure and tariff impacts.

The due diligence process on CLP's proposed LNG terminal is still ongoing. No decision has been made by the Government regarding the proposal of CLP to build an LNG terminal project in Hong Kong. Although the Government is unable to report the results of the due diligence at this stage, we briefed the Environment Affairs Panel of the Legislative Council on 30 June 2008 on the latest status of the proposed LNG terminal. Given the concern of the Hong Kong community on the need and justification of the terminal, it is crucial that all aspects of the project are properly examined to ensure that building an LNG terminal in Hong Kong is in the best interest of Hong Kong.

At present, electricity generation is the major source of GHG emission in Hong Kong, representing over 60% of the total GHG emission. Over half of the electricity is generated from coal burning. Compared with coal burning, electricity generated by natural gas emits about 50% less carbon dioxide. Energy saving and change in fuel mix can reduce GHG emission. However, changing the fuel mix for power generation by drastically increasing the use of natural gas in order to reduce coal burning involves important and complicated issues such as energy policy, energy security, and stability in power supply. The public is also very concerned about the impact on the tariff as a result of the change in fuel mix. More in-depth analysis and discussions of these related issues are therefore necessary before we can come up with an option which takes account of environmental requirements, people's livelihood and a sustained economic development.

Cross-boundary Marriages

13. **DR YEUNG SUM** (in Chinese): *President, regarding marriages between Hong Kong residents and Mainlanders, will the Government inform this Council:*

- (a) *of the number of Hong Kong residents who applied to the Immigration Department for the Certificate of Absence of Marriage Record in each of the past five years and, among the marriages registered in Hong Kong in each of the past five year, the number of cases involving marriages between Hong Kong residents and Mainlanders;*
- (b) *whether it knows, among marriages between Hong Kong residents and Mainlanders over the past five years, the respective number and percentage of cases in which Mainlanders were separated from or who divorced their Hong Kong spouses before obtaining One-way Exit Permit for settlement in Hong Kong; and*
- (c) *of the approximate number of children aged 16 or below born to Hong Kong residents and Mainlanders at present; the government departments and legal procedures through which Hong Kong residents and Mainlanders may settle their disputes on the custody of their minor children; and if either the father or the mother of these children abducts them to his/her place of residence across the boundary, through what legal procedures and government departments or organizations the other party may seek assistance?*

SECRETARY FOR SECURITY (in Chinese): President,

- (a) In the past five years, the number of Hong Kong residents who applied to the Immigration Department for the Certificate of Absence of Marriage Record is as follows:

<i>Year</i>	<i>Application for Certificate of Absence of Marriage Record</i>
2003	21 332
2004	21 929
2005	25 932

<i>Year</i>	<i>Application for Certificate of Absence of Marriage Record</i>
2006	30 569
2007	23 075

In the past five years, the number of marriages between Hong Kong residents and Mainlanders registered in Hong Kong is as follows:

<i>Year</i>	<i>Marriages between Hong Kong residents and Mainlanders registered in Hong Kong</i>
2003	11 613
2004	15 036
2005	19 577
2006	20 329
2007	18 334

- (b) The Government does not maintain statistics on marriage cases between Hong Kong residents and Mainlanders in which the Mainlanders were separated from or divorced their Hong Kong spouses before being granted a One-way Permit for settlement in Hong Kong.
- (c) The Government does not maintain statistics on the number of children aged 16 or below born to a Hong Kong resident and a Mainlander at present.

Generally speaking, if a child born to a Hong Kong resident and a Mainlander is below the age of 18, his/her father or mother may apply to the Courts of Hong Kong for an order with respect to the child's custody, in accordance with the Laws of Hong Kong, including the Guardianship of Minors Ordinance (Cap. 13), the Separation and Maintenance Orders Ordinance (Cap. 16) and the Matrimonial Causes Ordinance (Cap. 179).

If any person suspects that a child is unlawfully abducted to a place outside Hong Kong, he or she should immediately report to the Police for assistance. The Police will investigate and follow up the case. If necessary, the Police will seek assistance from the public security department of the Mainland through the liaison mechanism.

Duty on and Prices of Tobacco Products

14. **MR MARTIN LEE** (in Chinese): *President, regarding the duty on and prices of tobacco products, will the Government inform this Council:*

- (a) *whether it knows the average prices of tobacco products, their actual average prices after adjustment for inflation and the changes in their sales before and after the relevant provisions of the Smoking (Public Health) (Amendment) Ordinance came into operation on 1 January 2007;*
- (b) *given that the prices of tobacco products have increased at a lower rate than inflation in recent years, resulting in a consistent rise in the sales of tobacco products, whether the authorities will consider increasing the tobacco duty to drive up the prices of tobacco products, so as to curb the growth in their sales; and*
- (c) *whether the authorities will consider allocating a certain percentage of the revenue from the tobacco duty for smoking cessation services, anti-smoking work as well as treatment of and researches on smoking-related diseases?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, my reply to the various parts of the question asked by Mr Martin LEE is as follows:

- (a) According to the statistical data compiled by the Customs and Excise Department (C&ED) on 22 brands of cigarettes sold in Hong Kong, the average retail price of these tobacco products was HK\$26.4 in October 2006. In May 2008, that is, 18 months after the vast expansion of no-smoking areas, the average retail price of these 22 brands of cigarettes was HK\$26.9. Their actual average market price in 2008 after discounting inflation (at 2006 prices) was HK\$25.2.

We do not have any sales figures of tobacco products. Nevertheless, the C&ED recorded a total of 287.493 million sticks of duty-paid cigarettes in October 2006 while the latest figure (as at May 2008) was 288.936 million sticks.

- (b) The HKSAR Government has been taking a multi-pronged approach, that is, through a combination of legislation, taxation, publicity, education, enforcement as well as smoking cessation services, to contain the proliferation of tobacco use and minimize the impact of passive smoking on public health. Since the passage of the Smoking (Public Health) (Amendment) Bill 2005, many more smoke-free areas have been created in Hong Kong and the public are now enjoying a generally healthier environment. Most smokers have also been law-abiding and co-operative, not smoking when they are indoors or when smoking affects others. We believe that the situation will improve further after the fixed penalty system for smoking offences is in place.

With regard to the question of increasing tobacco duty, the Government will review the rates of various taxes and duties in the annual Budget exercise after taking into consideration factors such as public finance, economic conditions and relevant policies. We will continue to monitor tobacco use and its impact on public health and take these into account when we consider whether the rate of tobacco duty has to be revised.

- (c) Under the Government's long-standing principles of public finance management, the revenues from tobacco duty, similar to other tax revenues, will be credited to the General Revenue. The Government will then make appropriate allocation of resources based on actual requirements for expenditure through the annual Resource Allocation Exercise to ensure fair and reasonable allocation of resources among various policy areas. If it is rigidly laid down that a certain proportion of a particular item of revenue has to be designated for a particular use, this will undermine our well-established resources allocation mechanism and erode its flexibility.

As a matter of fact, the Government has in recent years devoted more financial resources every year to tobacco control. The funding allocation for the Tobacco Control Office (TCO) under the Department of Health (DH) and the Hong Kong Council on Smoking and Health (COSH) has increased from \$18.5 million in 2003-2004 to \$55.4 million in 2007-2008, representing a three-fold

increase within four years. Where the provision of smoking cessation services is concerned, both DH and the Hospital Authority have stepped up their efforts by setting up more smoking cessation clinics, establishing the Smoking Cessation Hotline and enhancing their counselling and referral services. Looking into the future, DH will provide more smoking cessation services at the district level by working more closely together with non-governmental organizations and health care practitioners in the private sector.

The Government will continue to promote smoking cessation through the COSH and at the district level. We also believe that opportunities should be taken to provide smokers with information on smoking cessation services through enforcement of the fixed penalty system. To that end, we will print the Smoking Cessation Hotline number of the TCO on fixed penalty notices. Information on smoking cessation services will also be provided together with the issuing of payment reminders.

As for research, the Government has been providing funding to COSH for conducting research and surveys on a number of smoking-related topics such as "Youth Smoking and Health Survey", "Smoking and Passive Smoking in Children" and "Passive Smoking and Risks for Heart Disease and Cancer in Hong Kong Catering Workers", and so on. The Government will continue to provide funding support to research in the area of tobacco control.

It is therefore apparent that the Government will provide adequate financial resources for taking forward our tobacco control policy in the interest of public health without making it a rule that tobacco duty revenues must be spent on tobacco control purposes.

Human Rights Education

15. **MR ALBERT HO** (in Chinese): *President, since the reorganization of the policy bureaux of the Government Secretariat on 1 July last year, the Constitutional and Mainland Affairs Bureau (CMAB) is responsible for co-ordinating human rights policies, the Home Affairs Bureau is responsible for*

co-ordinating the work on civic education, which covers human rights education, while the Education Bureau is responsible for incorporating human rights education into the curricula and activities at school level. In this connection, will the Government inform this Council:

- (a) given that following the reorganization of its structure, the Committee on the Promotion of Civic Education (CPCE) has assigned the work on the promotion of human rights education to its Publicity Subcommittee, of the reasons why there is no representative from CMAB, which is in charge of human rights policies, among the official members of CPCE, and whether the authorities will consider including official members from CMAB in the membership of CPCE;*
- (b) whether it will make reference to the Guidelines on Civic Education in Schools issued in 1996, include "human rights" along with "democracy", "rule of law", "national education" "globalization" and "critical thinking" as key themes and formulate clear and systematic policies on human rights education; and*
- (c) which government department or mechanism is currently responsible for formulating policies on human rights education and co-ordinating the work of various government departments on the promotion of human rights education, and whether the authorities will consider setting up an inter-departmental committee on human rights education?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Chinese): President, the reply to the three-part question is as follows:

- (a) Human rights education is one aspect of civic education which covers a wide range of topics. The Committee on the Promotion of Civic Education would invite relevant bureaux and departments, including the Constitutional and Mainland Affairs Bureau, to participate in discussions on the promotion of human rights education, as and when necessary.

- (b) The themes and topics related to human rights education, which were covered in the Guidelines on Civic Education in Schools (1996) and the Key Learning Areas (KLAs), have been updated in the Curriculum Reform implemented in 2001. Important topics such as "human rights", "democracy", "rule of law", "national education", "globalization" and "critical thinking" are systematically and comprehensively incorporated into that various KLAs applicable for different key learning stages. These include General Studies at primary level, Personal Social and Humanities Education KLA and New Senior Secondary Liberal Studies at secondary level, and the most recently revised Moral and Civic Education curriculum (2008).

The promotion of generic skills, including critical thinking, has an important place in school education. This is reflected in the curriculum recommended by the Curriculum Development Council to all primary and secondary schools in Hong Kong. It is also one of the learning goals of all KLAs and related subjects.

- (c) Since the re-organization of the Government Secretariat on 1 July 2007, the Constitutional and Mainland Affairs Bureau is responsible for co-ordinating government policies on human rights. The Education Bureau and Home Affairs Bureau have included general human rights education as part of their relevant work at schools and outside schools respectively. In addition, individual policy bureaux and departments are responsible for promoting public education and awareness of the relevant human rights relating to their functional responsibilities. At present, we have no plans for setting up an inter-departmental committee on human rights education.

Places in Schools for Social Development

16. **MR CHEUNG MAN-KWONG** (in Chinese): *President, regarding the supply and demand of places in schools for social development (SSD), will the Government inform this Council:*

- (a) *of the following in the past five years:*
- (i) *the annual numbers of places in and students waiting for admission to SSD, broken down by gender and grades;*
 - (ii) *among the students waiting for admission to SSD each year, the number and percentage of those who withdrew their enrolment applications, broken down by the students' gender and grades as well as the reasons for withdrawing their applications; and*
 - (iii) *the respective annual numbers, broken down by the students' gender, of SSD Secondary Three (S3) graduates who continued their studies in S4 in the same school, enrolled in mainstream schools, enrolled in institutions under the Vocational Training Council and attended other courses, as well as the number of students who dropped out of school within the first year of their enrolment in mainstream schools due to poor academic results;*
- (b) *of the number of classes to be provided in each of the coming five years, broken down by schools and grades;*
- (c) *as it is known that a residential home, which is adjacent to a SSD and managed by the Social Welfare Department, has at least 16 residential places not fully utilized, whether these residential places can be made available immediately so as to increase SSD places; and whether measures are in place to resolve in the long run the problem of insufficient SSD places to meet the demand; if so, of the details; if not, the reasons for that;*
- (d) *of the total number of SSD S4 places which will fall short in the coming five years for S3 graduates to continue their studies in the same schools; the measures in place to remove the bottleneck at senior secondary levels; and whether additional senior secondary classes can be provided without cutting junior secondary places (so as to avoid aggravating the acute shortage of junior secondary places);*

- (e) *given that the New Senior Secondary Academic Structure will be implemented in 2009-2010, whether the authority concerned has assessed the number of additional classrooms and types of facilities required for SSD to operate more senior secondary classes; if assessments have been made, of the details, broken down by schools; if not, of the specific measures in place to assist those schools the premises of which are not well-equipped in operating senior secondary classes; and*

- (f) *whether the authorities will, having regard to the scale and teaching needs of SSD, consider various options, such as operating senior secondary classes under a "2-2-1" trapezoidal class structure, to assist SSD in addressing the shortage of such classes; if not, of the reasons for that?*

SECRETARY FOR EDUCATION (in Chinese): President,

- (a) (i) SSD places are divided into two categories: day placement and day placement cum residential service. Under the Central Co-ordinating Referral Mechanism, the Education Bureau (EB) and the Social Welfare Department (SWD) process applications for placement to SSD and residential homes respectively and arrange placement for students in need. As no comprehensive data for the 2002-2003 school year and before was kept, relevant information for that school year is not available. As such, the information for the four school years from 2003-2004 to 2006-2007 is provided in this subparagraph and (ii) below. The number of places in and students waiting for admission to SSD, broken down by gender and grades, are set out in Annex 1.

- (ii) Among the students waiting for admission to SSD each year, the number and percentage of those who withdrew their enrolment applications, broken down by the students' gender and grades as well as the reasons for withdrawing their applications are set out in Annex 2.

- (iii) According to the findings of the EB's annual questionnaire surveys, the respective number of SSD S3 students who continued their studies in S4 in the same school, enrolled in mainstream schools, enrolled in institutions under the Vocational Training Council (VTC) and attended other courses in the past five years are as follows:

School year	Continued Studies in S4 in the Same School		Enrolled in Mainstream Schools		Enrolled in Institutions under the VTC		Attended Other Courses (Note)	
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls
2002-2003	0	11	60	38	28	3	11	0
2003-2004	9	9	53	30	28	3	6	1
2004-2005	7	15	54	29	22	5	12	0
2005-2006	5	29	62	23	13	3	6	1
2006-2007	15	29	74	19	16	1	2	0

Note: Other courses mainly include those offered by the training centres of the Construction Industry Council and the Clothing Industry Training Centre, and so on.

We do not maintain any statistics on SSD students dropping out of school due to poor academic results after their return to mainstream schools.

- (b) As the EB determines each year the numbers of classes to be operated in SSD having regard to the supply and demand of places, the number of classes to be operated in the 2009-2010 school year and beyond are not available at this stage. The approved number of classes to be operated in SSD in the 2008-2009 school year, which are similar to those for the 2007-2008 school year, are as follows:

SSD	Primary					Secondary					Total
	2	3	4	5	6	1	2	3	4	5	
Boys' Schools											
Hong Kong Juvenile Care Centre Chan Nam Cheong Memorial School	-	-	-	-	-	2	3	3	1	1	10
The Society of Boys' Centres — Chak Yan Centre School	-	1	2	3	4	2	3	3	-	-	18

SSD	Primary					Secondary					Total
	2	3	4	5	6	1	2	3	4	5	
The Society of Boys' Centres — Hui Chung Sing Memorial School	-	-	-	-	-	2	4	4	-	-	10
The Society of Boys' Centres — Shing Tak Centre School	-	-	-	1	2	1	1	2	1	1	9
Tung Wan Mok Law Shui Wah School	1	1	1	1	1	-	-	-	-	-	5
Sub-total	1	2	3	5	7	7	11	12	2	2	52
Girls' Schools											
Marycove School	-	-	-	-	1	2	2	2	1	1	9
Caritas Pelletier School	-	-	-	-	-	1	3	3	1	1	9
Sub-total	-	-	-	-	1	3	5	5	2	2	18
Total	1	2	3	5	8	10	16	17	4	4	70

- (c) The SWD has not frozen any places in residential homes adjacent to SSD. To meet service demand and optimize the use of resources, it created eight additional residential places for girls and deleted 24 such places for boys between 1999 and 2002. Between 2003 and 2005, it allocated additional resources to create 20 and eight residential places for girls and boys respectively. The Department also has plans to create about 40 residential places (the respective numbers of places for girls and boys are to be confirmed) in the 2008-2009 school year to meet overall service needs. In general, students in mainstream schools with behavioural or family problems may apply for admission to SSD. If residential care is also needed, they may apply for residential places attached to SSD. Alternatively, they may apply for other residential services for children, such as children's homes, boys'/girls' homes and hostels. The EB and SWD will consider increasing the number of SSD places and related residential places to meet service demand through such measures as conversion works and/or reprovisioning of schools.

- (d) Since the emotional and behavioural problems of the students in SSD are transient in nature, some of the S3 students there will be re-integrated into mainstream schools to continue their studies at senior secondary levels under existing arrangement. With the implementation of the New Senior Secondary Academic Structure in the 2009-2010 school year, those SSD with secondary classes will provide new senior secondary classes as necessary. We expect that sufficient senior secondary places will be provided in SSD.
- (e) The EB has assessed the need for additional classrooms and facilities for the implementation of the New Senior Secondary Academic Structure in SSD. It plans to provide three SSD with two to three additional classrooms each as well as other ancillary facilities. It is also actively exploring the feasibility of reprovisioning another SSD.
- (f) We will discuss with individual SSD and determine the class structure in a flexible manner, on the basis of the actual needs and scale of the schools.

Annex 1

Numbers of SSD places and students waiting for admission
with a breakdown by gender and grade

2003-2004 School Year

Grade	Number of Places* (Enrolment)		Number of Residential Places (Number of Placement)		Number of Students Waiting for Admission*			
	Boys	Girls	Boys	Girls	Boys		Girls	
					Day school	Day school cum residential places	Day school	Day school cum residential places
P2	15 (7)	-	421 (394)	188 (163)	0	2	-	-
P3	45 (27)	-			0	1	-	-
P4	75 (66)	-			1	2	-	-
P5	90 (89)	-			2	0	-	-
P6	105 (105)	15 (11)			1	1	1	1
S1	75 (90)	30 (21)			17	42	4	18
S2	150 (153)	75 (77)			13	13	7	13
S3	165 (116)	75 (57)			2	2	2	4
Total	720 (653)	195 (166)			36	63	14	36

Note: *Refer to the position as at June 2004

2004-2005 School Year

Grade	Number of Places* (Enrolment)		Number of Residential Places (Number of Placement)		Number of Students Waiting for Admission*			
	Boys	Girls	Boys	Girls	Boys		Girls	
					Day school	Day school cum residential places	Day school	Day school cum residential places
P2	15 (7)	-	421 (395)	188 (173)	0	0	-	-
P3	45 (26)	-			0	4	-	-
P4	75 (61)	-			1	4	-	-
P5	90 (102)	-			0	6	-	-
P6	105 (96)	15 (10)			0	8	0	1
S1	90 (49)	30 (34)			12	19	4	3
S2	150 (135)	75 (80)			19	51	6	7
S3	150 (118)	75 (59)			1	21	0	12
Total	720 (594)	195 (183)			33	113	10	23

Note: *Refer to the position as at June 2005

2005-2006 School Year

Grade	Number of Places* (Enrolment)		Number of Residential Places (Number of Placement)		Number of Students Waiting for Admission*			
	Boys	Girls	Boys	Girls	Boys		Girls	
					Day school	Day school cum residential places	Day school	Day school cum residential places
P2	15 (7)	-	429 (391)	188 (175)	0	0	-	-
P3	30 (19)	-			0	2	-	-
P4	60 (43)	-			1	5	-	-
P5	90 (90)	-			1	12	-	-
P6	105 (110)	15 (8)			0	21	1	0
S1	75 (78)	30 (31)			6	27	6	9
S2	210 (196)	75 (69)			8	36	6	41
S3	135 (114)	75 (67)			3	29	1	26
Total	720 (657)	195 (175)			19	132	14	76

Note: *Refer to the position as at June 2006

2006-2007 School Year

Grade	Number of Places* (Enrolment)		Number of Residential Places (Number of Placement)		Number of Students Waiting for Admission*			
	Boys	Girls	Boys	Girls	Boys		Girls	
					Day school	Day school cum residential places	Day school	Day school cum residential places
P2	15 (10)	-	429 (395)	188 (177)	0	1	-	-
P3	30 (25)	-			0	0	-	-
P4	45 (41)	-			1	0	-	-
P5	90 (84)	-			2	21	-	-
P6	105 (100)	15 (6)			4	15	0	14
S1	105 (99)	30 (30)			25	63	5	80
S2	165 (150)	90 (93)			8	38	7	38
S3	165 (152)	60 (60)			1	3	4	13
Total	720 (661)	195 (189)			41	141	16	145

Note: *Refer to the position as at June 2007

Annex 2

Among the students waiting for admission to SSD, the breakdown on the number and percentage of students withdrawing their applications by gender and grade

Grade	2003-2004 School Year (Number of applications: 815)		2004-2005 School Year (Number of applications: 849)	
	Number of students withdrawing application		Number of students withdrawing application	
	Boys	Girls	Boys	Girls
P2	4	-	1	-
P3	2	-	0	-
P4	1	-	4	-
P5	0	-	4	-
P6	3	1	1	1
S1	8	0	13	5
S2	7	2	20	1
S3	0	1	1	1
Total	25	4	44	8
Percentage	3.06%	0.49%	5.18%	0.94%

Grade	2005-2006 School Year (Number of applications: 971)		2006-2007 School Year (Number of applications: 1 121)	
	Number of students withdrawing application		Number of students withdrawing application	
	Boys	Girls	Boys	Girls
P2	1	-	0	-
P3	3	-	1	-
P4	2	-	0	-
P5	0	-	4	-
P6	4	3	5	3
S1	25	10	49	6
S2	13	8	31	16
S3	9	2	7	6
Total	57	23	97	31
Percentage	5.87%	2.36%	8.65%	2.76%

The numbers and percentages of students withdrawing their applications
with a breakdown by reasons of withdrawing

Major reasons for withdrawing applications	2003-2004 school year		2004-2005 school year		2005-2006 school year		2006-2007 school year	
	No.	%	No.	%	No.	%	No.	%
1. Transferred to a mainstream school/returned to the Mainland for schooling/reintegrated into the original school	14	1.72	9	1.06	23	2.37	38	3.39
2. Arrangement objected by student or rejected by parents	5	0.61	3	0.35	25	2.57	32	2.85
3. Others/other service arrangements (for example, student transferred to small group homes or rehabilitation centres, or choosing to enrol in the Hong Kong Institute of Vocational Education)	3	0.37	24	2.83	13	1.34	23	2.05

<i>Major reasons for withdrawing applications</i>	<i>2003-2004 school year</i>		<i>2004-2005 school year</i>		<i>2005-2006 school year</i>		<i>2006-2007 school year</i>	
	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>
4. Improvement in student's behaviour/case having been followed up by student guidance officer	3	0.37	10	1.18	7	0.72	13	1.16
5. Admitted to boys' or girls' home/imprisonment/gone missing	2	0.25	4	0.47	8	0.82	12	1.07
6. Employment	2	0.25	2	0.24	4	0.41	10	0.89

Reporting of Medical Incidents

17. **DR KWOK KA-KI** (in Chinese): *President, the Hospital Authority (HA) launched the Advanced Incident Reporting System in 2006 and has implemented a Sentinel Event Policy since October 2007 to strengthen the reporting, management and monitoring of sentinel events in public hospitals. HA also makes public these events in its internal newsletter to alert front-line medical staff to prevent the recurrence of the events. In this connection, will the Government inform this Council whether:*

- (a) *it knows what mechanism HA has in place to ensure that front-line medical staff report medical incidents accurately; and*
- (b) *it will consider requiring, through administrative instructions or even by legislation, that HA must not disclose the places of the incidents and the names of the medical staff involved when making public the medical incidents concerned, so as to encourage medical staff to report such incidents proactively?*

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

- (a) The HA has put in place an established mechanism and guidelines for medical staff to report medical incidents and take follow-up actions. Under the existing mechanism, hospital clusters will make

immediate reports of medical incident to the HA Head Office through HA's internal Advanced Incident Report System (AIRS). In addition, HA has since October 2007 implemented a Sentinel Event Policy to strengthen the reporting, management and monitoring of sentinel events in public hospitals, so as to further enhance patient safety. Under the above Policy, hospital clusters are required to report via the AIRS any medical incidents classified as sentinel events within 24 hours upon awareness of their occurrence. They should at the same time handle the incident promptly in accordance with the established procedures so as to minimize the harm caused to the patient and provide support to the staff involved in the incident. The HA Head Office is responsible for monitoring and co-ordinating the handling of sentinel events and implementation of initiatives for promoting patient safety at an organizational level.

As to follow-up actions on medical incidents, the hospitals concerned will investigate the causes of the sentinel events and take follow-up actions. They are also required to submit a report on the event to the HA Head Office. HA will improve the relevant systems and working procedures where necessary, with a view to avoiding recurrence of similar incidents in future. Through the training provided by HA and the internal newsletter "Risk Alert" published by HA, the staff of different clusters could make reference to and draw on the experience in handling sentinel events.

- (b) As a public body, HA has the responsibility to make public the causes and details of medical incidents in a transparent and open manner. This would help HA fosters mutual trust and a respectful relationship with the public. In the case of serious medical incidents, HA may disclose the places where the incident took place as well as the grade and rank of the medical staff involved when making public the details of the medical incidents. However, the identity of the medical staff will not be disclosed. Under the principle of being accountable to the public in a transparent and open manner, we consider the practice of not disclosing the places where medical incidents occurred is not feasible and preferable. HA will endeavour to maintain the high quality of services and at the same time promote a learning culture among its staff so as to

encourage them to communicate with patients and their families professionally under the principle of mutual trust and respect and explain to them the causes and consequences of medical incidents, to report medical incidents accurately and reduce the chance of mistake.

Loophole in Town Planning Ordinance

18. **MISS CHOY SO-YUK:** *President, there is public concern that the natural environment in the New Territories, comprising important and ecologically sensitive natural habitats, has fallen as a constant target of unauthorized and illegal activities. These activities include, but not limited to, unauthorized land filling and excavation, as well as illegal tree felling. Previous uncovered cases have revealed that as the Planning Department (PlanD) does not have the power to enforce the Town Planning Ordinance (Cap. 131) in areas which are covered by statutory zoning plans but not Development Permission Area Plans (DPAPs), there is a large loophole in the existing planning control mechanism. As a result, the PlanD is not empowered to take action against the above activities, although they are not in line with the planning intention of the zoning plans concerned. In this connection, will the Government inform this Council:*

- (a) *of the areas on Hong Kong Island, in Kowloon and the New Territories in which existing legislation against unauthorized and illegal activities which violate the planning intention is not enforceable (that is, areas which are currently not covered by a DPAP), as well as the location of such areas and the land area involved;*
- (b) *of the number of cases uncovered in the past three years in which enforcement action could not be taken against the relevant unauthorized and illegal activities because of the above loophole; and*
- (c) *given that there is an increase in the number of cases in which the above loophole in the Town Planning Ordinance is exploited, and the unauthorized and illegal activities involved will damage the environment and affect the future development of the areas concerned, what action the Government will take to plug the*

loophole, and whether it will consider amending the existing legislation?

SECRETARY FOR DEVELOPMENT: President, unauthorized and illegal activities that may have an adverse impact on the natural environment in the New Territories take various forms. It must remain the responsibility of the respective land owners to prevent such activities from occurring. The relevant government departments will also adopt measures to deter such activities or take enforcement action under their respective legal powers. To address the problem more effectively, concerted efforts are being made by relevant government departments.

Since the Honourable CHOY So-yuk's question is apparently focused on unauthorized land filling activities and the relevance of the town planning regime, I shall respond to her three-part question on these aspects:

- (a) The prime objective of the Town Planning Ordinance is to regulate land use and related developments. Except for certain zonings which prohibit development, developments conforming to the zonings are permitted as of right, and land filling operations are considered as part of the development process. Development control in these areas is exercised by way of statutory Outline Zoning Plans (OZPs) and the planning permission system under the Town Planning Ordinance, as well as building controls under the Buildings Ordinance and the relevant control provided for in the land leases.

The Ordinance does not confer enforcement authority in respect of areas not covered by Development Permission Area (DPA) plans. These areas comprise mainly the urban areas and new towns. Even for DPAs, the PlanD's enforcement action against unauthorized land filling activities is confined to "Green Belt", "Agriculture" and conservation-related zonings (such as "Sites of Special Scientific Interest", "Conservation Area" and "Coastal Protection Area"), as designated areas in the rural New Territories are also planned for suitable developments, such as "Village Type Development", "Residential (Group D)" and "Open Storage". Land filling operations in these development-related land use

zonings would not be prohibited as they are incidental to development. Areas in the New Territories, including the Frontier Closed Area, which are at present neither included in country parks nor subject to statutory planning (OZP/DPA) control make up about 10.8% of all land in Hong Kong, mainly scattered in the less developed and remote parts of the rural New Territories.

- (b) The report submitted to the Legislative Council Panel on Environmental Affairs on 30 June 2008 has listed 152 cases uncovered in the past three years about inert construction and demolition materials being deposited on private land. Out of the 152 cases, PlanD has undertaken enforcement action on 92, the majority of which fall in "Green Belt", "Agriculture" and conservation-related zonings within DPAs. It was either not possible or appropriate to take enforcement action under the Town Planning Ordinance against the remaining 60 cases. These comprise 19 cases which fall within development-related zonings within DPAs; 20 cases where there was insufficient evidence for action or where planning permission had been obtained; 15 cases were located within OZP areas not previously designated DPAs; and six cases were in areas not covered by any statutory plans.

It should be noted that enforcement action was not or would not be taken in many cases because the respective land filling operation was not prohibited under the prevailing zoning or planning mechanism.

- (c) Given the background outlined in part (a) above, we do not consider the Town Planning Ordinance to be the most appropriate tool to control land filling activities *per se*. To lightly contemplate overhauling the planning regime to forestall a particular form of illegal or unauthorized activities on the land would have far reaching implications. In practice, for most parts of the urban areas and new towns where development is to be facilitated rather than prohibited, introducing control against land filling in the planning permission process would also unnecessarily prolong the development approval process.

At present, relevant government departments exercise control over the deposit of construction and demolition materials on private land in accordance with the legislations and administrative measures under their purview. As reported to the Legislative Council Panel on Environmental Affairs on 30 June 2008, the Environmental Protection Department is, in collaboration with other government departments, setting up a database on such activities to capture all basic information including site locations, their zonings, sizes, land uses, and so on, and will also record all the actions taken by the concerned government departments. The database will be readily accessed and updated by the concerned government departments. They will also meet regularly to ensure effective and co-ordinated actions are taken in accordance with the legislation under their respective jurisdiction.

Digital Broadcasting

19. **MR JAMES TO** (in Chinese): *President, I have recently received views on digital broadcasting standards from members of the public, and have written to the Office of the Telecommunications Authority (OFTA) to enquire about the matter. OFTA replied that if the satellite master antenna television (SMATV) systems installed in buildings are upgraded to ones which can receive digital video broadcasting (DVB) satellite signals, satellite television programmes such as those broadcast on high-resolution integrated channels of the China Central Television (CCTV), and so on, may be viewed with television sets with built-in DVB decoders, and it is not necessary to install external decoders. In this connection, will the Government inform this Council whether:*

- (a) *television sets with built-in DVB decoders can receive channels (for example, high-resolution integrated channels of CCTV) broadcast with DVB; if they can, of the works required to be conducted on the SMATV systems of private buildings for receiving such signals; and*
- (b) *the Government has issued to the trade concerned relevant technical guidelines on the modification of master antenna television systems, and publicized the relevant information among the trade and the public?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, Hong Kong has all along adopted an "open sky" policy for reception of satellite television. Hong Kong people may choose to receive some 400 free satellite television programme channels from all over the world, the majority of which being transmitted digitally and with three being high definition (HD) channels (including the Hi-Vision channel of the China Central Television). Nonetheless, television sets available in the market are for direct reception of analogue or digital terrestrial television (DTT) signals and not satellite television signals. It is also impracticable if not impossible for residents in multi-storey buildings to install individual satellite television reception systems (that is, dish antennae) in their flats. Most residents in Hong Kong are thus receiving signals of satellite television programme channels through satellite master antenna television (SMATV) systems installed in their buildings.

My reply to the question is as follows:

- (a) Residents in multi-storey buildings currently receive satellite television programmes via the SMATV systems which convert satellite signals into analogue terrestrial television signals. As the analogue format does not support HD television, pictures of the converted satellite television programmes received by the residents are not of the HD quality.

Technically, it is feasible to enable reception and viewing of HD satellite television programmes without any change in picture quality. Household viewers would need to arrange for the in-building SMATV systems to convert the satellite signals into the signals of "National Standard" which has been adopted for the DTT service in Hong Kong. They can then enjoy the HD satellite TV programmes through their existing television sets with DTT set-top boxes installed, or new integrated television sets with built-in DTT decoders.

- (b) Currently, Hong Kong does not have a strong market demand for HD satellite television. So far, the OFTA has not received any application from the SMATV system operators for spectrum allocation to enable their in-building SMATV systems to transmit signals of HD satellite television channels. The OFTA would issue

relevant technical guidelines for the trade's reference in response to prevailing market situations if necessary. At the same time, the OFTA has been maintaining close contact with suppliers and manufacturers of electrical appliances to keep track of the development and supply of relevant equipment.

Expenditure Weights for Compiling Consumer Price Index

20. **DR DAVID LI:** *President, according to the Monthly Report on the Consumer Price Index (CPI) published by the Census and Statistics Department, "the expenditure weights for compiling the 2004-2005-based CPI series are based on the household expenditure patterns obtained from the Household Expenditure Survey conducted during October 2004 to September 2005". Current weight for food items (excluding meals away from home) is 10.08%. Using the 2004-2005 weights, between May 2004 and May 2008, the prices of food items have increased by 30.5% while the Composite CPI has increased by only 10%. There are concerns that there is a potential underestimation of the current Composite CPI using the 2004-2005 weights. In this connection, will the Government inform this Council whether it has taken into account the above potential underestimation in its current calculation of CPIs; if it has, of the details of the methodology and whether adjustment has been made to its calculation; if adjustment has not been made, whether the Government has conducted any study to estimate the degree of underestimation; if it has conducted such a study, of the results?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY:

President, the accuracy of the CPI and its rate of change are not affected by changes in expenditure weights caused by price changes in individual items (for example, food) because the CPI compilation formula has already taken this into account. In fact, the expenditure weights of food items have correspondingly been increased to account for the recent increase in food prices. Therefore, there is no underestimation of the Composite CPI.

According to the existing computation formula, the CPI in a specific month is computed by comparing the total cost of a basket of consumption items in that month with that of the same basket in the base period. The expenditure

weights used in compiling the month-to-month rate of change of the CPI are updated to the price level in the preceding month. Moreover, the Census and Statistics Department will, in conformity with international statistical standards, update the basket of consumption items and the expenditure weights every five years to take into account changes in consumption patterns of households over time.

BILLS

Second Reading of Bills

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): Bills. We now resume the Second Reading debate on the Race Discrimination Bill.

RACE DISCRIMINATION BILL

Resumption of debate on Second Reading which was moved on 13 December 2006

PRESIDENT (in Cantonese): Ms Margaret NG, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

MS MARGARET NG (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Race Discrimination Bill (Bills Committee), I shall report to this Council on the main deliberations of the Bills Committee.

Hong Kong has an obligation under international human rights treaties to prohibit and eliminate racial discrimination. According to the Government's explanation, the main object of the Race Discrimination Bill (the Bill) is to render discrimination, harassment and vilification, on the ground of race, unlawful.

The Bills Committee held a total of 34 meetings to scrutinize this Bill which has far-reaching implications. The Bills Committee has thoroughly examined the relevant policy issues, the proposed provisions of the Bill, the amendments proposed by the Government and the various amendments proposed by me on behalf of the Bills Committee. The Bills Committee has also carefully considered the views of concern groups and ethnic minority groups on the Bill, including possible improvements to its provisions. Details of the Bills Committee's deliberation are set out in the report of the Bills Committee. My speech will focus on four major issues, namely the application of the Bill to the Government, the scope of circumstances constituting indirect discrimination, the exclusion of new arrivals from the Mainland from the scope of the Bill and the exception for languages.

Regarding the application of the Bill to the Government, while the three existing anti-discrimination ordinances expressly bind the Government, clause 3 of the Bill provides that the Race Discrimination Ordinance, when enacted, would apply only to an act done by or for the purposes of the Government that is of a kind similar to an act done by a private person. As such, discriminatory acts by law enforcement, correctional services and immigration control agents would not be covered under the Bill.

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

The majority of the members are concerned that while the Bill may render certain individual discriminatory acts on the ground of race unlawful, it would not have any impact on longstanding discriminatory practices in the public sector arising from the implementation of policies and measures in the Government's performance of its functions or the exercise of its powers. The exclusion of government acts from the Bill would send a strong message to the community that certain types of racial discrimination are endorsed or at least tolerated, and different standards apply to public authorities and private bodies. The Bills Committee has requested the authorities to consider following sections 19B and 76 of the Race Relations Act 1976 (RRA) of the United Kingdom, which were included in the RRA in 2000 to cover all government functions.

The authorities has advised that the Bill is introduced to address public concerns over the lack of specific legislation on the problem of racial discrimination in the private sector and do not consider it appropriate to expand the scope of the Bill to cover all government functions because the Government is concerned that any policy or practice could be challenged in the Court. However, the authorities has agreed to amend clause 3 of the Bill as: "This Ordinance binds the Government".

Regarding the scope of circumstances constituting indirect discrimination, clause 4(1)(a) specifies the circumstances which would constitute direct discrimination on the ground of the race of a person. Under clause 4(1)(b), indirect discrimination occurs when a person imposes a requirement or condition which, although applicable to all, has a disproportionate adverse impact on people of a particular race, and the requirement or condition imposed cannot be justified by reasons not related to race.

Members have queried the need to include the defence of "justification" which is not included in the other three existing anti-discrimination ordinances. Members noted that clause 4(2)(a) and (b) as presently drafted have the effect of satisfying either the so-called rationality and proportionality test under clause 4(2)(a) or the so-called "not reasonable practicability" test under clause 4(2)(b) would suffice to establish the defence of "justification". In other words, a requirement or condition would be justifiable as long as the alleged discriminator can prove that it is not reasonably practicable for him not to apply it, no matter how irrational and disproportionate the requirement or condition is to serve the relevant legitimate objective. The majority of the members are of the view that the authorities should model clause 4(1)(b) on the relevant provisions newly added to the RRA in 2003 to include the application of a provision, criteria or practice.

Given members' concern regarding the inclusion of the alternative test of "not reasonable practicability" in clause 4(2)(b), the authorities have, after consideration, agreed to delete clause 4(2)(b) and clause 4(3) to (5).

Regarding the exclusion of new arrivals from the Mainland from the scope of the Bill, although the Bill does not expressly exclude new arrivals from the Mainland from its scope of protection, clause 8(2) and (3) specifically exclude different treatment on the ground of permanent residency, right of abode and

length of residence from being regarded as racial discrimination, the legal effect of which would render discrimination on the ground of a person's status as a new arrival from the Mainland not unlawful under the Bill.

Many members are of the view that the scope of the Bill should be extended to cover discrimination against new arrivals from the Mainland because these new arrivals constitute a distinct community and the problem of discrimination as well as negative stereotyping against them is prevalent. Some other members consider that, although new arrivals from the Mainland do encounter differential treatment in education and employment, the Bill should not cover discrimination against them as discrimination experienced by these new arrivals from the Mainland is not a form of racial discrimination but is, rather, linked to their social class.

The authorities are of the view that the discrimination encountered by new arrivals from the Mainland is largely prejudices arising from behavioural difference and their social and economic positions, and is therefore a form of social discrimination. Since such discrimination does not arise from ethnic or racial considerations, it would not be appropriate to seek to tackle the problem through legislation against racial discrimination.

Regarding exception for languages, given that language is a major barrier for ethnic minorities to gain access to essential public services, particularly medical services, some members have expressed strong dissatisfaction with the exemption provided for in clause 58 for the use, or failure to use, of particular languages in regard to the provision of goods, services and facilities. These members have stressed that discrimination by use of language is a real issue which can and currently does exclude certain racial groups from essential public services and benefits, including vocational training opportunities and medical treatment. Such an exemption would greatly weaken the effect of the Bill.

To facilitate access of the ethnic minorities to public services, the majority of the members have requested the authorities to consider imposing a statutory duty on the Government and specified public authorities to draw up a Race Equality Scheme for the purpose of eliminating racial discrimination and promoting racial harmony.

However, the authorities have turned down members' request and have only undertaken to compile administrative guidelines on promoting racial

equality within the Government for the key bureaux and departments to follow in their formulation and implementation of relevant policies and measures.

The majority of the members have expressed disappointment at the authorities' plan to compile the proposed administrative guidelines because the authorities have refused to make an undertaking to allocate additional resources for the implementation of measures formulated with reference to the administrative guidelines and set up a separate high-level monitoring mechanism to oversee the implementation of the guidelines within the Government as a whole. The authorities' refusal to make such undertakings has clearly demonstrated the Government's lack of commitment and determination to eliminate racial discrimination.

Deputy President, the majority of the members are dissatisfied with the approach adopted in the drafting of the Bill because of its narrow scope of application and its numerous exemptions. These members have expressed serious doubt as to how far the Bill as presently drafted would bring about substantive improvements to the problem of racial discrimination in Hong Kong. In the light of the concerns raised by members on various aspects during the discussion of the Bills Committee, the authorities will propose a number of amendments to the Bill, which are agreed by the Bills Committee.

However, the majority of the members take the view that, as far as the four major issues mentioned just now are concerned, the amendments to be proposed by the authorities cannot fully address their concerns. The Bills Committee has decided that I should move five Committee Stage Amendments (CSAs) on its behalf as follows:

- (i) first, to amend clause 4(1) to include the application of "a provision, criteria or practice" for the purpose of extending the scope of the circumstances constituting indirect discrimination;
- (ii) secondly, to delete the reference to different treatment on the ground of permanent residency, right of abode and length of residence from clause 8(3) to the effect that the Court can apply the existing case law to decide whether any discrimination against new arrivals from the Mainland would constitute racial discrimination under the law;

- (iii) thirdly, to add a new section 9A under the new Part 2A of the Bill stating that "It is unlawful for the Government to discriminate against a person on the ground of race of that person in the performance of its functions or the exercise of its powers";
- (iv) fourthly, to add a new section 9B and Schedule 6 under the new Part 2A of the Bill imposing a general statutory duty of the Government to draw up a Race Equality Scheme and requiring the specified bureaux and departments of the Government and the public authorities to perform specified duties with regard to this statutory duty; and
- (v) fifthly, to exclude the provision of vocational training courses and the provision of medical treatment within the meaning of section 2 of the Medical Clinics Ordinance (Cap. 343) from the exemption provided for under Clause 58.

Deputy President, the Bills Committee has also deliberated on other issues and agreed that I should move a number of amendments on behalf of the Bills Committee. I will explain each amendment in detail in the Committee stage. The Bills Committee strongly believes that if amendments as agreed by the Bills Committee are made to the Bill, its existing major inadequacies will be rectified and it can provide greater protection to ethnic minorities and society as a whole.

Deputy President, with these remarks, I have briefly reported the deliberation of the Bills Committee and I would like to take this opportunity to express my gratitude to the clerk and the legal adviser of the Bills Committee for their outstanding performance.

MS MARGARET NG: Deputy President, now, I would like to express my own view of the Bill.

I want to pay tribute to the minority groups and their friends who have fought with passion and dignity for the rights to which they are clearly entitled and yet have been unjustly denied. I want to pay tribute to members of the Bills Committee who have spoken out for them with understanding and persistence, always looking for sensible solutions which are fair and viable. I am proud to have served them as Chairman of the Bills Committee.

This day could have been a day of joy and celebration, and indeed would have been so, had our voice been heeded. Instead, I stand before this Council and the eyes of the world bowed down with shame and disappointment. I am deeply ashamed of our Government, which have let us down. It has not only let our ethnic minorities down, it has let Hong Kong down in blatantly failing to meet the basic requirements of our international obligation under United Nations (UN) conventions to eliminate all forms of racial discrimination. The Government's lack of will and commitment to racial equality has put Hong Kong's claim to be a "World City" into question. This will also have consequences for our economic competitiveness.

If our Government cannot guarantee the ready availability of just English and Chinese in such vital areas as medical treatment, job training, job placement and education, then what right have we to be called an international city? If multi-language services and equal treatment are only available to privileged visitors but denied day after day to the ordinary citizens in our midst; if racial equality is given little value; if we do not put our money where our mouth is; then what right have we to pretend to be a modern, civilized society?

Our grudge is not against the private sector. We know and accept that Rome is not built in one day. Our dissatisfaction is against the Government in using this Bill to give itself all the legal protection it needs to put its discriminatory actions, policies and practices beyond the challenge of the aggrieved citizen and the supervision of the Courts. The Government is using the law to cut down the very rights which the conventions seek to guarantee.

In my speech on behalf of the Bills Committee, I have already pointed out that clause 3 is drafted to minimize the application of the Bill to the Government. Even after the amendment it has reluctantly agreed to make, it still leaves the Government free to practise discrimination outside specified areas under the Bill. It still refuses to be bound by the law to the same extent as in other anti-discrimination ordinances.

After this Bill passes into law, a person may not be vilified or harassed by another person for his race or ethnic or national origin. He may not be treated discriminately by his perspective or present employer or service provider, landlord or school. But his treatment at the hands of the Government and public authorities and their agents will be no better than before. Indeed, it may be

worse, because those who treat him discriminatorily can now feel that they do so legitimately. The policeman who gives him a ticket can openly tell him that he is targeted because of his race, and the only remedy will be to complain to CAPO. He will obtain no better information from the job placement service in the Labour Department which will continue to provide requirements for vacancies only in the Chinese language, if they please. They will tell him that if he does not understand, it's just too bad. He will still be ignored by the medical staff who cannot communicate with him in his language or through an interpreter. If he is irrevocably harmed by delay or the wrong treatment, this Bill will give no reprieve; because the Government insists that "the use or failure to use a language is not racial discrimination".

What cause does he have to rejoice over the enactment of such a shameful law?

One group who had looked forward to the vindication of a race discrimination bill were the new arrivals from mainland China. Discrimination against them is acknowledged by the Government to be prevalent and serious. Previous consultations have accepted that they come within the concept of "race". But when this Bill was published in December 2004, they were cut out, on the basis that whatever the discrimination against them, it is not discrimination on the ground of race. The reason is that these new arrivals are of the Han race, the same as the rest of Chinese in Hong Kong.

This is a narrow definition of "race" which has been thoroughly discredited in law and by the UN Committee on the Elimination of Racial Discrimination. The definition of "race" under clause 8(1) of the Bill includes "national or ethnic origin". By common sense and by authoritative court decisions, new arrivals from the Mainland will be recognized as a distinct group within the meaning of "national or ethnic origin". But the Government goes on, in clause 8(3), to specifically provide that a person discriminated against on the grounds of his not being a Hong Kong permanent resident or his length of residence or nationality, is not considered to be discriminated against on the ground of race.

So the new arrival from mainland China will get no help from this Bill. He can be safely denied jobs, accommodation, welfare, goods and services, because this Bill decrees that he is put beyond protection. Why should they

celebrate the enactment of this Race Discrimination Bill? What have they got to thank the Government or this Council for?

Deputy President, the Bar has just brought to Members' attention and the attention of the Secretary for Constitutional and Mainland Affairs a decision of the Privy Council on 9 June 2008 concerning one David Leo THOMPSON, a dentist, who applied for registration with the Bermuda Dental Board and was refused because the Human Rights Act there provides for the differential treatment against non-Bermudians; a "Bermudian" is defined to mean "a person having a connection with Bermuda recognized by the law relating to Immigration for the time being in force". Like our Bill, "race" is defined to include "national or ethnic origin" under their Human Rights Act. In para. 26 of the judgment, the Court says this:

"In their Lordships' view, discriminating against someone because he or she is not Bermudian, or indeed on grounds of nationality or citizenship, is discrimination on grounds of 'race, place of origin, colour, or ethnic or national origins'....."

The Bar has warned that,

"Clauses 8(3)(b) to (d) impermissibly seek to undercut the proper scope of legislation sought to be enacted to tackle race discrimination. Their enactment would simply invite unnecessary and disruptive litigation for declaratory judgment for their removal on constitutional ground".

In other words, the enactment of this Bill without the CSAs of the Bills Committee will be likely to disgrace us all.

Deputy President, in our search for a practical solution which will give the Government time to put its act together to meet the standards required by the UN Conventions, we adopted the suggestion of the Equal Opportunities Commission to impose a general statutory duty on the Government to draw up "equality plans", in the bureaux and departments most directly concerned, by way of a new clause 9B. The Government has refused the Bills Committee's proposal. It counter-proposed "administrative instructions". In refusing to be bound by law, the Government has exposed its lack of commitment as well as a

lack of confidence in its leadership to bring about the change that the law requires.

In the event, even the promise of "administrative instructions" reveals itself to be of no substance at all. The Government has refused to give any undertaking to form a serious inter-departmental body under the highest level responsibility of the Chief Secretary; it has refused to make any commitment to provide extra resources where necessary. It is a miserable fig leaf with which the Government tries to cover its nakedness.

That fig leaf is torn away with the Government's objection to the Bills Committee's proposal to move clause 9B on the basis of its "charging effect". Deputy President, Members well know that charging effect is an obstacle only where the Government refuses to agree to it. The Government cannot claim that it has any commitment whatsoever to racial equality.

As Mr Bernard CHAN, a Member of this Council and of the Executive Council wrote in an article in the *South China Morning Post*, the law is not everything: It is the commitment which counts. A patently bad law without the saving grace of commitment should not be supported by this Council.

The sad fact is, the better one knows the Bill, the more difficult it is to support it. The only reason I and my fellow members of the Civic Party will vote in favour of the Second Reading of the Bill is to give our CSAs a chance, to mark by their proposal what the minimum requirement should be. If even these CSAs are defeated, we shall be left with so unconscionable a Bill that we must do our best to oppose.

Deputy President, I so submit.

DR YEUNG SUM (in Cantonese): Deputy President, legislating against racial discrimination has been the aspiration of the Democratic Party and the community for years. Over the past decade or so, every time the Government submitted its report to the United Nations (UN), we would draw to the attention of different human rights treaty monitoring bodies of the UN that the Hong Kong Government had not introduced any legislation against racial discrimination; and these treaty monitoring bodies also repeatedly called on Hong Kong to legislate

against racial discrimination in their concluding observations. It was not until 2006 when Albert HO of the Democratic Party and organizations such as the Hong Kong Human Rights Monitor expressed their views at the UN meeting in the context of the UN Human Rights Committee's consideration of the implementation of the International Covenant on Civil and Political Rights (ICCPR) in Hong Kong that the Government was made to undertake to introduce this Bill to this Council on that occasion.

Unfortunately, what the Government has ultimately introduced is an extremely conservative Bill, the contents of which are very disappointing. On 1 July this year, many ethnic minorities even took to the street to express their dissatisfaction with this Bill. The contents of the Bill cast doubt on how much such legislation can help improve racial discrimination, and the legalization of discriminatory acts effected by the numerous exemptions has even caused some ethnic minorities to request recently that this Council vote against the entire Bill at its third reading to avoid causing far-reaching adverse impact.

Regarding the original Bill introduced by the Government, there are fundamental and substantial divergences between the Bills Committee and the Government on a few areas, and the discussion process between the Bills Committee and the Bureau can be described as "a tedious drag". The original Bill introduced by the Government is plagued with discrimination, and in response to the criticisms and views expressed by the Bills Committee and civic groups, the Government just repeated the same points like a recorder, without making any concession to the recommendations proposed by members of the Bills Committee.

With such a lack of intention to listen and discuss on the Government's part, these civilian groups could only lobby the UN Committee on the Elimination of Racial Discrimination, which in the end resulted in an unusual expression of concern from the UN about the Bill. The UN pointed out that the Bill was not in line with the requirements under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and requested the Hong Kong Special Administrative Region (SAR) Government to make amendments to it. Regrettably, the Government simply ignored most of the views expressed by the UN.

What the Bills Committee finds most offensive in the Bill is the provision which exempts the Government from regulation. Clause 3 of the original Bill introduced by the Government provides that the Government's act will only be subject to the regulation of this legislation when it is "of a kind similar to an act done by a private person". I am afraid no similar drafting exists in the entire law of Hong Kong. What constitutes a government act "of a kind similar to an act done by a private person"? Why should exemption be provided to acts which can only be performed by the Government?

After repeated wrestling and debates, the Government has finally decided to introduce a Committee Stage Amendment (CSA) to amend the provision as: "This Ordinance binds the Government". Deputy President, this CSA is already the greatest concession made by the Government throughout the scrutiny process. Under this CSA, only discriminatory acts done by the Government in a few areas such as employment, education, goods, facilities, services, premises and the election and appointment of public bodies will be subject to regulation. Actually, the above acts fall within the scope of the Bill. However, in hearings inviting organizations to express their views, many ethnic minorities expressed concern about discrimination and insults relating to the law enforcement by the police and immigration control. In my day-to-day contact with ethnic minorities, I have also heard of cases in which they suffered discrimination and unfair treatment because of language barrier — besides, many people of South Asian origin, being relatively timid and stoical, would usually keep the suffering to themselves. It is vital to protect them from discrimination in these areas, which, however, would be excluded from the Bill.

According to this CSA proposed by the Government, in areas such as law enforcement and correctional services which would not be covered under the Bill, Government officials will not be subject to regulation even if they perform blatant discriminatory acts. As such, this will send a very negative message to the community that blatant racial discrimination in these areas is allowed under this legislation.

The Government has all along defended that racial discrimination by the Government is subject to the regulation of the Basic Law and the Hong Kong Bill of Rights Ordinance (HKBORO). However, the exemptions and defence under the HKBORO and the Racial Discrimination Ordinance, which are bills on different aspects, are totally different. The main object of the HKBORO is to regulate policies and ordinances instead of the performance of public duties by

individual officers, and claim for compensation must not be the subject of litigation. It is only when the Government is proved to have breached the law and caused damages to the victim that application for financial compensation will be allowed. The Racial Discrimination Ordinance may apply to individuals and claim for compensation may also be the dominant purpose of litigation. Besides, as the HKBORO requires court trials, most members of the public may not be able to afford the exorbitant litigation costs, while under the Racial Discrimination Ordinance, the public may lodge complaints with the Equal Opportunities Commission (EOC), which will carry out mediation and follow-up actions. The Government's argument does not hold water indeed.

Actually, all the three pieces of legislation on equal opportunities, including the Sex Discrimination Ordinance, expressly state that the scope of the relevant ordinance covers all Government functions and powers. This Bill narrows the scope it covers and it is a regression, which is very unacceptable and has caused much dissatisfaction. The Democratic Party welcomes the amendment in this respect proposed by Chairman of the Bills Committee, Ms Margaret NG, on behalf of the Bills Committee to extend the scope of the Bill to cover the performance of functions and exercise of powers of the Government.

The entire Bill is full of exemptions of various kinds, and I am afraid the party which is granted the most exemptions is the Government itself. There are exemptions in law enforcement and also various exemptions in the provision of services, including education and medical treatment. The Government has, in relation to the meaning of racial discrimination, stated in clause 4 that it would suffice to establish the defence of justification for discrimination if the rational and proportionate requirement is satisfied, and on top of this, exemptions are also provided. Regarding education, it is clearly stated that educational institutions do not have any obligation to make special arrangement for students of a certain race regarding the medium of instruction; in clause 58, it is further stated that the use, or failure to use, of any languages in areas such as education and the provision of services would not constitute racial discrimination. Deputy President, with these two additional exemptions, even if a school has many ethnic minority students, and even if a hospital has many ethnic minority patients, their insistence, without reasonable excuse, on using only Chinese, which is a language that the students and patients do not know, to provide education or medial services will not constitute racial discrimination.

All along, language barrier has precisely been the major hindrance and the cause of inequality for ethnic minorities. At the hearings and in our contact with the public, many concern groups reflected to us that some ethnic minorities took wrong medications because they were unable to tell the doctors about their conditions and get clear information about their medications when in hospital. Some epilepsy patients were only prescribed pain killers, while some women who were unable to tell their doctors about the early stage of pregnancy took antibiotics which would have harmful effect on the fetus. The provision of interpreting services by the public medical system is the prime concern of many ethnic minorities because life is priceless and it is a matter of life and death. Yet, this will be exempted under the legislation.

To see their children stand out among their fellows and pursue their studies as other young people do is the hope of a lifetime for many ethnic minorities. However, their children are not accorded with equal opportunities for development in Hong Kong. When we pressed for information on the education of children and youth of ethnic minorities, whether at meetings of the Bills Committee or the Legislative Council Panel on Education, the Government has kept saying that data was not available. It was not until 2007-2008 that a longitudinal study was conducted, and the findings revealed that among students of ethnic minorities, only 23 of them were admitted to Secondary Six and Seven, five of them were admitted to programmes in post-secondary institutions, while four of them were unable to meet the minimum admission requirements because of their Chinese Language results. This shows that ethnic minority youth are not accorded with equal opportunities for promotion and education in Hong Kong, and the greatest barrier is that Chinese is not their mother tongue. As it is very difficult for them to get a pass in Chinese Language, they cannot meet the minimum admission requirements. Although we were unable to make the Government implement affirmative action policies for ethnic minority youth in the Bills Committee, the Government has, in response to the pressure exerted by the Bills Committee, made some improvement after discussing with tertiary educational institutions. Starting from this year onwards, GCE and GCSE may also be considered as acceptable qualifications for admission to undergraduate programmes. We were told during our interview with some teachers of ethnic minority students that ever since the introduction of GCSE as an acceptable admission qualification, their students have been making additional efforts in studying Chinese because they will have an opportunity to study in university.

Regarding affirmative action options, Deputy President, in order to eliminate racial discrimination in its real sense and allow ethnic minorities to receive equal opportunities for development, a more effective option is to establish affirmative action plans. The EOC has put forward for us a very constructive proposal of implementing the mainstreaming of racial discrimination by way of legislation. Unfortunately, the Government has not taken on board this proposal and only agreed to introduce administrative guidelines. In the relevant paper provided by the Government to the Bills Committee, many areas remained very ambiguous. For example, when the Bills Committee requested the setting up of a mechanism responsible for co-ordinating the compiling and implementation of the administrative guidelines, or even called on the Government to introduce legislation if the implementation of the administrative guidelines failed to achieve satisfactory results, the Government disagreed. The Government turned down our request with the response that it would "consider them on a need basis", which revealed its lack of sincerity.

Regarding the promotion of mainstreaming by way of administrative guidelines, the Association for the Advancement of Feminism pointed out with reference to the experience in gender mainstreaming that as the programme was not stipulated in the legislation, slow progress has been made by the Women's Commission in promoting gender equality in various government departments over the years. If the racial equality programme is not stipulated in the legislation, it will only turn out to be a replica of the unsuccessful saga of gender mainstreaming. We are greatly disappointed with the Government's refusal to implement the affirmative action option by way of legislation. The Democratic Party supports the relevant CSAs moved by Ms Margaret NG on behalf of the Bills Committee.

New arrivals will not receive any protection. Another area of the Bill which has aroused widespread dissatisfaction is the exclusion of new arrivals from the Mainland from the scope of protection under the Bill. In its consultation paper published in 1997, the Government pointed out that discrimination against new arrivals from the Mainland might be regarded as racial discrimination — this was stated in the Government's paper — and court cases could also lead to the same conclusion. Just now, Ms Margaret NG has already pointed out that according to a letter from the Bar Association, the Privy Council considered, with reference to a case in September last year, that

nationality and citizenship may be regarded as within the definition of "race and origin".

Taking reference from the ICERD, the Bill defines "race" as "race, colour, descent, or national or ethnic origin", excluding nationality and status such as length of residence. The Government said that this definition is in line with the ICERD and is widely adopted internationally. Deputy President, this is misleading. Although modelling on the definition under the ICERD is a conservative approach to take, the Court may still rule whether new arrivals fall within the definition of "race". However, the Government has even included an additional exemption in the Bill and expressly stated in clause 8(2) and (3) that discrimination on the ground of permanent residency and length of residence is not to be regarded as racial discrimination. This exemption provides a tighter definition of "race" and renders the scope of protection under the Bill far narrower than that of the ICERD, and new arrivals from the Mainland are thus excluded from the scope of protection under the Bill. The CSA moved by the Bills Committee seeks to delete the exemption under clause 8(2) and (3), and the Democratic Party supports this CSA moved by Ms Margaret NG on behalf of the Bills Committee.

Deputy President, regarding new arrivals from the Mainland, I hope the Secretary can hear that, and probably he has also received the letter from the Bar Association and learned about the view of the Privy Council. When citizenship should fall within the scope of "race", and if the Bill is passed, I believe many new arrivals will seek judicial review at the Court. If the Government does not make any amendment in this respect, it should be prepared to bear the consequences.

Deputy President, on behalf of the Democratic Party, I support the CSAs moved by Ms Margaret NG on the Bills Committee's behalf. With these remarks, I support the resumption of Second Reading of the Bill.

MRS ANSON CHAN: Deputy President, as a late comer to the Bills Committee on the Race Discrimination Bill, I have not sat through all 34 meetings that the Committee has held since the introduction of the Bill into the Legislative Council on 13 December 2006. Even so, dealing with the Administration on this Bill these past eight months has been quite an eye-opener. Despite repeated urgings on the part of members of the Bills Committee, we are left with a Bill that is

fundamentally flawed, notwithstanding the Committee Stage amendments that the Administration will move. It will not meet our obligations under the United Nations Convention on the Elimination of Racial Discrimination and it will certainly not provide the services and protection against discrimination that the ethnic minorities in our community have every right to expect. This is, as the Honourable Margaret NG has pointed out, a sad day for Hong Kong.

Our government officials are fond of describing Hong Kong as "Asia's World City". But the true mark of any world city lies in the way that it treats its vulnerable groups. Ethnic minorities over the decades have made a significant contribution to the social and economic well-being of Hong Kong. But for too long, they have been neglected and denied access to the educational, medical, employment and training facilities that the bulk of the population enjoy. They and Members of this Council had high expectations of the Race Discrimination Bill but sadly these expectations have not been met. The Bill as it stands shows a woeful lack of commitment and leadership in coming to grips with a social problem that no civilized society should tolerate. This cannot be a good example of "strong executive-led Government".

To deal effectively with racial discrimination, it is essential for the Government to lead from the top in seeking a culture change within the Administration and to be prepared to commit the necessary resources to improving existing services, particularly in the key areas of education, medical and health services, job training and job placements. Our public coffer is overflowing, so lack of resources cannot be an excuse. Unfortunately, we have seen very little of a real sense of commitment in our discussions with the Administration. On the contrary, the Administration seems intent on limiting the scope of the Bill to avoid in their words "unnecessary litigation" and to get away with doing as little as possible. Indeed, far from protecting ethnic minorities from discrimination, the Bill will legitimize certain discriminatory acts on the part of Government that fall outside prescribed areas.

The Honourable Margaret NG has already commented on our deliberations and on the major defects in the Bill. She will later move Committee Stage amendments to redress these defects. These amendments are essential to ensure that ethnic minorities will obtain the basic services that are required for a decent standard of living, that they and their children will be properly educated, cared for when they are sick, assisted in job placements and

generally go about their business in the community without harassment. In short, to be treated on the same footing as the rest of the population.

I wish to draw attention specifically to the following deficiencies in the Bill:

- (a) The Bill does not bind the Government in the same way as the existing three anti-discrimination ordinances in force in Hong Kong. The broad exemptions granted in the Bill send quite the wrong message to the public service providers and to the community as a whole that certain types of racial discrimination are endorsed or at the very least tolerated and different standards apply to public authorities and to private bodies. In short, by limiting its applicability to government services, the Bill fails to provide an effective remedy to eliminating all forms of racial discrimination. This is not responsible behaviour.
- (b) The Bill fails to remove the language barrier. By stipulating that the use, or failure to use, any language is not racial discrimination, ethnic minorities will continue to be denied services because they do not understand Chinese. Since English and Chinese are both official languages in Hong Kong, it is difficult to understand the Government's refusal to undertake to communicate with its citizens in a language that they can understand, at the very least in English. This poses particular difficulties for ethnic minorities in gaining access to vocational training and in obtaining appropriate and necessary medical treatment.
- (c) The Bill does not impose a general statutory duty on the Government to draw up "race equality schemes" in the bureaux and departments that are most directly involved in providing public services, as an indication of the Government's resolve to eliminate all forms of racial discrimination. Nor has it undertaken to commit the necessary resources. Instead the Government has counter-proposed administrative guidelines. We would have been prepared to consider such guidelines but quite frankly, the proposed guidelines that we have seen so far are not worth the paper that they

are written on. Nor will they be taken seriously by the bureaux and departments involved.

As I have pointed out, eradicating effectively all forms of racial discrimination takes strong leadership and commitment on the part of Government. I urge the Chief Executive and the Chief Secretary to provide that leadership by driving the programme from the top. As we have seen in many other areas, it is necessary to ensure that all departments act in concert and pull in the same direction to achieve the objective of eliminating racial discrimination. To provide the necessary oversight, the Bills Committee has proposed that the Chief Secretary for Administration will chair a co-ordinating committee. I hope that the Chief Secretary for Administration will consider seriously this proposal.

A great deal of work has gone into the scrutiny of the Race Discrimination Bill. I join the Chairman of the Bills Committee in thanking the minority groups and their supporters for their patience and quiet tenacity in pressing their case. I also wish to pay particular tribute to the Honourable Margaret NG, for her able chairmanship of the Bills Committee over the past 19 months. She has been as usual painstaking and incisive, guiding the Committee to seek fair and practical solutions to a long-standing problem. The amendments that she will move will enable us to vote in favour of the Bill with a clear conscience and I look forward to the Administration's response.

Thank you, Deputy President.

MR RONNY TONG (in Cantonese): Outside this Chamber, a reporter of a television channel asked me whether any of my contribution over these four years has made me particularly glad. Deputy President, I told him that regrettably, none has.

Deputy President, the fact that nothing has made me particularly glad or I have not made any special contribution does not mean that I am ashamed. I consider myself having done my utmost in this Council. On the contrary, as Ms Margaret NG said just now, it is the Government which should be ashamed.

Our Honourable colleagues have been unable to make any contribution despite their dedication and commitment in the work of this Council because of

the imbalance in our political system and because this Government neither agrees with nor respects the core values of Hong Kong people and the core values and standards of the international community. Deputy President, our discussion today is on the prevention of racial discrimination, which is an internationally recognized standard as well as a commonly agreed core value.

Deputy President, I have looked up the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) which was passed in 1966, ratified and signed by the Hong Kong Special Administrative Region (SAR) Government. Deputy President, section 1(a), in particular, provides that "States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation."

Deputy President, section 1(c) further states that "Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists."

Deputy President, this Convention seeks to prevent and prohibit racial discrimination. This is the duty of not only the individual or individual organizations but also every government, which has even a greater duty than the individual or individual organizations in this regard. However, very regrettably, our SAR Government does not agree with this core value of the international community and the people of Hong Kong, and during the past 30-odd meetings, it has tried to dodge its duty, and has completely ignored and even turned a deaf ear to all the proposals which can effectively prevent racial discrimination. Like "squeezing toothpaste" out of a tube, it only agreed with one provision in the end and said that this provision would only apply to the Government.

However, Deputy President, this is not the only problem because, as can be seen from this provision, this is not a piece of legislation which can prevent racial discrimination on all fronts. There are many areas to which this piece of

legislation does not apply, and there are many areas in which exemptions with plenty of grey areas are provided. Under this piece of legislation, the Government is unwilling to undertake the duty of taking the lead to eliminate racial discrimination on all fronts, which is indeed very regrettable. Therefore, Ms Margaret NG has moved the various amendments on behalf of the relevant Bills Committee of this Council. We can examine these amendments in detail later, and I will also speak further on them to express our views.

However, Deputy President, here I have to point out that the adoption of such an attitude by any government only reflects its disrespect for such an important basic human right and core value in question. That being the case, I do not see why this Council has to conform to the wish of the Government and pass such a shameful piece of legislation. Here, I hope the representatives of the SAR Government will carefully ponder the arguments of Honourable Members and change their mind and support our amendments during the scrutiny of the proposed amendments.

Deputy President, besides ignoring the core value standard set by the international community, the SAR Government has even taken the lead to discriminate against people with different racial background in some areas. Deputy President, what I refer to is of course the most disheartening aspect of this Bill. The Bill contains an express provision, that is, clause 8, as I have pointed out, which excludes all new arrivals from this legislation. In other words, our society and this SAR Government can take the lead to discriminate against our mainland compatriots who are also Chinese and descendants of the same common ancestors. I find this totally unacceptable. However, the SAR Government has raised various specious legal viewpoints and deliberately confounded right and wrong. This is absolutely wrong and very misleading.

Deputy President, a very simple argument is that Article 39 of the Basic Law stipulates that the provisions of the International Covenant on Civil and Political Rights (ICCPR) apply to Hong Kong and shall be implemented through the laws of the Hong Kong Special Administrative Region. Deputy President, Article 2 of the ICCPR clearly states that "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other

status.". Deputy President, new arrivals may be different from local Hong Kong residents because of their birth, social background or the result of different historical development, but discriminating against them on such ground is a blatant breach of Article 2 of the ICCPR, which I have mentioned just now. For the same reason, such discrimination has also breached Article 26 of the ICCPR with exactly the same provision.

The Government has advanced mere sophistry and distorted the truth by saying that these Chinese people are not people of other races. Deputy President, the international covenants and the judicial cases arising from these covenants we have mentioned never judged whether people were of a different race solely on the basis of their racial background. Rather, as I have mentioned just now, these people are categorized as people of a different race according to the different kinds of background stated in great detail in the provisions of the covenants, and therefore should be accorded with equal treatment instead of being discriminated in any way.

Deputy President, Ms Margaret NG has cited one of the court cases just now. As far as I know, there was a similar case in the Privy Council, and it has been made very clear that people of the same race and colour, despite their coming from a different background, culture, historical background or place of birth, shall be accorded with equal treatment and shall not be discriminated in any way. The Government has not only failed to provide any help in this respect but has even included special requirements in the provisions to exclude these people from the scope of the provisions. In other words, it has legitimized the discriminatory acts against these people. To pass this Bill is tantamount to helping a tyrant perpetuate evil. I think we must not accept the Government's stance.

Deputy President, what is even more infuriating is that when this provision is extended, discriminatory acts by law enforcement, correctional services and immigration control agents would not be subject to the provisions of this Bill, yet these areas are precisely those which have aroused the greatest concern among ethnic minorities and which badly warrant improvement. For example, a survey conducted by an organization pointed out that about 36% of the new arrivals interviewed indicated that they had suffered discrimination when seeking help from the Government; besides, many ethnic minority groups said that they had experienced various forms of discrimination when reporting to the police at the police station or applying for legal aid.

Ethnic minorities are, as a matter of fact, disadvantaged groups in Hong Kong, and thus especially require the support and assistance given by government services. However, since the provision of these services cannot be regarded as equivalent to an act done by a private person, it is not subject to the regulation of the legislation, the helplessness currently faced by ethnic minorities in using government services will not be mitigated at all, hence the entire Racial Discrimination Bill will arguably be disabled and become an empty shell.

During the scrutiny of the Bill by the Bills Committee, Deputy President, I heard of some specious excuses confusing right and wrong made by some government official. That government official said that the Hong Kong Bill of Rights Ordinance and the Basic Law were already put in place to regulate the acts by the Government in racial discrimination, and members of the public could obtain such protection by way of judicial review. He also pointed out that this Racial Discrimination Ordinance only seeks to address the inadequacies of the Hong Kong Bill of Rights Ordinance and the Basic Law and aims at regulating acts done by private persons.

Deputy President, first of all, we have to clarify that if the Government really respects these international covenants, why does it not expressly state that it will fully comply with this piece of legislation in question? Besides, I think it must be pointed out that judicial review is not a solution to the problem of providing comprehensive and effective protection to ethnic minorities or preventing acts of racial discrimination.

Judicial review in itself is subject to many limitations, one of the greatest of which is of course that not all members of the public will consider lightly the question of bringing the Government to Court because exorbitant costs will be involved and they may lose the case, and the Government may even require the appellant to pay the Government's legal cost. Most importantly, judicial review is in itself a procedure, and as the name implies, it is to review if any deviation is involved in the Government's administrative procedures. It rarely makes a qualitative judgment on the Government, pointing out whether or not its ethical conduct is acceptable to society. As such, these judicial review procedures are inadequate to protect the ethnic minorities in Hong Kong from the various difficulties.

Deputy President, what the society of Hong Kong needs is a government which takes the lead to respect ethnic minorities in, *inter alia*, policy

formulation and enforcement, and includes racial equality as one of the important factors in its policy assessment and consideration; and at the same time a government which acts proactively to enable ethnic minorities to equally enjoy various information and services it provides. This is the crux of the proactive duty mentioned in Ms Margaret NG's amendments.

Deputy President, I hope Honourable colleagues will support the various amendments moved by Ms Margaret NG.

MR CHEUNG MAN-KWONG (in Cantonese): Deputy President, Hong Kong has an international duty and obligation to legislate against racial discrimination. Nevertheless, the Hong Kong Special Administrative Region (SAR) Government has spent over a decade on consultations, studies, drafting, scrutiny, discussion and revisions before the Second and the Third Readings of this long-awaited Racial Discrimination Bill (the Bill) can finally be resumed today amid debates and arguments. Can this Bill which has taken a decade for inception achieve the effect of prohibiting any form of discrimination and giving a guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status?

Let us listen carefully to the voices and views of the society with our eyes and our ears, and with a heart of sincerity and tolerance: At the march on 1 July this year, a record of a few thousand ethnic minorities took to the street to protest against the Government's taking the lead to exercise discrimination and express their dissatisfaction and disappointment with this Bill. At a forum, Manohar CHUGH, an Indian general committee member of the Hong Kong General Chamber of Commerce, said to this effect that "instead of introducing this legislation from its heart, the Government just did so reluctantly at gunpoint".

All along, ethnic minorities have been holding strong aspirations for this Council to pass this piece of legislation expeditiously to protect their basic rights and dignity. After scrutinizing this Bill for a year and a half and holding 34 meetings, including two hearings, Members and organizations painstakingly and repeatedly requested the Government both inside and outside this Council to plug the loopholes, urged the Government with well-intended exhortations to face squarely the four major core issues of the Bill and requested the authorities to:

bind the Government's behaviour in exercising its powers by way of legislation, amend the definition of indirect discrimination to avoid providing for an excessively narrow scope, regulate existing discrimination against new arrivals and change the situation in which ethnic minorities suffer indirect discrimination on the basis of language. However, like a cold iron plate, the Government turned a deaf ear to these requests and ignored the difficulties and long-standing discrimination suffered by ethnic minorities. Such stubbornness and heartlessness have left one feeling helpless and distressed. Therefore, I will support all the relevant amendments moved by Ms Margaret NG during the Committee Stage — Dr YEUNG Sum has clearly expressed the views of the Democratic Party — we also think that if the four major core issues of racial discrimination are not thoroughly addressed, or if the amendments proposed by the democratic camp are negated, the legislation to be enacted will be incomplete and will lead to endless social resistance and judicial reviews.

Racial discrimination has always been a dangerous spark which can start a prairie fire for reasons such as education, employment, religion or social origin, and thus should not be taken lightly. At present, indirect discrimination is the most common among the different forms of racial discrimination in Hong Kong. The learning difficulties of ethnic minority students, in particular the barriers to their pursuit of education, have always been my concern over the years of my service with this Council and even to date. Therefore, my focus is on eliminating racial discrimination both in history and in reality in the education system. Due to cultural divergence and differences, the local Chinese Language curriculum is excessively difficult for ethnic minority students whose result in Chinese Language is hardly comparable to that of local students. Very often, ethnic minority students lose their opportunity for university education just because they cannot obtain a pass in Chinese Language in the Hong Kong Advanced Level Examination (HKALE) after they have finished their secondary education. This is currently the most obvious indirect racial discrimination in education.

Taking reference from history, the history of racial discrimination in the United States (US) has also confirmed that to change the fate of the disadvantaged race groups, one has to start with education, employment and the law. A few decades ago, in order to change the fate of the black people, the US introduced the Affirmative Action so that education would tilt towards the disadvantaged ethnic minorities. For example, in order to practise racial

equality in its real sense, universities would allocate a certain proportion of their places to the black people to enable the elites among them to access the pinnacle of education and contribute to the well-being of their race groups after graduation. It was not until after an extended stretch of time when indirect and latent racial discrimination were rectified that the Affirmative Action faded out from the US history. However, the Bill introduced by the SAR Government, which expressly and directly refuses to take affirmative actions, is a very regrettable start. I had repeatedly requested the Government to reconsider the feasibility of legislating for affirmative actions to ensure reasonable access to university education for ethnic minority students. However, this request was turned down in the end.

After the Government had turned down the proposal on affirmative actions, I requested the Government to change its policy on public examinations for ethnic minorities in order to solve the problem whereby ethnic minority students were unable to enter local universities only because they could not obtain a pass in Chinese Language. According to the data provided by the Education Bureau, in 2007-2008, only six non-Chinese students successfully enrolled on local university programmes — only six of them — accounting for 0.04% of the 14 500 subvented first-year undergraduate places in universities. This figure is absolutely disproportionate and pitifully small, and is strong evidence of this indirect discrimination against ethnic minorities. When ethnic minority students are denied access to universities, and only a handful of them are admitted to Secondary Six after graduating from secondary school, how can they change the fate of their ethnic groups? How can they establish themselves among the professionals in society? How can they break the fetters of poverty for their ethnic groups through education? How can they truly integrate into the Hong Kong community and stop living in the lowest strata and under constant discrimination?

During the scrutiny of the Bill, I noticed that universities have put in place a flexible admission arrangement which exempts student returnees from meeting the Chinese Language requirement and recognizes Chinese Language qualifications obtained in examinations other than the Hong Kong Certificate of Education Examination (HKCEE) and the HKALE. Besides, students of international schools may also use the HKCEE result in another language in the place of the Chinese Language result. Only local ethnic minority students or the disadvantaged ethnic minority students who are not good at Chinese are required to obtain a pass in Chinese Language in the HKALE, which is

extremely difficult for them. This has greatly reduced their opportunities for university education and has in return given rise to a discriminatory phenomenon which is unfair and should not be allowed to continue in local universities. It has also become a burden for social mobility. Therefore, I strongly request the authorities to open up avenues for ethnic minority students to be admitted to universities with alternative qualifications in Chinese Language so as to allow knowledge to change the fate of the ethnic groups as a whole.

Some progress has ultimately been made after a lengthy discussion for one year. Institutions funded by the University Grants Committee (UGC) have agreed to offer flexibility in their admission process to increase the opportunities of ethnic minority students to study in the universities. Students who have learnt Chinese Language for less than six years while receiving primary or secondary education or have been taught an adapted and simpler Chinese curriculum may use alternative overseas Chinese Language qualifications such as GCSE, GCE and IGCSE to apply for admission to local universities. The relevant arrangement will be implemented in 2008 and students will be benefited right away. I have interviewed schools and consulted school principals and teachers on this change, and they considered this a progress which was hard to come by. However, it is yet to be cautiously seen whether this arrangement will really be implemented by universities and whether schools will honour their words in their Secondary Six admission procedure. I hope universities and the Education Bureau can change the path of history and make ethnic minorities' dream of education come true, so that Chinese Language will no longer be the greatest barrier to their pursuit of education.

To tie in with the Secondary Six admission schedule, the Government has also introduced transitional arrangements in the light of demand so that the last three years of Secondary Five students in 2007-2008, 2008-2009 and 2009-2010 can apply for admission to Secondary Six with these Chinese Language qualifications. The Education Bureau has requested secondary schools to, starting from the next school year, consider admitting ethnic minority students who have obtained grade D or above — just grade D — in Chinese Language in GCSE as long as their results of the other subjects meet the university entrance requirements. At present, over 80 public sector schools in the territory have already responded positively. However, we have to note that there are over 400 aided schools in Hong Kong. Anyhow, Chinese Language is no longer the deadlock of further education, and after fighting such a long battle, ethnic

minorities have ultimately opened up access to education for their next generation, which is a hard-earned breakthrough achieved during the scrutiny of the Racial Discrimination Bill. However, I hope this breakthrough is only the first step for ethnic minorities to free themselves from the yoke of discrimination in education, and I would also like to request the Government to extend this new policy to every school and every corner of the campuses in Hong Kong.

After addressing discrimination relating to the Chinese Language examination, I would like to further request the authorities to face squarely the problem of the lack of Chinese Language curriculum and textbooks and target teaching and resources for ethnic minorities so that the painful process of learning Chinese which induces a sense of inferiority will become a thing of the past. The Bills Committee urges the Government to improve the support for ethnic minority students. To date, there is still much room for improvement in the Supplementary Guide to the Chinese Language Curriculum for ethnic minorities. As can be observed during our school visits, Chinese Language textbooks compiled in accordance with this Supplementary Guide are only an experimental first step, and issues like the bridging over of the primary and secondary textbooks and how to tie in with the requirements of GCSE have yet to be resolved; an ideal mode for the integration of ethnic minority students into mainstream schools remains to be developed; the great discrepancy in the Chinese standard between ethnic minority students has also posed immense difficulties in teaching, which calls for the need to consolidate effective teaching methods; and ethnic minorities' pursuit of education and employment, which is still filled with twists and turns, is also a difficulty and a challenge to be overcome by society and the education sector as a whole. Starting from the next school year, the Education Bureau will provide an annual recurrent special grant of \$300,000, which will be increased according to the student intake, to 19 "designated schools" for ethnic minorities to facilitate their implementation of the school-based support measures. In two years' time, the number of "designated schools" will only be increased to 25 — please note that it is 25 schools among over 400 schools. Therefore, compared with the problem of discrimination in education built up both in history and in reality, we still have a long way to go in solving the prevailing problems in education. How much further do we have to go along this long and winding path and how many ethnic minority students have to be sacrificed before real equality in education without racial distinctions can be achieved? This is also a question left by this Bill and warrants an answer from society.

In the past, too many ethnic minorities have been sacrificed in the education system of Hong Kong. Today, the Education Bureau and the Government are duty-bound to expeditiously rectify and dress this wound in history. Previous discrimination should be condemned, and the Government must not allow such shameful discrimination to extend to the next generation of ethnic minorities, and the compensation in and the right to education is the vital starting point and hope. Only an impartial law can help ethnic minority students on various fronts, enable them to change their fate with knowledge and competence, open up a diversified career path for them, break the vicious circle of discrimination and poverty and achieve racial equality and harmony in their true sense.

Deputy President, with these remarks, I support the Second Reading of the Bill.

MS EMILY LAU (in Cantonese): Deputy President, although Hong Kong always brags itself as Asia's world city, we have to deal with the long-anticipated Race Discrimination Bill (the Bill) today amid controversies. I believe this is not only the failure of the SAR Government but it is also undesirable to the whole society.

Deputy President, many Honourable colleagues have just referred to three international covenants applicable to Hong Kong, that is, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Hong Kong is obliged to eliminate racial discrimination under these covenants.

Many people and I have attended the hearings of the United Nations committees on these covenants for many years. On each occasion, these committees asked — you may say they rebuked or urged — the then colonial government and the subsequent SAR Government to implement the covenants as soon as possible. A few years ago, LAW Yuk-kai who is now in the public gallery also attended the hearings with us. The United Nations Committee on Economic, Social and Cultural Rights even pointed out in its concluding observations on the hearing — I cannot remember who also attended as a representative of the Democratic Party besides Albert HO — that the covenants

had been violated as there was not any law in Hong Kong to prohibit racial discrimination. That was the strongest criticism made so far.

This caused tumults for many years; Deputy President, I have to praise the Legislative Council Secretariat for producing a very good report. The report reminded us that, in February 1997, the Government published a consultation paper entitled "Equal Opportunities: A Study on Discrimination on the Ground of Race". It is really outrageous that the colonial government had not done anything throughout the years. Whenever we talked about racial discrimination back then, we were stabbing at where it hurt most. Therefore, the colonial government took action in February 1997 when it was about to leave, but as its actions were not exhaustive enough, and there was endless procrastination too. So, the years 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, and 2006 passed by, and the Bill is only introduced in 2008.

Deputy President, it was stated in the report prepared by the Secretariat that, according to paragraph 1.7 of the consultation paper, the reason for the Administration's inclusion of new arrivals from the Mainland in its study was that "international bodies concerned with race-related issues consider that 'racial discrimination' includes discrimination against identifiable minorities within a particular culture, even those of the same ethnic stock as the host community". The report also cited the United Nations Committee's comments on the elimination of racial discrimination. The United Nations Committee noted the case of the so-called Irish travellers. According to the Committee, although they were ethnically Irish people and spoke with an Irish accent, their distinct lifestyle set them apart as a discrete minority and as such, the Committee would handle their cases. All of us know that.

The SAR Government would also handle such cases because it has caught the ball whether it is willing or not. Nevertheless, it has expressed that this group of people should not be included in the scope of racial discrimination as they are of the same ethnic stock as other Hong Kong people. Thus, it brushed that to one side. As this has aroused so much controversy. I am not sure if we have to debate until 10 pm this evening, and continue with our debate at 9 am tomorrow until 10 pm tomorrow evening. Better wish us good luck; we are mentally prepared to have meetings on Saturday, Sunday, next Monday and next Tuesday.

Deputy President, as several Honourable Members have said, I have to thank Miss Margaret NG, the Secretariat and many organizations for presenting their views. Miss NG and some organizations went to the United Nations in March, and on 7 March, the High Commissioner for Human Rights of the United Nations wrote to the Chinese ambassador to the United Nations Office in Geneva expressing his views on the Bill. What were his main points of view, Deputy President? According to the United Nations, the scope of application of the Bill was too narrow; it had not covered immigration services and detention facilities, and it had not even covered language discrimination and new arrivals to Hong Kong. The remarks were made on 7 March, Deputy President, but it is 9 July today. If we pass the Bill, but it does not include all those matters mentioned by the United Nations If I support the passage of the Bill, as "Long Hair" has said, "Buddy, how can I express any views in the United Nations in the future?" If I support the passage of the Bill while the United Nations has explicitly stated that it is impossible for the above areas to be excluded If I support the passage of the Bill; when I attend a meeting in the United Nations in the future, I would be asked why I voted in support of the Bill. Don't tell me that I am split-minded.

Given that the United Nations made this very clear long ago, why is the SAR Government still doing so? The SAR Government has actually taken no notice of the United Nations. Similarly, on the issue of universal suffrage, I once asked the Government about the United Nations' comment, that is, it failed to comply with the relevant provisions of the covenants about universal suffrage. However, the Government said that it was most important to respond to the aspirations of Hong Kong people, and there were exemption clauses. There cannot be any exemption clause on racial discrimination! It is futile to talk about exemption because it is inconsistent with the provisions of the covenants after all. They are actually doing what they like. I do not know why the Government still calls itself a "world city".

Deputy President, I am a member of Amnesty International. Today, when I am about to enter this Building, some ethnic minorities handed me a document. They also welcome the enactment of legislation; what else have they said? They said that Amnesty International opposed the passage of the Bill introduced by the Government because its provisions failed to reflect the standards of the international covenants or safeguard any person from racial discrimination. Therefore, they think that this Bill should not be passed.

What have they suggested? In fact, their suggestions have been conveyed by many Honourable colleagues. The first suggestion is that new arrivals to Hong Kong should be included. They think that it is a mistake not to include these people. They have also suggested revising the scope of coverage to include people from the Chinese territories outside the Hong Kong SAR. Besides, Amnesty International also raised objection to the fact that the Bill does not regulate immigration matters. In particular, it has another concern. We are also very concerned about the issue and the United Nations has expressed its views on that many times. Deputy President, I am referring to foreign domestic helpers. In their view, as foreign domestic helpers should leave Hong Kong within 14 days after contract expiry, they do not have time to institute prosecutions and perform other essential tasks. It regards this as discrimination, and foreign domestic workers cannot get any compensation. This is another reason why it raised their objections.

The third suggestion is related to the scope of application of exemptions, and the thrust is on employment. The ordinance provides for an exception for small employers with not more than six employees during the first three years after the enactment of the Bill. According to Amnesty International, a three-year exemption is unreasonable and unacceptable because small companies and small employers must comply with three other anti-discrimination ordinances covering disability, sex and family status discrimination. Since it has enough experience, Amnesty International finds it unnecessary to grant exemption, and it again calls upon the SAR Government to fulfil its responsibilities, demonstrate its determination, and not to give too much exemption.

Deputy President, lastly, I would like to read out a letter from an ethnic minority child addressed not to the President or me but to "Grandpa WEN" — Premier WEN Jiabao.

"Grandpa WEN, I am KAN Tin-mun, a Pakistani born in Hong Kong; I have six brothers and sisters. I am 13 years old this year and I am in Primary Six; I will be a Secondary One student after the summer holidays. My elder brother works very hard to support our family; I would also like to do the same and help my family soon. Therefore, I have been studying hard all along, and I hope that I would get a good job when I grow up. I do well in all subjects but I am poor in Chinese.

I know that, to find a job in Hong Kong, I must be good in Chinese; though I have tried my best, I cannot pass the Chinese tests. My lowest mark is zero, and I sometimes have eight marks, sometimes 35 marks and my highest mark is 59. Although my teacher told me that I am the best in Chinese among all South Asian students, I feel sad when I get my reports. Now that I have such marks even after so much hard work, I will not be admitted by a good school and I will be teased by the others throughout my life for being a bad student of a band 3 school.

Except my elder sister, all members of my family do not have a chance to learn Chinese, and it is very hard for them to find a good job. Many South Asians are unemployed and very poor. Job hunting is a tough task for us. I do not want to be like them. I often heard the adults say that people in Hong Kong should be self-reliant, and we should not be lazy bones. I do not want to be a lazy bone, but, what can I do?

Without a suitable Chinese course and suitable Chinese textbooks for my level, and when Chinese characters look like pictures to me, it is really too hard even though I really want to learn the language well. My elder sister and I, the Nepalese, Indians and Filipinos have all been studying hard but still we fail to catch up.

I hope the Chief Executive, Mr Donald TSANG, can solve this problem but I know that the "Race Bill" on racial discrimination to be passed will not help us. My elder brother said that it is all right for the Hong Kong Government to discriminate against us; nonetheless, we cannot do anything when my mother is frequently scolded and laughed at by the doctors when she consulted them because she speaks neither Chinese nor English, and she does not have an interpreter.

I heard from the others that this is racial discrimination. Although I do not quite understand it, I think it is not something good for us. We think that the Government does not care or bother about us. We hope that the Government would implement a scheme that could really help us learn Chinese well and there would be a race equality scheme. I hope the Chief Executive can help us.

Our teachers have taught us about "one country, two systems", which means that Hong Kong enjoys a high degree of freedom and China will not

intervene. Yet, I still hope that Grandpa WEN would care about our situation and remind the Chief Executive that, apart from a large number of Chinese people, there are many non-Chinese people living in Hong Kong. Grandpa WEN, I have a dream. I dream that I would become a social worker when I grow up and I would be able to help the needy and contribute to our society. I hope Grandpa WEN would write back soon.

KAN Tin-mun, 4 July 2008."

Deputy President, if the Bill is passed as it is, the wish of this student, this child, can never be realized at all. As Mr CHEUNG Man-kwong has just said, the university admission rate of ethnic minorities is less than 0.1%. All of us feel ashamed on hearing that. Hong Kong is a Chinese society and we have the ability and resources, and the Government should also have the determination to help these people. Yet, I fail to see any determination in the Bill. We have only seen the United Nations' condemnation and the despair of the ethnic minorities. Many Hong Kong people doubt if there is anything wrong.

Hence, Deputy President, I fully support Ms Margaret NG's amendments. However, I was not born yesterday. I know that, unless there is a miracle, the amendments made by Ms Margaret NG on behalf of the Bills Committee would meet with disaster. Then, we will certainly oppose this junk Bill. Yet, I am going to tell the international community, the ethnic minorities and our society that we will never stop fighting for a legislation that can really eliminate discrimination.

MR JEFFREY LAM (in Cantonese): Deputy President, as the Chinese proverb goes, "Have a generous heart and a generous mind", there is a need for mutual tolerance, understanding and respect among people of different races, skin colours, nationalities or ethnic groups at home or abroad, regardless of whether they are firmly rooted in Hong Kong or have just arrived, or are just travelling in Hong Kong for tourism or business purposes. Also, the interests and well-being of the ethnic minorities should be our concern and we should promote racial harmony, and we should never tolerate any form of discrimination, harassment, vilification and harm.

After having an overview of the six major areas covered by the Bill, including employment, education, goods, facilities, services and premises, we find that there are some areas in which ethnic minorities are more likely to encounter unfair treatment. If the Government pinpoints these areas and puts them under regulation, and makes harassment and vilification on the ground of race unlawful, it obviously aims at strengthening the protection of the interests of ethnic minorities. Such spirit is worth commending.

However, in light of the fact that the Race Discrimination Bill has extensive impacts, I think people outside would inevitably be a bit worried. Upon the passage of the Bill, would the general public, the business sector and different organizations inadvertently violate the law because they are unfamiliar with the new provisions or because grey areas exist in the law, and would the ordinance be abused? These issues deserve the Administration's attention. If as some Honourable Members have suggested, the definition of indirect discrimination should be relaxed further, the situation will become even more chaotic. For instance, followers of Judaism who rigidly observe the Sabbath day may sue their employers for failing to arrange a day of rest for them on that day. Thus, after the commencement of the ordinance, I hope the Government would step up publicity and education, and enhance public awareness of the legislation.

In particular, small and medium enterprises (SMEs) with insufficient manpower often lack suitable legal support, so they would need a longer period to adapt and learn. Therefore, I think it is suitable for this Bill to provide for an exception for small employers with not more than six employees during the first three years after the enactment of the Bill. Furthermore, the Equal Opportunities Commission needs some time to draft a code of practice for compliance by the public, the business sector and organizations. Hence, it is very important to provide for an adequate adaptation period.

Furthermore, we should not forget that many SMEs have recently been facing various legislative changes, including the amendments concerning the mandatory provident fund and the Employment Ordinance. If the grace period is shortened, SMEs will be put under enormous pressure within a short period, and they will easily be blamed as a result of inadequate preparation.

Clause 17 makes it unlawful for partnerships consisting of not less than six partners to discriminate against persons seeking partnership or existing partners.

In my view, the partners of these SMEs are mostly relatives or close friends; if they get along well, they will become partners regardless of their races; if they do not get along well, they will not become good partners despite the existence of these provisions. After all, we cannot regulate by legislation that other people must be allowed to take part in a rather private business. If we do so, we will give people an impression that we intervene too much in the free economy and free business operation; this will even be used as a tool to get involved in private disputes. This should not be supported.

Of course, we agree a lot that we should not discriminate against a person on the ground of his nationality or race. Even in the case of our compatriots (such as new arrivals), we should not look down on them. But after all, we think that this matter should not be treated in the context of a law on racial discrimination. It is because new arrivals from the Mainland are ethnically the same as the Chinese people living in Hong Kong, and they should not be regarded as people from another ethnic group. In addition, the definition of "race" in this Bill is consistent with the International Convention on the Elimination of All Forms of Racial Discrimination. Although a recent case in the United Kingdom is related to new arrivals, we all know that new arrivals in the United Kingdom are in essence not the same as new arrivals in Hong Kong. The case of the United Kingdom is basically different from that of Hong Kong because an absolute majority of new arrivals in Hong Kong are ethnically the same. If we only take it literally and rigidly apply the practice adopted in the United Kingdom, I am afraid it would be very inappropriate.

Deputy President, I would like to express my worries. There are quite a number of multinational enterprises in Hong Kong, and many of them have recruited overseas staff. Basing on the qualifications of these overseas employees, their remuneration packages may be different from or even more preferential than those of local employees. Though the Bill seeks to provide a defence for employers in case they are challenged, such as possession of skills not readily available in Hong Kong and that has nothing to do with race, we are still worried if any employee would abuse the legislation and resort to making a judicial challenge against his employer. Hence, it is indeed essential for the Government to pay close attention to the implementation of the new legislation, especially to whether it will have unnecessary impacts on law-abiding employers who are just offering more preferential terms to attract overseas talents.

Lastly, Deputy President, I would like to restate that education is the most effective way to promote racial harmony or reduce discrimination against new arrivals. When people have been learning since childhood how to respect others' interests, culture and other differences, legislating will only be the second choice. Only legislating cannot fundamentally change people's deep-rooted prejudice, and mandatory legislation can hardly remove obstacles in terms of habits and customs, religion, language and culture. If regulation is excessively stringent, people may inadvertently violate the law at any time. It may be just the opposite of what we wish, and it may create more conflicts.

Deputy President, I so submit.

MR ANDREW LEUNG (in Cantonese): Deputy President, before making my remarks, I would like to declare that I am Chairman of the Hong Kong Vocational Training Council (VTC).

As an advanced international city, Hong Kong is indeed duty-bound to defend civil rights, promote social harmony and eliminate all forms of discrimination. I strongly support the policy spirit of the Race Discrimination Bill (the Bill). The elimination of racial discrimination has been repeatedly discussed in our society for more than 10 years. We can see that the Bill currently introduced to the Legislative Council for scrutiny has summed up the views of various parties and struck a balance among their needs. I support the passage of the Bill.

Hong Kong is a diversified society where Chinese people and foreigners are living together, and it is also the home of quite a number of ethnic minorities. I deeply believe that, to fully eliminate various forms of discrimination, we can not just rely on the enactment of legislation to provide deterrent effects. Instead, it would be more effective when we have suitable administrative policies and measures, and try our best to encourage ethnic minorities to integrate into society with a view to achieving social harmony. I would like to take the language of instruction of vocational education and training as an example to illustrate this point.

Deputy President, becoming professionals through education is the main way in which ethnic minorities in our society can climb up the social ladder.

Knowledge not only enables them to find a job, it can also help improve their quality of life and help them integrate into the local community. If the Government is to further enhance the social status of ethnic minorities, it would be most practical for it to encourage them to receive better education, and encourage educational institutions to make more efforts.

As Chairman of the VTC, I understand very well how the provision of vocational education and training services operates in practice. The courses offered by the VTC are open for enrollment by all eligible persons (irrespective of race). We will adopt suitable languages of instruction in light of the requirements of the relevant industries and work places, and the levels of the students. The VTC is concerned about the needs of ethnic minorities, and is devoted to offering special courses for them, including full-time certificate/diploma courses on commerce, hotel, tourism and catering which are suitable for Secondary Three and Secondary Five school leavers; applied learning courses on hotel operations for senior secondary students; preparatory courses for trade test for working adults on electrical work, welding and air-conditioning, as well as vocational development programmes for non-engaged youth on electronic and computer assembly, and western food production.

In the year 2006-2007, around 300 ethnic minorities took these courses. In the years 2007-2008 and 2008-2009, the VTC have further increased the quotas for these courses to 600, and flexibly adjusted the minimum number of trainees per class from 30 persons to 15 to 20 persons to offer suitable courses to ethnic minorities as far as possible. The VTC is now consulting the Standing Committee on Language Education and Research about the preparation of a series of vocational courses on Chinese communication for ethnic minorities. Besides, the VTC provides learning and employment support to ethnic minority trainees; it has spared no efforts in serving them.

The instructors of trade knowledge and skills should have suitable qualifications and trade experience, but most of them do not have a grasp of the national languages of the ethnic minorities, the main language of instruction of special courses for the ethnic minorities is English. If necessary, the VTC would consider making arrangements for interpretation services to be provided as far as possible.

Rigidly making a law to provide for the use of the national languages of the ethnic minorities as languages of instruction of the relevant vocational

training courses would be rather difficult, and it would even make the training institutions worry about the legal consequences, thereby undermining their willingness to provide services to the ethnic minorities. On the contrary, if the Government can promote such services policy-wise, and provide complementary resources to support training institutions with the intention to provide suitable services for the ethnic minorities, there would be more practical advantages for them.

Ms Margaret NG's amendment requests hospitals or clinics that have communications with ethnic minority patients to provide interpretation services in different languages; this will only waste a lot of resources, and medical institutions may have to deal with lots of legal proceedings. When a patient of a certain nationality, race or language family seeks medical consultation, an institution will have violated the law if it fails to provide suitable interpretation services. As a result, these institutions should have interpreters conversant in dozens of languages at all times. I am afraid there is hardly any place in the world that would do so.

Instead, if as a first step, the Government can adopt an administrative measure and provide simultaneous interpretation services covering four commonly used ethnic minority languages in four clusters, we think that it can accede to the requests of the ethnic minorities while also prevent them from making impractical requests. This would be a practical step to take.

Deputy President, I support the resumption of Second Reading debate on the Bill.

MR JAMES TIEN (in Cantonese): Deputy President, it is rare for three Members from the Liberal Party to deliver their speeches one after another; I believe other Honourable Members would like to listen to other Honourable colleagues' views before making their remarks.

Deputy President, Hong Kong is an international city and a harmonious society. So, the Liberal Party has always considered that efforts against racial discrimination should be supported. But, besides giving support, should a law be made? In the past, there were many anti-discrimination legislative proposals; since the Liberal Party represent many people in the business sector

(especially small and medium enterprises (SMEs)), we naturally have reservation about these legislative proposals for we do not think there is any problem when all things are running well. The Liberal Party's position is the same in respect of various forms of discrimination including those on grounds of age, sex, race and religious belief. Having said that, I certainly believe that we must keep abreast of the times and follow closely the world trend for this sort of legislation is very common in many countries in the world. Therefore, if the Race Discrimination Ordinance manages to improve the situation of the ethnic minorities who are discriminated against, we would definitely support it.

Nevertheless, our views may be different from those of some Honourable Members because we think that, though there are actually problems in such areas in Hong Kong, the situation is not as serious as that in foreign countries, and it cannot be compared to the racial discrimination problems in some African countries. It is because there are a lot more ethnic minorities in foreign countries; for example, there are a much larger number of blacks, Hispanics or Asians living in the United States while an absolute majority of Hong Kong people are Chinese. As I have noticed, most of those we have mentioned are people of South Asian descent; many of them have lived in Hong Kong for a very long time and some are even born in Hong Kong.

I absolutely agree with the remarks made by Mr CHEUNG Man-kwong and Ms Emily LAU that the Chinese language really poses a problem because it is really hard to learn Chinese well. My two-year-old grandson may have such an experience, (*Laughter*) I also think that it is very hard for me to learn the Chinese language as well. In actual social situations, it is really hard for us to ask them to learn Chinese well because learning Chinese is something that cannot easily be managed. In respect of the education and health care systems, we certainly encourage the Government to do a better job. Nevertheless, though resources are not limited, if we only have that much resources, I really think that we can hardly expect all hospitals to have interpreters. There are difficulties if we require doctors or interpreters to explain in detail medical terms and theories to patients because it would be a struggle as medical terminologies and medical terms for symptoms are very difficult. Of course, we would encourage the Government to try its best but if it makes a law specifying the work must be done for example, in respect of the operation of the Hospital Authority (HA), many Chinese people in Hong Kong need the services too, would the HA be under greater pressure which would thereby adversely affect its ordinary work?

Would doctors have to spend more time? We hope doctors would be able to do so; if a law is made, there would be greater chances that lawsuits would be brought but the actual results may not necessarily be favourable. There is a similar situation on the education front.

To be sure, on any laws related to discrimination including the Race Discrimination Ordinance, the views of the business sector are often less expressed in this Council because their concerns are different from those of the education and medical sectors as we have just mentioned. From the perspective of the business sector, there is no problem with the large enterprises, be they multinational or local enterprises, and the work can be done. Yet, for the SMEs, I think the Government must make greater efforts in the areas of publicity and education. Of course, our political party has members from different functional constituencies and we will continue with our appeal but there are practical difficulties. For instance, the quality of service of waiters in tea restaurants may vary. When a Chinese customer orders a French toast, the waiter will make the toast right away; however, after a non-Chinese customer has ordered food, he may not be served well because the waiter may not have heard him or may not have heard him very clearly. This may lead to problems in service. Certainly, I do not want such a law to result in lawsuits and I do not want a non-Chinese customer think that his coffee comes later than that of another person because for he has placed the order as a South Asian and so his order has been neglected.

On the other hand, an example that has been frequently given is that some landlords and some people from the middle income group have worries about renting their flats to South Asians. In fact, the owners have in mind many reasons when they determine whether they would rent their flats to these people, however, they fear being sued for one of those reasons. They are also afraid that they may be blamed for being hesitant about renting their flats to Pakistanis, and disliking their lifestyles, for example, they would produce some smell when they prepare food. On this point, upon passage of the Bill, I think there should be extensive promotions by the Government to inform the public about the provisions of the law. This is also why the Liberal Party supports the Government's proposal to give the SMEs a three-year exemption.

Actually, in proposing a three-year exemption, we are not supporting the continuous discrimination against ethnic minorities by the SMEs within these

three years. That is not our intention and we also hope the SMEs would act in conformity with the legislation, understand the provisions of the legislation, and try their best to observe them. Nonetheless, we do not want the SMEs to face up to the problems at once. In fact, a few laws in the past proved that there was not much problem in giving a three-year exemption period, and most SMEs did not have to take three years to adapt. In any case, we still find a one-year period too short, so we would like to give them a longer grace period. We are not encouraging them to continue to discriminate as far as possible against the ethnic minorities in terms of services within the three-year exemption period. We just want to clarify this point.

I have also noticed the remark made by Ms Emily LAU a short while ago that, if the amendments are not passed, many Members would vote against the Bill. However, I would like to call upon Honourable colleagues to consider that very carefully. Regarding the image of Hong Kong abroad, if the Bill is not passed in one go — many Members do not support it because they think the Government is not doing enough because the acts of many government departments have not been covered — in certain cases, foreign countries would be understanding, for example, when immigration matters are involved. I have a similar experience whenever I visit the United States. The treatment I get is not really bad, but when there are people from the Middle East with beards, they will conduct inspections on almost all of them, and they may do so for other reasons. This is a realistic society. In regard to public order, it would be difficult for many government departments for example, the Immigration Department to do so.

Concerning education and medical services that are under discussion, it is still difficult for us to ask the Government's acts to conform to the legislation. However, if Members vote in opposition because the Government is not doing enough, they may affect the image of Hong Kong outside. Foreign countries may not hold the same view, and they may conversely think that the Legislative Council in Hong Kong has not given its unanimous support to the Race Discrimination Ordinance. I think we should ponder over this.

With these remarks, Deputy President, I support the Bill.

MISS CHAN YUEN-HAN (in Cantonese): Deputy President, based on the population census in 2006, there were 342 198 ethnic minority people in Hong Kong, which accounted for 5% of our total population. Of course, we should deduct the number of ethnic minority foreign domestic workers which is slightly more than 200 000 people from the total, so there are more than 100 000 people left, which is quite a large number. In my opinion, as time goes by, many ethnic minorities will call Hong Kong their home and there will certainly be an increasing number of ethnic minorities in Hong Kong in the future.

We have noticed another figure in the population census above. The median monthly wage of ethnic minorities is \$15,500. That is remarkably higher than the median wage of the local people. The Secretary may say "Ha! Ha! Miss CHAN, you need not bother then." However, he is wrong for there is very serious income polarization among the ethnic minorities. Of course, the white people, the Japanese and the Koreans have generous incomes but the Filipinos, Indians and Thai people have lower key employment incomes. A male employee earns \$10,000 only and a female employee earns \$4,000 which is even less. As for the Nepalese and the Pakistanis, many of them have incomes lower than the amounts I just mentioned. Deputy President, in other words, there is serious disparity between the rich and the poor in Hong Kong. Frankly speaking, the disparity between the rich and the poor among the ethnic minorities is very serious, particularly serious.

(THE PRESIDENT resumed the Chair)

Last year when I handled the industrial action of steel reinforcement fixing workers, I found that there were a few hundred ethnic minority workers among these workers. I remember that we were then fighting for a daily wage of some \$900 while skilled workers had a daily wage of over \$8,000 at that time. The so-called skilled workers were outstanding workers who were concurrently sub-contractors, and their daily wage reached that level. Some workers had a daily wage of over \$6,000; some others only had a daily wage of over \$3,000 Am I right? WONG Kwok-hing?

MR WONG KWOK-HING (in Cantonese): Over \$600 per day.

MISS CHAN YUEN-HAN (in Cantonese): The figures I just have mentioned are incorrect. The outstanding workers had a daily wage of over \$800 but most of them were sub-contractors who were concurrently workers. Ordinary workers only had a daily wage of \$500 to \$600. Who had the lowest incomes? The ethnic minorities; they only had a daily wage of over \$300 to \$400. This is a commonly known fact in the construction industry. Some people even thought that we should not listen to the views of the ethnic minority workers during the negotiations. Nevertheless, I did not agree because these workers are also Hong Kong people though they are ethnic minorities. In the course of negotiations, they must have their roles and representatives. I have referred to such figures because I would like the Secretary and other officials understand the areas that should be addressed better during our discussions on the Race Discrimination Bill. I also hope that the Government would make more "movements" in this connection, that is, pay closer attention to the current financial situation of ethnic minorities.

The Chinese University of Hong Kong conducted a survey on racial discrimination in Hong Kong in 2005. Ethnic minorities interviewed clearly recognized the existence of racial discrimination. Sixty-seven per cent of the respondents felt that they were often discriminated against because of their race. More than half of the respondents, that is, 62.9% felt that racial discrimination was a serious social problem in Hong Kong and 58.6% thought that their ethnicity determined their career advancement. Almost half that is, 48% of the respondents felt that they were seen as second-class citizens. Discrimination most commonly happened in the work place and shops, where they were being discriminated against by employers and by the shopkeepers. In fact, I have handled quite a large number of cases like that. I think that discrimination cannot happen in a civilized society as Hong Kong. Findings of the above survey reveal that there is serious discrimination against ethnic minorities in Hong Kong and the impacts on ethnic minorities at the grass-root level are very serious. Thus, besides eliminating racial discrimination on the education front, it is extremely necessary to enact legislation to prevent racial discrimination.

Madam President, back in 1997, the Government conducted the first round of consultation on racial discrimination. I still recall that the then Legislative

Council had heated discussions on discrimination on the grounds of sex, family status and disability before the reunification — LAU Chin-shek is looking at me — and our discussions also led to discussions on racial discrimination at that time. Nonetheless, the Government said that we should first deal with the three forms of discrimination and a consultation on racial discrimination would later be conducted. Time has obviously passed and this is already the 11th year since 1997. Thus, I would like to say I do not intend to argue with James TIEN Nevertheless, I still want to share with Honourable colleagues a fact. Ten years ago when the then Legislative Council was discussing the three laws on discrimination, we clearly indicated our wish that a law on racial discrimination would be made. Nonetheless, the Government told us that a consultation was needed; we also agreed that a consultation should first be consulted. It has been 11 years since then. There was an amendment to clause 10 at that time. As chance has it, it has been 10 years since the reunification and this is already the 11th year. Margaret NG made the amendment on behalf of the Bills Committee, and CHAN Yuen-han was one of those who proposed it. I said that I disagreed to provide for an exception for employers with not more than five employees during the first three years after the enactment of the Bill. I said I disagreed. Some Members thought that these employers were not clear about the provisions of the legislation, so they should be given three years' time to familiarize with these provisions, yet, I did not find that necessary. I hope Members would also support me because we have already discussed this issue for more than 10 years. The opinion I expressed at that time was accepted by the Bills Committee, and some additional amendments were subsequently made. Frankly speaking, I have learnt the term "humble" after tackling the issue of the West Kowloon Cultural District. I would like to tell the Secretary that we describe our proposal as "humble". If the Government does not even let our one amendment go, I would really be distressed. I hope Honourable colleagues would understand what I mean. We have had discussions for 11 years and I only need a year now. It would be very unsatisfactory if we still encounter objections. That is my idea and I am the creator of a bad precedent — it is actually not proposed by me but by many groups — that is, the request to change the relevant period from three years to one year.

Madam President, KWONG Chi-kin and I have handled some labour cases involving the ethnic minorities. I am very thankful to the NGOs in the public gallery for seeking our assistance because they know that we are well aware of the situation of the wage-earners. A few years ago when the Government

implemented the first stage of registration under the Construction Workers Registration Scheme, even local construction workers were all in a muddle because of the Scheme; local workers engaged in carpentry, plastering works and painting works were all in a muddle because of the registration. They did not know how to get registered as skilled workers and semi-skilled workers. In a word, the Scheme was very complicated indeed. The problem at that time was: even though local workers had paid close attention to news reports all day long and were very clear about the relevant provisions, they still had a lot of questions in mind. That happened to local workers, let alone the ethnic minority workers. There are a large number of ethnic minority workers in the construction industry.

As a matter of fact, many grass-root workers in Hong Kong including those from the ethnic minorities are engaged in strenuous jobs like carpentry, plastering works and painting works. These ethnic minority workers are at a loss as to what to do since even local workers under the leadership of trade unions do not have a clear idea. As Honourable colleagues are aware, the construction industry trade unions are terrific, yet, local workers under the leadership of the trade unions are still at a loss as to what to do, let alone the ethnic minority workers. When Miss WONG approached us, she met KWONG Chi-kin who was well versed in the relevant laws, so KWONG Chi-kin and her handled the problem.

On worker registration, we subsequently found that it was very hard for quite a lot of ethnic minorities to sit the examination for construction industry certificates and licences because many of them did not know Chinese and some even did not know English. Thus, an Honourable Member told us in the course of scrutiny that, according to the Hospital Authority, it was not known what languages the ethnic minorities used, and even if they used English, what they said could not be understood. Both parties do not know what the other side is talking about. I would like to ask the Secretary if he knows why the parties do not understand one another. They fail to understand one another; like when a person from Zhongshan speaks Cantonese, we sometimes do not understand what he is saying, right? I am not discriminating against Zhongshan people. I am from Bao'an, and people there called peanuts "groundnuts". Do Honourable colleagues know what "groundnuts" are? They are peanuts.

We have also encountered such a problem, let alone the ethnic minorities. Besides, as all courses are conducted in Chinese, construction training courses basically seem out of reach to the ethnic minorities. Certainly, we understand the difficulties of the training institutions. In regard to the Construction

Industry Council (CIC), it is very, very difficult to require instructors to use English as the language of instruction. If Honourable colleagues have time to observe the training courses offered by the CIC, they will know that the instructors are experienced workers. They have excellent knowledge of carpentry, plastering works and painting works but it would really be a chore for them if they are asked to use English as the language of instruction. This is a practical problem to be faced up to.

It is very important to find out how we can make ethnic minorities understand the contents of the courses. Under the registration scheme, construction industry workers in Hong Kong should receive training, then how about the ethnic minorities in the construction industry? It is a pity that the CIC at that time conversely asked the ethnic minorities to "take up the whole class", that is, they should only enroll when they had grouped together enough trainees, and they could not enroll if the group had less than 30 persons. Also, frankly speaking, the ethnic minorities very often live dispersed throughout the territory. They will find it really difficult if they are to group together a certain number of their own people. Hence, they can only rely on NGO counsellors. Though the social workers are very enthusiastic, a new class will only commence when there are enough trainees. This practice is too bureaucratic. In addition, everyone has different proficiency and skills, and training classes cannot provide all-round training. For example, some people like carpentry while some others like plastering works; since everyone likes to take up different work, it is quite difficult to group together 30 trainees in a class. I discussed the issue with the CIC then but it turned out that each party was sticking to its own views, which also annoyed KWONG Chi-kin. We have brought up these problems when we scrutinize the Bill this time, and Ms LI Fung-ying and I have repeatedly expressed our views on how the VTC, the CIC and the Employees Retraining Board (ERB) should handle the existing problems; I also gave an example a short while ago. How are we going to give them assistance? How can we help ethnic minorities follow closely the social trend of lifelong education? How can we help them integrate into society? This is a very important point.

Madam President, my educational standard is pretty low and I do not have a special endowment for languages. When I was studying in the United Kingdom in 1992, we could take some English courses in different localities as each locality has a different standard for the English language. At least, we are given training in local English to make it easier for us to learn the language.

Actually, my requirements are very "humble". I often emphasize regulation I am not asking others to do the same but they should at least be given a chance to get assistance when they are recruited. In other words, they do not need assistance throughout life, and they only need to be equipped for entering the industry. But the problem is that the Government very often needs to be pressed by us before making efforts. It only makes greater efforts when being pressed harder and scolded by us. Madam President, I would like to propose an amendment because I am infuriated. Not only me but LI Fung-ying also scolds these organizations very often. We have found that these organizations are willing to make efforts; the ERB with billions of dollars takes actions the soonest, followed by the VTC which is willing to take action because I have become its Board member. And, the CIC is willing to do something after being scolded by me.

I would like to tell Honourable colleagues that I like these conditions and "movements". What "movements" are they? As the Secretary may know, generally speaking, I do not trust the Government a lot though Mr XI has told us that we should communicate with and support each other. Nonetheless, we have a monitoring role to play, right? If we excessively support the Government, we will conversely do it harm, right? When the Government has excessive power, it tends not to accept our views. If an organization has done certain things, I will not deny it. But, I have my own thoughts. I have often told some government departments, for example, the Urban Renewal Authority, that we should faithfully observe the relevant laws. I took part in the scrutiny process but I had been fooled.

That is why I proposed an amendment when we discussed the West Kowloon Cultural District Authority Bill last week, and I hope the Secretary would understand our situation. If the Government really acceded to our requests when we co-operated with it in the past, I will absolutely trust the Government now and I will definitely not interfere. The training institutions concerned have done some work and I trust that they have made efforts; I am especially thankful to them for providing me with the relevant figures. In the end, I agree that they have made efforts. I agree to that.

But all in all, I really hope that government departments including the Labour Department would not adopt an evasive attitude towards the ethnic minorities just like what it is doing now. Hence, if there are guidelines and

laws to choose from, I would certainly choose to observe the laws, right? But the most lamentable point is that there are no guidelines at present, and all government departments need to be pressed by us before making some efforts, and they only make greater efforts when they are pressed harder. So, I really hope that the Government would understand this first. As for the Hospital Authority, I also agree that it is willing to do certain things but I am worried that it may not have the resources because curing the sick and studying are two different things. When I was studying in the United Kingdom, I worked as a volunteer in Birmingham. They had very good health care measures there; when the elderly sought medical consultations, they were accompanied by overseas students. The elderly who did not speak English would be helped by part-time workers like us. We can see that other people have taken a lot of similar measures because curing the sick is considered very important. Hence, I really agree that the organizations concerned have already done something.

Madam President, I do not have enough time to read from the whole speaking notes but I will speak again if I have the chance. I will support some of the amendments of the Bills Committee because I think that the rest must be handled better. Nevertheless, I agree that the equality schemes (in the Secretary's letter to us dated 7 July) are all right and pretty good. Mr Arthur HO is not here today; he was deeply concerned and wrote us on 7 July describing the work about the equality schemes. Frankly speaking, if measures have been formulated today, I am going to say yes at once, and legislating may then be unnecessary. Yet, as that has not been done, we should continue to discuss the matter. I hope the Secretary would understand my way of thinking or what we are asking for. The remarks made by the three of us today are insignificant and we were also in a terrible fix last week when we discussed the West Kowloon Cultural District Authority Bill. In any case, I hope the Secretary would become better informed through more dialogues.

Madam President, I so submit.

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

MR ABRAHAM SHEK: Madam President, I fully concur with the views put forward by the Honourable Members of the Liberal Party. They supported this Bill and subscribed to the fight against racial discrimination in a practical manner, and they would also support the Bill in the same manner.

Madam President, is Hong Kong a society where there is no racial harmony? No. Hong Kong is a society where racial harmony is striven. How could we not have racial harmony? Just see how different racial groups living and working together to create Hong Kong what it was and what it is today. So far, we need no law to create a racially harmonious society. The fact is: Our different racial groups — be they Chinese, Indian, Pakistani or Nepalese — all believe in the values of importance of the family, friendship, mutual trust and respect, and the good nature of people. For these good values we have, we will continue to live in harmony and friendship.

Yes, we are a racially harmonious society, but it does not mean that there is no element of racial discrimination. And it is for this reason and purpose that the Government introduced this Bill to weed out racial discrimination, small as it is.

As a member of the Bills Committee, I wish to record my respect to the Chairlady, Margaret NG, for exercising her patience, fairness and tolerance during the deliberation of the Bill. The Administration's answers to the queries we raised actually tested the patience of any reasonable man. Margaret has performed very well in that. I have found Margaret's chairmanship to be of the highest quality. Margaret, you have performed your duties diligently and admirably, and you have made us proud to have served under you during those 34 meetings.

I have listened carefully to the views of the majority of the members of the Bills Committee. I found their views and recommendations reasonable, and sometimes hard to find fault with. But they are too idealistic. And being a practical man, I have to side with the Government.

During the meetings, I have also listened very well, and urged the Government to listen to the views expressed by the Bills Committee. But the Government seemed to have listened but not heard the views of Committee

members who have spent hours and hours to express their views and the hope that they could find solutions to weed out racial discrimination.

As a member of the Committee, I have purposely not objected to the Committee's moving of the amendments, and during that time, I indicated that while I would not object to the moving of the amendments, I would not be supporting those amendments. The reason for my supporting the Government is simple: I believe the Administration is sincere in its fight against racial discrimination. Otherwise, it would not have introduced this Bill. This Bill is not near perfect, nor is it what the majority of the members of the Bills Committee wanted. However, I think this is a good first step to fight against racial discrimination. In other words, it is better to have this Bill passed than not to have it.

I also trust the Administration has no alternative but to listen, and to continue to listen to improve its fight against racial discrimination by adopting some of the recommendations recommended by the Committee. I would plead that you should do it, because as I said earlier, the recommendations have been very well presented.

Madam President, during the deliberation of the Bills Committee, the majority of our members said that new arrivals from the Mainland should be included within the ambit of this Bill, since the problem of discrimination and negative stereotyping against them is widespread. Protection should be provided to these new arrivals by extending the scope of this Bill in order to halt discrimination against them. In this regard, having listened to the Government's argument, weak as it may be, there seems to be some logic in it. I support the Administration's view that new arrivals from the Mainland do not constitute a racial or ethnic group in Hong Kong. Thus, discrimination against these new arrivals, either because of their status as new arrivals or because of the accent and culture of these arrivals, should not be considered a form of racial discrimination. I will not support the relevant CSAs moved by the Chairman of the Bills Committee, as I mentioned earlier, as these amendments would mean that discrimination against new arrivals from the Mainland could be considered as racial discrimination under the law.

Nevertheless, we cannot deny that the new arrivals from the Mainland are being discriminated against in many other spectrums. Since the new arrivals

comprise a significant proportion of the local population, as a responsible government, the Administration is duty-bound to allocate more resources to eliminating such discrimination and facilitating the integration of these new arrivals in Hong Kong. I call on the Administration to provide a concrete and pragmatic plan of action to assist these new arrivals to work and live in Hong Kong.

Madam President, as regards the exception for languages, without doubt, it is of paramount importance for the Administration to provide proper language assistance to the minorities, particularly in the medical services area. Given that misunderstandings or delays in medical treatment can seriously affect health and life, I strongly believe that the Administration should step up the provision of more interpretation services at hospitals, targeting specific minority groups. At the same time, bearing in mind that the provision of medical treatment is funded by public money, we need to ensure cost-effectiveness in this regard. It would be impractical and unrealistic to expect every government department to be multilingual. Therefore, I find the Administration's undertaking to draw up the proposed administrative guidelines acceptable. The said guidelines represent the Government's sincerity to strengthen existing public services to safeguard lives and health, irrespective of race and origins.

We must understand that this legislation is not the panacea for all social issues. Reviews and improvements are practical ways to fine-tune our systems. To provide a solid foundation, I urge the Administration to state clearly in its proposed guidelines the language assistance to be offered. I expect the Administration would provide us with more details in its speech during the Second Reading debate to show us its commitment and sincerity, hitherto, they have failed to do so during all the meetings.

Madam President, on 30 May 2008, I joined the school visit of the Panel on Education, observing mixed class of local and non-Chinese-speaking (NCS) students, and meeting the NCS students and their teachers at the CNEC Ta Tung School (Kwai Chung). I witnessed the enthusiasm and eagerness of these students in learning Chinese. They know very well that a good command of both Chinese and English will determine their future success, as highlighted by the Honourable Emily LAU in reading out a letter from the students. Also, I welcome the new arrangements for UGC-funded institutions to offer further flexibility in accepting GCSE and other alternative qualifications in Chinese

languages for the NCS students seeking admission under the JUPAS. This will definitely encourage more NCS students to pursue a better future in the local education system. These students are no different from our own children. They should be provided with sufficient and equal opportunities for a good education. This is their right and not a handout by the Government. Therefore, it is essential to find a solution to the problem of the lack of avenues for the NCS students to attain qualifications in Chinese to enable their admission to universities. Regrettably, many NCS students drop out from schools since they receive insufficient Chinese language skills in school and they do not continue their studies. Worse still, some of them fail to find good jobs and end up joining triad societies, which is prevalent in the western New Territories. Madam President, all students have a right to receive a good education. As I said earlier, it is their human right. In such an affluent and prosperous society as Hong Kong, we should ensure that the NCS students also have this simple right.

It is never too late to mend. Though the Administration has developed a supplementary curriculum guide for teaching Chinese language to NCS students, it is definitely not sufficient. Currently, in public sector and direct subsidy scheme schools, there are 5 000 and 3 000 NCS students studying at primary and secondary levels respectively. I urge the Administration to set up a panel of language experts to produce a "comprehensive set" of textbooks for second language learners of Chinese, stretching from primary to secondary schools. High-quality textbooks and lessons would have a strong positive impact on the learning of NCS students. Otherwise, opening up to accept alternative qualifications in Chinese languages for university admission will be meaningless, since many NCS students will have dropped out from school before having the opportunity to further their studies in tertiary education. Countries around the world provide purpose-designed syllabus and curriculum for students to learn foreign languages as a second language. I have learnt French that way and it was successful. If we fail to offer our NCS students the opportunity to learn Chinese as a second language, we are hardly qualified to call ourselves Asia's world city and a caring society. Furthermore, the Administration should allocate extra resources to offer training for our teachers in teaching NCS students. I sincerely hope that the Administration will give us a clear policy direction in this area and include solid affirmative actions in its guidelines during its reply at Second Reading.

Madam President, policies and laws will not eradicate discrimination from our society. However, anti-discrimination legislation will definitely help change people's attitudes and heighten public awareness. A recent survey conducted by the Hong Kong Christian Institute in April 2008 revealed that 45% of the minorities interviewed had never heard of the Race Discrimination Bill, and 36% of them thought that their lives would become more difficult as a result of this Bill. Though this survey was conducted on a relatively small scale, the findings represent the inadequacy of the Government's promotion of this Bill and our minorities' uncertainty and lack of confidence in the SAR Government. To promote social harmony and inclusion, I urge the Administration to step up its promotion and provide actual and solid measures to help our ethnic minorities integrate with the local community.

Thank you, Madam President.

MR LEUNG KWOK-HUNG (in Cantonese): After listening to the speech made by Mr SHEK, I think that he is really an interesting person. I am sure Ms Margaret NG would rather be scolded by him and in return gain his support for her amendment. But after he has praised her, he then says that he cannot lend her his support. Put it bluntly, he is saying that she should go and die. This does not make any sense at all. Of course I know that Mr SHEK has something that he cannot tell us: he lets his butt, not his brain, determine how he would use his hands. His brain is sound, but it is his butt that tells his hands how to vote. But this should never be done. He cannot say that he cannot support her after praising her.

Why is it like that? What we are now facing is in fact a constitutional issue. Whenever the Government blows the whistle, groups that support the authorities will find numerous grounds to support them. Each time Mr SHEK is very smart and he is saying what he has in mind in a tortuous and roundabout way. But this kind of wisdom may not be useful, for what is being discussed today is a very important and fundamental issue and that is, in a self-claimed cosmopolitan city like Hong Kong, do we give equal opportunities to the ethnic minorities?

Let me cite a plain example. That is from my own experience. The elder sister of a friend of mine was admitted to Kwong Wah Hospital. She

called me and told me that she was classified as a probable mental patient and had to be put in a ward for observation. According to the relevant law, a magistrate has to be called in to the hospital and acting upon the descriptions made by the doctor and the information given by the patient, the magistrate has to determine whether or not she is to be put in a mental hospital.

The magistrate who came on that day was a foreigner. According to the practice in the hospital, they would not care anymore after informing the magistrate to come. These magistrates are very busy people. They would come at once. At that time I was sitting there and I asked the people at the hospital on the spur of the moment whether or not they had any interpretation service. At that time everyone was dumbfounded, for they had no interpretation service. But as the magistrate had come, nothing could be done about it. The magistrate came to the hospital. I shook hands with him, telling him that there was no interpretation service there and I asked him what he would do and whether we should continue. The magistrate said that he would not continue and he had to wait until the hospital had found an interpreter. It was only after more than one hour had passed that the hospital could get an interpreter to come.

This example is plain enough. We have discussed that if there is statutory requirement that there must be interpreters for all languages, there will be unbearable pressure exerted on manpower. But even if that is well-intended, it cannot be done or it will make things more complicated. This is the argument put forward by Mr James TIEN. His argument may sound well, but in the end it is still not justified.

The situation is just like what Mr SHEK has said, why? It is in fact not difficult to get an interpreter. We just have to look at the Courts. When a case is being tried, how can a trial proceed if there is no interpreter? No, it cannot. If no interpreter can be found in Hong Kong, the hunt has to go on until one is found. This is what is like in trying cases, why can it not be done when it comes to curing the sick? Doctors are kind-hearted, but if they cannot understand what the patient says and make mistakes, then what should they do? It is simple enough. If something has to be done, then people will naturally get someone who has the ability to do it. Right? Well, if no one can be found and if no one can be found even after an advertisement is put up in the newspaper, in that case, the Government has to offer a reasonable explanation, saying why no

one can be found. Right? Laws have to be enacted in the first place. But things are going in the other direction and it is said that no one can be found even before any law is enacted. There is a fundamental difference and that is, the Government is duty-bound to do it.

This is also the argument put up by Ms Margaret NG and that is, if legislating results in the Government placing itself above the law, that will be really bad. Members all know that during the age of the Warring Kingdoms, LIU Bang made a contract with the people after he had gained the whole of China. Only three points were mentioned in the contract. He said that was how he would do it. He said that was what he would do after he had conquered the whole of China. This is as simple as that. However, in this solemn and majestic place of a Chamber, if a piece of legislation is enacted in which the Government plays no part in it, would Mr SHEK be ready to accept it? Of course not. Then how come he will support the Government? This is out of the question. The Government enacts the law but it places itself above it. This is only trying to make the law binding on other people but not on it, right?

What then is a constitution? A constitution is something that a government will tell us what it will do and if it does not, it will be acting in contravention of the constitution. The case is with the attempt to legislate now. This piece of legislation in fact contains provisions which are constitutional, for it is based on three conventions, namely, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination Against Women. All these three are conventions and they are provisions of a constitutional nature. This is how we deduce and enact a piece of legislation. So it really baffles me when the Government is doing this.

Had the Government not done it, it would not have to settle the accounts, for it has eaten a French toast and a prawn toast, so to speak. The Government is doing all this because it wants to stay above the law, right? This is plain truth.

Now let us see what happens. Up to this present moment, the Government is still telling us that if this law is not passed, Hong Kong will be put into shame. If the opposition party does not pass this law, there can never be any improvements in Hong Kong. But that is really the consequence of the

defects of this political assembly. If Ms Margaret NG can propose her own amendments pursuant to the Rules of Procedures and not be fettered by Article 79 of the Basic Law, then we will have another proposal for discussion today, right? Then all the people of Hong Kong will be able to see the truth and know who is playing foul and prevent the proposal of a better law. And the people will know who support a worse law.

This is the trick which the Government is playing today. What the Members have got is only the right to veto. The Government is only making some minor amendments and these are in fact flawed. But we have to lend our support in any case. Or else we will not have even these minor amendments. To be frank, this is the logic of the bandits. It works because Article 79 of the Basic Law makes it almost impossible for Members to propose a Member's Bill, for it cannot have any financial implications and must not affect government policies and how it governs. This is something that cannot be found in this world. Right?

Let us come back to this question. The Government tells us what things would be like if such things do not exist. I come across a new term and that is Nylonkong, that is, New York, London and Hong Kong. Hong Kong is added in. But I would think that Hong Kong would become Nuremberg instead. Why Nuremberg? Nuremberg has to do with the rise of HITLER and a female director once made a gorgeous movie for the *Schutzstaffel* (SS) and that is really wonderful. I was moved when I saw it. However, when I knew that it was about HITLER, then I came to my senses. The Nuremberg rallies were mass meetings in which all forms of discrimination were made against the Jews and the Slavs. That is how we will become another Nuremberg, instead of Nylonkong. This is like the declaration of Nuremberg, that through legislation, the Government of Hong Kong is engaging in some kind of lawful discrimination. Of course, the Government will not say that it is discriminating people and so as we always say, there is a devil in the details. In other words, the details are a devil and these details compiled by the Government are a devil.

Ms Margaret NG is working very hard. First of all, I must declare my interest, I do not work hard. Ms NG has done a lot of work but I seldom attend meetings of the Bills Committee. Why? I know that Ms NG commands our respect, but sad to say, she is going to be betrayed. It would not help things

even if she is praised. So I do not have to do that. She has done so much. What is the question in front of us today? I want to answer one question. All the things which the Government says cannot be done are false. It says that it is because of this excuse that it refuses to fulfil its international obligations and constitutional obligations. That is true. It is easy to tell what is true and what is false. Right? Put simply, even if you people want to besmear me, that will not matter. I can only treat that as a Pandora's Box and once it is opened, all the demons will come out. And we will know what is inside. Some goblins are doing their work. But if the box is tightly locked and then it is said that nothing can be done, then it is only cheating me and no one else.

To be honest, in all Asia, the flow of talents in Hong Kong is superb. Now just those asylum seekers cases I handle are plenty. These people are seeking asylum for political reasons. It would be great if these people are asked to come here to work. Why not? It will just fit our needs. Right? But people ask in the end why these people should be given that advantage. It is wrong to say that. I have said many times that for all those who come to Hong Kong to settle, they cannot earn a living if they do not work hard. In a capitalist society, this is the case with most people. If something can be done to make these people useful, so that they can make contributions, then it would indeed be an act of virtue. If something is done to prevent these people from making contributions and subject them to institutional and cultural discrimination, though not in law, when they cannot give play to their talents, society will say that they are a burden. The case of Mr Martin LEE could well be like that. When he first came to Hong Kong, he might be a burden to us. But we made him a useful person and so he can now speak here. If we had the idea that people from the Mainland were no good, then we had better make ourselves better. And we would not have Martin LEE today. And even if there is one Martin LEE, he would not be sitting here.

What we are talking about today is actually about how we should treat our own compatriots. And that makes things even more baffling. Our compatriots are not included here in the law. Buddy, there is indeed some difference speaking from the point of view of residency status. Please do not split hairs with words. The Government always says that we are not practical. But that is what we really are. We are practical and we do not adhere to that term. If such a large community is facing this problem but the Government is saying that

it cannot be included, then is the Government not being unfair to them? Hong Kong should not just be caring for the rich who buy properties in West Kowloon. Of course, they should not be cared. We are talking about those people who are craving and dying to come here. They hope to come here lawfully and lead a happy life. But they are being discriminated against. I know that many people hate me and they say that I am poking trouble. But the question is I cannot help but fight for their rights. We are facing something that is terribly wrong. As the saying goes, blood is thicker than water and one should be compassionate to all people. In this Council we have always been lectured that we should love our own country, but should we love our country but not our compatriots? What should we love when we say we should love our country? Of course, it means loving our compatriots. Right? We should love the people and not *renminbi*.

So why do we have to do that? It is wrong to do it. But the Government is playing this trick and that. It says that it knows everything and all views are heard. Except those from certain people. The Government is like what it has been doing to me: it can change at any time it wants. Even if I have been sent an invitation card, I cannot attend that function. To be honest, the Government loves to delete the record of the speeches. Secretary LAM, can you undertake not to delete the verbatim record of the speeches you make in the meeting today? You cannot say that that you were not saying this way and so the record is to be deleted. If this Government has any integrity and reason, Secretary LAM, I hope you can dispel our worries.

Another thing, this is something which many NGOs have asked me to say and that is, if the Government does not agree to the so-called race equality plan, they will say that the Government is a bad guy. President, this well-known saying of ORWELL can be used once again today. It is: "All animals are equal, but some animals are more equal than others." It can apply to race matters. I hope that Secretary LAM can learn this lesson. I know that he is not an animal, but he should do something which does not like what is done by animals.

Thank you, President.

MISS CHOY SO-YUK (in Cantonese): President, on behalf of the DAB, I speak to elucidate our position on the Race Discrimination Bill.

All along the DAB has been supportive of government attempt to legislate to outlaw racial discrimination. We hope that the relevant law can be put into force as soon as possible to fulfil our obligations as prescribed by the International Convention on the Elimination of All Forms of Racial Discrimination. It is because pursuant to Article 39 of the Basic Law and the relevant stipulations applicable to Hong Kong under the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, these stipulations should be put into force by way of the laws of the SAR. As a society which advocates equality, concern and harmony, Hong Kong has the responsibility to fulfil its obligations under these two international conventions and materialize the protection in this aspect offered by the Basic Law.

In fact, the DAB could well be said to be one of the first parties to set up a special committee to serve the ethnic minorities. We could also well be the first party that raised some demands to the Government about six or seven years ago on the hardship faced by ethnic minorities. We asked that the Government should make improvements. I myself have led members from ethnic minorities to meet public officers from different departments, especially the Immigration Department, to relate the problems they have encountered. However, there are quite a number of controversial provisions in this Bill and I would now like to elucidate our position on each of them.

Clause 3 of the Bill points out that "This Ordinance applies to an act done by or for the purposes of the Government, that is of a kind similar to an act done by a private person." With respect to this, the DAB thinks that it is not comprehensive enough and it may send a message to the general public that provided that an act by the Government is different from an act done by a private person, it will not be regulated by the Bill. We also understand that the Government is presently subject to regulation by the Basic Law and the Hong Kong Bill of Rights and it cannot do any act in any form of discrimination. Therefore, the scope under which the Government is subject to control is in practice much wider than that of the Bill. However, in order to avoid any misunderstanding which is unnecessary, the DAB thinks that it should be stated in the Bill that it is binding on the Government.

Now the Government agrees to propose an amendment and add in a provision which states: "The Ordinance binds the Government". The DAB thinks that it is appropriate. We also think that the racial problem is very complicated and it should be handled with greater care than discrimination on grounds of sex, disability and so on. When devising and practising public policy, and with respect to the discharge of duties by public officers, there should be more training and guidelines in the departments so as to imbue a greater awareness of the problem of race discrimination. When devising and implementing policies, the Government should fully take into account the principle of racial integration and the promotion of harmony in society. As for the amendment proposed by the Bills Committee which stipulates: "It is unlawful for the Government to discriminate against a person on the ground of race of that person in the performance of its functions or the exercise of its powers", we would think that this would enlarge the scope of the Bill excessively and it may cause impediments to the performance of the normal duties of the Government.

We believe that the solution to the problem of racial discrimination does not lie in legislating alone and if an excessive amount of racial discrimination litigation is caused, the result may backfire. This is because the ethnic problems may be magnified and lead to conflicts between different communities in society. I hope that when the Secretary speaks in the Second Reading debate, he can make an express promise to the effect that after the passage and coming into force of this Bill, all the services provided for the ethnic minorities will only increase and be improved instead of becoming fewer.

Another amendment proposed by Ms Margaret NG is to further expand the definition of the term "discrimination" from the wording of "requirement or condition" as suggested by the Government to "provision, criterion or practice". The objective effect of this move to render certain practices which do not fully constitute a "requirement or condition", such as giving priority consideration and so on, be included in the scope covered by the Bill. On one hand the DAB supports the idea that positive efforts should be made by legislating to solve the problem of racial discrimination, but this does not mean that practical circumstances and other matching laws should be overlooked. The wording as suggested by the Government is actually in line with the existing three pieces of anti-discrimination legislation. If the Legislative Council expands the definition of acts of racial discrimination, there is a possibility that these three pieces of legislation will have to be amended accordingly. As the issue touches on and

extends the scope of acts of discrimination covered by all anti-discrimination laws and hence has far-reaching effects, the DAB considers that the issue should be left for review later by the Government as soon as possible. That would be an appropriate course of action to take.

Besides, we are worried that if the scope of acts of discrimination is enlarged from the formal practice of imposing requirement or condition to other informal practices, this well-intended move may cause undesirable results. This is because if the definition of discriminatory acts is made too loose, the floodgate for accusations made in the name of racial discrimination will be flung open, hence encouraging unnecessary litigations. Also, if members of the public are caught inadvertently by the law when they do something that is not related to racial discrimination, this will definitely be of no good to society.

President, certain Members have suggested that deletion should be made to the stipulation in the original Bill that acts on grounds of right of abode, length of residence and status as permanent residents do not constitute racial discrimination. These Members are of the view that the scope of the Bill should be extended to include discrimination against new arrivals to Hong Kong from the Mainland.

The DAB agrees that new arrivals from the Mainland do experience discrimination in education and employment. However, we must be clear that the cause of such discrimination does not lie on ground of race but mainly due to the prejudice caused by the differences in their behaviour and socio-economic position. This is a form of social discrimination and it is clearly undesirable to solve such problems which are not due to race or ethnic factors by way of anti-race discrimination law.

The DAB thinks that the way to eliminate the problem of social discrimination faced by new arrivals is not by passing the amendment proposed by Ms Margaret NG but by specific policies and measures devised by the Government to support the new arrivals. These will help them adapt to living and working in Hong Kong. Therefore, we strongly urge the Administration to make an express undertaking that after the passage of the Bill, more resources will be set aside to launch such measures to help new arrivals integrate into our society and protect them from being discriminated against.

President, about the exception for languages found in the Bill, Members are most concerned about two areas and as pointed out by many Honourable colleagues, they are vocational training and medical service. The DAB knows that members from ethnic minorities encounter many difficulties when using these services. This is especially the case in hospitals because no interpretation service is provided there. As a result, they cannot communicate effectively with the doctor and this may affect the treatment they get. However, we have reservations for the proposal to remove such exception for service languages.

When these demands are met, it appears that the rights of the ethnic minorities are protected, but in reality it is doubtful that this is practicable. The DAB is worried that if this is made compulsory, the result will only be contrary to what is expected. This is because when there is no such exception, this is like asking these public or private agencies to provide their services in different languages or that interpretation service has to be provided when communicating with ethnic minorities. Just imagine if it is practicable to require an ordinary medical doctor to provide interpretation in languages other than Chinese and English when he is seeing patients. Moreover, when vocational training institutions offer classes to the ethnic minorities, they are required to first get instructors who are conversant with these languages. The result could well be that these classes cannot be offered in the end. And it is the interests of these ethnic minorities which are to suffer.

Therefore, the DAB thinks that the problem of racial discrimination is actually much more complicated than other problems in discrimination and hence it should be dealt with in many ways. The most pressing work for the Government now is to compile guidelines for various departments and increase the support given to the ethnic minorities. This would include inputting large amounts of resources to enhance the teaching of non-speakers of Chinese pupils and increase the training of local language given to them. On the other hand, the authorities should make necessary arrangements in all front-line departments like hospitals, employment centres and various welfare service units and provide interpretation service when necessary.

Some Members suggest requiring the Government and other designated public authorities to formulate race equality plans in order to eliminate racial discrimination and promote racial harmony.

The DAB thinks that legislating is not the only method to tackle this problem and this is because the Administration has made a public undertaking that it will compile a set of internal guidelines for the major policy bureaux and departments encompassing areas like health care, education, vocational training, employment and major community services and so on for compliance by these policy bureaux and departments. At the same time, the Government is to give an account of the plan and timetable for launching the proposed administrative guidelines so that this Council can monitor their contents and progress. This will show that the Administration has the sincerity in eliminating racial discrimination.

President, at last, I wish to make a brief response to two amendments. One of these amendments is about the proposal made in the Bill that an employer with no more than five employees should be given an exemption for three years and he is not required to comply with racial discrimination requirements in employment. Some Members propose that the grace period should be reduced from three years to one year. The DAB thinks that this is not a matter of principle and other anti-discrimination laws also have a three-year grace period to enable the SMEs to get well-prepared. So we would think that it is more appropriate to make the grace period in line with the existing anti-discrimination laws.

By the same argument, for commercial undertakings with less than six partners, the exemption from regulation by the Bill with respect to partnership arrangement is in fact in line with the existing anti-discrimination laws. Therefore, the DAB is opposed to the amendment which seeks to remove such an exemption.

President, regardless of whether we support or object to these amendments, the DAB will continue to do what we have been doing and strive to fulfil the aspirations for racial equality and build a harmonious society.

President, I so submit to support the Second Reading of this Bill.

DR FERNANDO CHEUNG (in Cantonese): President, as many Honourable colleagues have said, this Bill is long past due and much awaited. As many as 10 years have been spent in exasperating wait. In terms of the stand disclosed by the Government in public, in November 2006 in the paper submitted by the

Government about the Bill, it was admitted that there was a recognized need to legislate back in 2003. It has been five years counting from the two-year consultation period since then to agreeing to legislate and finally up to the present. The entire process stretches more than 10 years and this is really a belated Bill.

President, what in fact is the background for this Bill and the position of the SAR Government in racial discrimination? I would like to read out a simple account given in the Legislative Council Brief submitted by the Home Affairs Bureau. This is the first paragraph of that paper: "Racial discrimination is not a prevalent or serious problem in Hong Kong. Although over 95% of the population is ethnic Chinese, Hong Kong has always been a cosmopolitan city and Hong Kong people have a long tradition of living in harmony with and respect for persons from diverse cultural background and ethnic origins. While there are occasional complaints and incidents among individuals, as a community the relationship between the Chinese majority and the ethnic minorities in Hong Kong has generally been peaceful and harmonious. There have also been, from time to time, mild expressions of intolerance, but there are certainly no real antipathy, division or entrenched prejudice and discrimination against any particular groups on account of their race or ethnic origin." President, this simple introduction shows the inadequacy of the SAR Government in understanding the problem of racial discrimination that exists in Hong Kong. It turns out that according to those in the Government, racial discrimination is not a prevalent or serious problem in Hong Kong. Has the Government ever asked the ethnic minorities that in a society dominated by the Chinese, are the ethnic minorities being discriminated against or not? By common sense, you will know that these people are under tremendous pressure. Has the Government ever conducted any surveys? What has the Government asked during this two-year consultation period? Recently, we can read from the newspapers that in June this year, a trade union for construction workers interviewed some 300 Nepalese construction workers and 75% said that they were being discriminated against. Their wages, that is, when they are working, are \$45 an hour. Compared to the hourly wage of some \$60 for Chinese workers, it is 26% less. Their average unemployment period is some four months. The trade union says that it is hard for these Nepalese workers to find a job. They often rely on the help from other people and this results in exploitation.

Does the Government see this and has it ever asked? Does it see that there are many people from ethnic minorities who are unable to communicate

with the doctor when they are sick? During the deliberations of the Bill, I heard a lady say that when she went to see a doctor, the doctor was unable to make a diagnosis. In the end, the doctor prescribed some anti-depressants for her and she took them as medicine for headache.

We have interviewed some young people from the ethnic minorities and they tell us that they are subjected to all sorts of racist and insulting remarks from law enforcement officers when they are held in a detention centre or a police station. Have you ever asked these people from the ethnic minorities and are told that when they go to look for jobs, even as they can speak fluent Cantonese and when they can speak like any other local Hong Kong person, but when they appear before the employer, they are just told to leave?

Has the Government ever asked them what the situation is like in education? During the deliberations on the Bill, officials from the Education Bureau said in response that now there are some 6 000 primary school pupils from the ethnic minorities and there are some 3 000 secondary school pupils. Some 200 take the School Certificate examination and some 70 are in Secondary Six. Some 20 have taken the university entrance examinations, seven are matriculated and five can enrol in a university. Have we ever seen how our society is making bottlenecks for these ethnic minorities? The Chinese language examination in Hong Kong is creating what is called in foreign countries a glass ceiling for them. It looks that everyone can see the top but when they come to a certain level, they are barred from going further up. There is a piece of glass there, they may see through it but they can never go through it. Why is the SAR Government so blind and think that no such problem exists in Hong Kong? I have heard some Members from the Liberal Party speak, I am sure that they also think that no such problems exist. Like when Mr Jeffrey LAM says that there are many kinds of inconvenience, such as there should not be any regulation in partnership and the SMEs should be given exemptions and the longer the list of the exemptions the better. I think it is like that it seems that he is against legislating. To be frank, for people like them who are in business, the best thing would be the market is given the first priority and the less such kind of laws there are, the better it is.

President, for this Race Discrimination Ordinance which is so fundamental a piece of legislation, we have spent so much time on it. Let us look at how the international community would see this Asia's world city. On 24 August 2007,

the United Nations (UN) wrote to us and said to the SAR Government that it was worried that in this law, the definitions of direct and indirect discrimination was too narrow. This is different from our earlier Sex Discrimination Ordinance and Disability Discrimination Ordinance. Moreover, we can see that what clause 3 is doing is that all the major acts of the Government are exempted from this law. Well, at last the Government has made some minor change. But why is this kind of change still completely different from our other anti-discrimination laws? Why can the wording not be the same? There is no explanation for that at all. On 7 March 2008 the United Nations Committee on the Elimination of All Forms of Racial Discrimination wrote again that the SAR Government had not yet submitted the report it owed which was long over due. We do not have one report that is over due but four reports. The UN suggested that we should submit all the reports at one time. And it was worried that this Bill did not provide for any protection in respect of citizenship or state of residence. This will have the effect of excluding the new arrivals to Hong Kong from the Mainland from protection. And it is obvious that this Bill does not make language as a basis for defining race and this is likewise a failure to meet the requirements of international conventions.

President, after speaking for such a long time, all things do show that irrespective of the international community or the local situation, as well as the way the SAR Government understand acts of racial discrimination, there exists a great divergence. Now when the Government introduces this Bill to the Legislative Council, on a whole, we are glad to see that this law can be enacted here in Hong Kong and we hope that support can be given for its Second Reading. After the resumption of the Second Reading, I am grateful to Ms Margaret NG who is the chairman of the Bills Committee, for her guidance and efforts in proposing numerous amendments on behalf of the Bills Committee. These amendments show that the Bills Committee has discussed problems that we consider as loopholes in this piece of legislation. Without these amendments, it is hard for us to support this Bill.

President, there is a group called Colours in Peace and it is formed by some young people. Recently, they made a survey and they asked some members of the public, that is, local Chinese and some ethnic minorities, on how they would think about this Bill. They found out that many people had never heard of this Bill. For those who did, the first question they were asked was: "If this Bill is passed, would it bring any benefits to the local Chinese? Would

it be better or worse?" The replies given are very interesting. On the replies from local Chinese, more than 70% would think that nothing would change, that is, it makes no difference to local Chinese when this Bill is passed. But for the ethnic minorities, 64% think that things will become better for the local Chinese. Then we asked more: "If this Bill is passed, would it be better for the ethnic minorities?" For the local Chinese, about 81% say that it would be better, that is, it would help the ethnic minorities. But when we asked the ethnic minorities, what is their response? If this Bill is passed, 32% think that it will be good to the ethnic minorities and 36% think that after the Bill is passed, they will be living a worse life than before.

President, if I am asked to make an analysis of these two questions, you will see that people from the ethnic minorities do have some hesitations about this piece of legislation. They hope that the spirit of this law can be put into practice and that is: racial discrimination can be prevented. But as you can see, they think that after the passage of this law, the proportion among them who think that life will become worse is larger than those who think that life will become better. This shows that they are actually very much opposed to the too many exemptions and exceptions in this law. On the other hand, the local Chinese do not think it will matter too much. They have not considered that at all and they do not think that this is their concern. However, it is precisely because of the fact that great loopholes exist in this law and that even certain acts that we will certainly regard as discriminatory are being exempted and seen as exceptions, these acts will not be regarded as unlawful. When this law is passed, it is likely that these acts will be seen as lawful and they are permitted in law. Permitting such acts will easily pose some obstacles to their life. And for the local Chinese who form the mainstream population, things will be made more convenient for them. Therefore, the respondents think that after the passage of this Race Discrimination Bill, the local Chinese will think that their life will get better. Look, I just cannot figure out what the SAR Government has got in its mind. When this law is being enacted, does the Government ignore and turn a blind eye on what the ethnic minorities think as well as the practical difficulties and the institutionalized discrimination that they are facing? People from ethnic minorities do not have any hope and they cannot take any formal avenue open to them and reach the rung in the social ladder that they want to climb by pursuing education and a career. They cannot pursue any career they fancy. This is what our society has become.

Earlier on some friends and Members have mentioned that if this Race Discrimination Bill includes language requirements, it will not be practical. They think that there is no place in the world that will include such language requirements. I do not know much about other places, but as I have lived in the United States for more than 10 years, I do know that there is such a law there. It is clearly stated in the law of the United States that if anyone does not get any fair treatment on the ground of his mother tongue and hence denied of basic services like health care, education, applying for social welfare, applying for public housing, get help from the labour department in finding a job, or when someone applies for a course of study in the hope that he can get better promotion prospects, it is a contravention of the law if he is unfairly treated on account of the language he speaks. Would this not be practical? I have lived in the United States for so many years and I can see that they do not see these things as a big deal. They have some ways of dealing with almost any one from any race or speaker of any language who comes to seek medical care. Of course, help can be given not by someone right on the spot, but through the telephone. And as science and technology are so advanced these days, I do not know if you have this experience, you may have and you may have not. If someone dials 911, that is, calling the police, like with the number 999 in Hong Kong, once the line is put through, no matter which language he speaks, very soon someone who speaks the same language as the caller will be fetched to talk with him. The same system can be found in other public services that I have just mentioned. So please do not tell us that this is impractical, what matters is whether or not we have the determination to do it.

President, I hope very much that later on the amendments proposed by our Bills Committee can be supported by other Members. Thank you, President.

MR LEUNG YIU-CHUNG (in Cantonese): President, some Honourable colleagues have just said, tolerance will lead to great achievements. In fact, speaking about the Race Discrimination Bill and Hong Kong society, I would think that these words are very meaningful and significant. This is because the meaning of this phrase is that if we can pool different races together, the impact and help it makes to social development and progress would be very great indeed. So this phrase is very meaningful and significant.

However, with respect to this Bill, the phrase does not mean as simple as racial harmony. It is also hope that another effect can be achieved and that is,

different races are allowed to enjoy the same opportunities and make contributions to one and the same society. There is equality of treatment and care in the life of people from different races. This is what tolerance means and how the aim and meaning of this Bill can be achieved and derived.

President, as a matter of fact, on the effect produced by various anti-discrimination laws, such as the Sex Discrimination Ordinance passed in 1994, although it has not yet produced a 100% positive effect and help in the position of women as yet, many things in society have changed after the passage of the law. An example is that in the past, it would be unthinkable to have woman bus drivers. We never met any woman drivers when we were young. But now we often see woman drivers. Also, we have never imagined that some women would be employed in certain trades, such as security guards. But there are woman security guards these days. Therefore, the emergence of an anti-discrimination law can produce many positive effects and will help address the problem.

Earlier on, some Honourable colleagues have said that laws do not necessarily have to be enacted and legislation is only meant to be complementary. On the other hand, education should be enhanced. President, I do not object to education. But what are the results produced over these many years? In the case of the Sex Discrimination Ordinance, before it was enacted, how much had the status of women been raised and what kind of work in education was done and how great was the effect of that? As far as we can see, they are no match for the results produced after the emergence of this ordinance. So I would think a law on discrimination, especially on racial discrimination, must be introduced as soon as possible. It is both pressing and imperative that this is done.

Now we have a Bill, but can it achieve the effect that I have just mentioned, that is, tolerance? That is to say, people from different races are permitted, protected or cared for in a positive manner so that they can give full play to their abilities in society and help in its development. Also, their basic rights are protected. This is what we should ponder over and ask ourselves. Ms Emily LAU has cited an article earlier on and that is a piece of mind from a student. I was very moved when I heard it. This is because she has voiced a cry and expressed the feelings from the heart of students from the ethnic minorities. In fact, ethnic minorities are found in every corner of our society.

Despite their being small in number, they do exist in our community. We can just see that in the public rental housing estates, most of them have some ethnic minorities living there and there are also children from these ethnic minorities who study in our schools. So I think this problem must be addressed by society and it must be faced fully and squarely.

The article cited by Ms Emily LAU earlier has really hit the crux of the problem. So colleagues from the Government must therefore reflect on and ponder over the question of whether our existing laws are able to help them. Although the letter is not addressed to the Hong Kong Government, in fact, it is trying to tell the Government that the problems they face are real and they do exist in real life. Has the Government responded? Has it faced up to them or helped them in any way? I want to ask, has the Government given any help to them with respect to their difficulties and situation? We do not want to see that these people of South Asian descent or other ethnic minorities are regarded as second class and they are all CSSA recipients and they are our burden.

President, if we do not help them positively from education and employment and such like areas, they will actually end up becoming our burden. We do not want to have this kind of burden and neither do they want to become such a burden. People want to be self-reliant. But have we given them the opportunities to enable them to become self-reliant? This is the most important thing of all. These people may want to pursue their studies. But do they have the opportunities to finish their studies? These people may want to get a job, but do they have any opportunities to get one? As many Honourable colleagues have said, some of these people cannot find any jobs and even if they can, their pay is lower than other people. Often they cannot even make a living. So what can be done? The only way is to seek help from the Government. That translates into social costs.

Then why do we not give them help in a positive manner but instead, we are tackling the problem in a negative manner? I hope very much that this Bill can do more to help them. Some Honourable colleagues have said that discussion for this Bill has been made for more than 10 years, but nothing positive has been done by the Government all through these years. The results produced are so disappointing. Will the Government not feel ashamed and realize that it has done a great disservice to the ethnic minorities?

President, when faced with this problem today, many people say that we do not have to resort to taking such an extensive step as legislating and we may as well proceed by doing a bit of something at a time, or else chaos and confusion may result in society.

President, we do not want to see a pandemonium break out in our society, but the question is, has the Government done its part and what it should do? Now no matter if the amendments of this Bill are passed or what kind of scope they are involved, I would think that the Government must display a proactive stance so that we will know how it is to go about eliminating racial discrimination, helping the ethnic minorities enjoy the rights and interests they are entitled to and helping them make contributions to our society.

As for the future work of the Government, be it with or without this law, I would hope that the Government can do the following: First, apart from putting into practice all the matters required by this law, I hope that the Government can do more in administration, that is, requiring all the departments instead of just a few departments, to undertake a review to see if sufficient attention is paid to the rights and interest of the ethnic minorities and to see if they are given opportunities to take part; second, the Government should review its policies to see if there is any discrimination and if so, whether it will make any changes by adopting administrative measures so that the rights and interests of these ethnic minorities can be taken into account and respected; third, the Government should find out where the problems lie and tackle them. An example is the problem of languages that we have just talked about. Can the situation be improved so that people from the ethnic minorities will not be prevented from integrating into our society because of the language barrier? Also, the Government should draw up action plans for implementation not only by the departments but also for encouraging the private sector to follow suit.

President, the purpose of legislating on this occasion is actually like what is found in other countries and that is, the enactment of anti-discrimination law is to target the Government. Why am I saying so? This is because discrimination is a matter of people's consciousness. If the Government can take the lead, it would be easy for society to come under the influence and so change can be made over time. As I have just said, after the passage of the Sex Discrimination Ordinance in 1994, there has been a gradual change in public consciousness in gender issues. Had there been no such law, the effects would

never have been so substantial. If the Government is not addressed in the Bill, the public will ask, if the Government is not doing that, why should we do it? This is something that could happen.

So I would think that when this law is to be enacted, the first thing to do is to target the law at the Government. But sad to say, in this Bill we have, the Government is exempted in many areas. This causes great disappointment in us. This point alone makes me think that no achievement can ever be obtained.

Also, besides taking the lead, the Government must put words into action. I do not know how the Government will co-ordinate the actual implementation of the law in various departments after it is passed. But this is really the most crucial thing. It is meaningless to engage in empty talks. When talking about disability discrimination, the Government says that it will assist the disabled to integrate into society, but often there is no practical action done to match it. Another example is that recently we said that we hoped to set up barrier-free accesses for the disabled, and although the work on that has commenced for so many years, it is still progressing in a snail's pace. It is just edging and inching its way forward. This is totally disappointing. Or when we say that the disabled should be offered half-fare concessions to facilitate their integration into society, but the Government has been lukewarm in this issue and it pretends that it does not see the problem. The Government makes us see that it does not want to put things into practice. If the Government can set up some committees tasked with taking action, I would think that the situation would be completely different.

Many Honourable colleagues have said that it is highly likely that the amendments proposed by Ms Margaret NG will not be passed. Even though this may be the case, I hope that when faced with this problem, at least the Government can adopt some administrative measures and take the lead in various policies and related services, set up a good example and make the public feel that the Government does not tolerate discrimination and hence the public is convinced that work in this direction will not only bring in harmony but also greater progress in society.

President, I so submit.

MR MARTIN LEE (in Cantonese): Madam President, I have spent 22 years in this Chamber and when I look back, I can see that when many laws are passed, we are not so satisfied with many of the measures or provisions there, but the Government would always make some promise and it says that provided that Members will take the first step, there will be a review later on. Then the law will come back to the Legislative Council in no time, by then our other demands can be fulfilled. I have thought about it for a very long time and I have also talked about this with Honourable colleagues over lunch. I have also asked them to think whether or not there is any time when the Government has coaxed us into passing some law which is not so satisfactory and then there is really a review undertaken later on and the law is reverted to this Council again. After thinking over it for a very long time, I cannot find any example nor can anyone else. So if the Secretary can think of such a case, would he tell me please?

If Members think that half a loaf of bread is better than none and if it is first eaten, the other half will be given, then I can tell Members that they should never hope like this. It will never happen. The Government will do nothing after coaxing Members into passing a law. And Members will know that under the restrictions found in Article 74 of the Basic Law — not Article 79 which Long Hair has been talking about — we cannot raise the matter again. A law passed is a law passed. So after giving their support to the passage of the Bill, Members from the royalist camp should not deceive themselves and others by thinking that there will be a review later on and that the law will be reintroduced to the Legislative Council again, there is no such thing as that.

After joining the Bills Committee, the thing which I am most unhappy about is that this Bill is clearly continuing to ask the people of Hong Kong to discriminate against the new arrivals. However, many of us here are actually the children or the posterity of new arrivals to Hong Kong. Often times some immigrants have some view which is not to be commended and that is, they are grateful for others for offering them a shelter, but they do not want people who come after them be offered a shelter. This is because they are afraid that the new arrivals who come later will rob their chance of survival and take away their jobs. This kind of mentality of the immigrants is undesirable but it may exist in Hong Kong today. This is precisely what I would call the immigrants' mindset.

I recall some time ago, there is a good friend of mine and he is a descendant of an unknown number of generations of immigrants to Hong Kong.

He said, "Why are you people like this, that you should discriminate against the new arrivals?" He recalls at the time of the liberation of mainland China, many compatriots flocked into Hong Kong from the Mainland and at that time the people would bring along food and clothes and welcomed them at the border. After they had come to Hong Kong, we would take care of them. But why is the situation like that now? We have been fighting with the best of our efforts so that this Bill will not allow the people of Hong Kong to discriminate against new arrivals, but we fail. We have asked the Government on many occasions the reasons why and finally we get an answer. The Government says that if this Bill is passed, it is feared that the new arrivals will apply to the Court for leave to file a judicial review and they will query why they cannot be given public rental housing and other kinds of treatment. Then the Government will have to spend a lot of money. So it boils down in the end to the question of money.

If the Government is that afraid of the situation that once the new arrivals get the protection from the Bill, they will apply for judicial review on the ground that they cannot obtain equal treatment and by then the Government will lose in such litigations, then how come the Government insists on passing this Bill? Ms Margaret NG and many other Members will think that the Government will lose in such lawsuits. But if it will lose in any case, then why does it not make itself stand gracefully in a position that will not lose? It is just the question of money.

Very soon we will be asking for funding to the amount of \$10 billion to help the victims of the Sichuan earthquake. Of course, there is no reason for us not to act generously to help these victims, but why can we not take good care of the new arrivals to Hong Kong who are already there? If it is a question of affinity, then those who have already come to Hong Kong should be regarded as closer in affinity. Now we have a lot of money and it seems that we will never use it up. So how come money is a problem?

I am commissioned by our good friend LAW Yuk-kai who hopes that I will speak about the inadequacies of the race equality scheme that we have. First, it is not applicable to all government departments, so why should a suggestion not be made to make all government departments come under regulation? Second, the Government has not told us that policies will be put under constant review to find out the shortcomings. Third, the Government has not undertaken that additional resources will certainly be set aside and that additional action plans and staff training will be drawn up, so it is not enough.

Now the guidelines are insufficient and their scope is too narrow and they do not include the police and immigration forces. As for reviews, to be honest, if they are really to be undertaken, then things should be first finalized and then put into practice and then reviews should be undertaken immediately. If any shortcomings are identified in the reviews, then immediate action should be taken to improve.

I hope that the Government can make a pledge on these when making a response later. Otherwise, this kind of race equality scheme is totally meaningless. It is only deceptive. So if the Government is sincere about it and if it wants Members to support this Bill which is imperfect, then since it has made a pledge on this race equality scheme, at least it should make it sound. This is the most basic thing, for if not, it would be very difficult for Members to support the Government in the Third Reading.

Although Members will propose many amendments, these amendments from Members will never get passed. Therefore, when the Third Reading comes, it will indeed be the most painful moment for me. I hope the Government can give us a satisfactory answer in this aspect at least.

Thank you, Madam President.

MS AUDREY EU (in Cantonese): President, as Margaret NG, Ronny TONG and Fernando CHEUNG of the Civic Party have spoken, so when it comes to my turn to speak, I would not speak at great lengths and repeat their arguments. However, President, there is something that I feel compelled to speak it out.

President, I joined some facebook lately. As you may know, many young people have their own facebook and I often chat with them there. A young person tells me that recently their teacher talked with them on issues about democracy. The teacher said that democracy was the majority oppressing the minority. He asked me why his teacher would teach them that way. If this teacher has paid attention to the anti-race discrimination law which has resumed its Second Reading in this Council today, he should be able to find an interesting thing and I also invite this student and his teacher to note this point. Last week we held a debate on a law which is related to special education needs, domestic violence and homosexuality. Every time when these minority groups or

disadvantaged groups in Hong Kong want to have any protection, you will find that it is Members from the democratic camp who speak out for them.

It has never been the case that democracy is where the majority oppresses the minority. Democracy is always people-centred. However, we may find an odd thing in this Chamber and that is also the problem often encountered by Members returned from direct elections or those supported by the democratic camp. The problem they have is whenever they speak out on behalf of the minority, those Members from the pro-establishment camp will rise up and object. On the same line of argument, it is the same case with the freedom of speech. All along the democratic camp has been in support of the freedom of speech and that is not because words coming from the mouths of the majority are pleasing to the ear but because the minority must be allowed to voice out their views as well.

President, the issue we discuss today makes me think of the Chief Executive who when present in this Council urged Members not to talk about democracy all the time and stop causing internal waste, instead Members should shift their topic to people's livelihood. President, what we are talking about today is precisely people's livelihood, about the chances of the ethnic minorities in receiving education, about the treatment they get when they go to hospitals to see the doctor, and about how they find jobs. These are all basic needs in people's lives. Ms Emily LAU has just read out the words coming from the heart of a 13-year-old child from a minority group. This Council often discusses topics about people's living. President, but why are these always related to democracy? President, it is because the political system in Hong Kong is a monstrosity. When Members like us from the democratic camp who are people-centred talk about issues related to people's living, we are often voted down by the Government or the pro-establishment camp. Now many Members are asking the Government today why such a topic that sounds so sensible is not passed or does not have government support. I would think that the classic example of this is Abraham SHEK. He says that in every meeting of the Bills Committee, he has listened carefully to the views of Members from the democratic camp who support the ethnic minorities and speak on their behalf. He says that he finds their views and recommendations reasonable and hard to find fault with. However, in the end he does not support them and instead raises his objection and supports the Government. The reason he gives is that he is a practical man. This is also what Members from the Liberal Party say. Even CHOY So-yuk from the DAB is also saying that they want to do some practical work and they are people who do practical work.

President, I would like to cite a phrase which Mrs Selina CHOW loves to use and that is, "to tell the truth". What then is the truth to be told? President, it is money and nothing else. Whenever it is said that the disadvantaged in Hong Kong should be cared for, the Government will start talking about resources. We have to tell people that this is a cosmopolitan city and we uphold all core values. But the problem is whether we can do as the saying goes, "put your money where your mouth is." That is to say, whether or not we want to spend money on this. The Government objects to the amendments proposed by Ms Margaret NG on behalf of the Bills Committee, saying that there is a charging effect, that is, they will affect government expenditure. Even some slight change made to the definition of "race" leads to government response that the scope of public services will be enlarged and so public expenditure will be affected, hence the Government is obliged to object. The question is whether this society is willing to allocate public money or public resources in a more equitable manner.

Therefore, President, people's livelihood, democracy and ethnic minorities are all interconnected, for politics is after all, matters concerning everyone and how public resources are to be allocated. Often times, the Government would approach the issue from the point of view that more money will have to be spent when some services are to be offered. The rich people will only keep their money and so it would not be so good when some services or help are to be given to these disadvantaged groups. This is what is meant by being practical. Abraham SHEK, this is what being practical is. To tell the truth, it is money that matters. Since we are talking about nice-sounding words like social justice and claim that we are a cosmopolitan city, then we should go ahead and do it. If we are doing nothing about that, then we had better stop talking about these nice-sounding words and preaching such lofty ideals. President, when the truth is told, it is as simple as that.

President, let me repeat once more, we from the Civic Party support the resumption of the Second Reading debate. This is because we have to propose a number of amendments which we think are crucial and of great importance. However, I am sure that in the mind of people who are practical and who only talk about money, these amendments are hardly acceptable. If these

amendments cannot be passed, the only thing we can do is to remain in our seats and cast our votes to oppose the Bill when it is read the Third time.

Thank you, President.

MR ALBERT CHAN (in Cantonese): President, I speak to oppose the Second Reading of this Bill.

President, this Bill is aptly named. It is called Race Discrimination Bill. It is interesting to know that in many foreign countries, laws about race usually come with names like race equality or anti-discrimination, but the name of this piece of legislation is rightly named "race discrimination". This reflects the mindset of the Government and the demon in it is clearly visible. This is because the Government is using this law to legitimize acts of discrimination, especially those done by the Government and to have the law passed by this Council by going through all the formalities.

President, during the deliberations of this Bill by the relevant Bills Committee, I have said repeatedly that this is a trap. This trap is that the Government can tell the United Nations and all the world that Hong Kong has already got a law that safeguards the equality of races and this Bill is passed by the Legislative Council with Members returned by the people. So I advise those Members from the democratic camp who support the Second Reading of this Bill to stop dreaming. This is because the Second Reading of a Bill is an indication of Members' position on matters of principle. It remains of course that it is another show of position if the Bill is voted down after the Third Reading. So if support is given to the Second Reading, it will mean that support is given in principle to the provisions proposed by the Government in the Bill concerned.

During the deliberations of the Bill, many Members have repeated raised the point that they are extremely upset about the Government for not subjecting itself to the regulation of this Bill. There are also many Members who seek a compromise by saying that if no demand is made on the Government in the Bill, then perhaps the Government can be asked to draw up some administrative guidelines or directives. These can make the Government do better. But the Government repeatedly refuses. At last, some Members are so tolerant to the extent that they say, even if no guidelines can be drawn up, then perhaps the

Government can make a pledge to do better. But it turns out in the end that this has also come to nothing.

So the Government has come back to square one and as the name of this Bill suggests, the Government is empowered to continue its discrimination against people from various races, especially those ethnic minorities. Since the provisions of this Bill have been under deliberation for so long, there should be no choice left to us but to point out clearly the shortcomings and absurdities of this Bill, the injustices of the Government, the most ridiculous and contemptible sides of the Bill and its gross neglect of the rights and interests of the ethnic minorities. The whole world and all the people in Hong Kong and all the ethnic minorities here will know that when introducing the Bill, the Government has not from the outset had an intention to safeguard the right of the ethnic minorities to equal opportunity.

President, on fighting to get the right to equality for the ethnic minorities, there has been debates held in this Chamber for more than 10 years. In my own constituency, that is, the districts of Tsuen Wan, Tin Shui Wai, Tuen Mun, Tung Chung, Kwai Chung and Tsing Yi, there are many ethnic minorities living there, especially the Indians, Pakistanis and Nepalese. Irrespective of whether they are children or adults, it can be seen over the years that they are filled with discontent. Things were somewhat better before 1997. This is because before 1997, many people of Indian or Pakistani descent could become policemen even though they did not know Chinese. But after 1997, this job opportunity has been totally removed and they are deprived of this opportunity.

Every time when they meet me, they would talk about a lot of problems, like their being discriminated in employment and in education. Even when it comes to leasing a flat, they are often subject to discrimination and they are denied any chance to negotiate with the landlord about the tenancy agreement. For some religious groups like those of the Muslims, they cannot rent a place if they want to. There is also discrimination in urban planning. An example is in Tin Shui Wai and Tung Chung, there is no land available for building a mosque so that these Muslims can have a bigger place in Tin Shui Wai or Tung Chung to hold some religious activities. On this occasion the Government resorts to law so that it can formally engage in lawful acts of discrimination. We must unveil the plot of the Government and its despicable and unacceptable tactics.

President, we are familiar with such similar policies and tactics practised by the subordinates of Eunuch LAM. One is in matters concerning constitutional affairs. Right? Elections in the functional constituencies can be regarded as direct elections. This is pointing at something and saying that it is a completely different thing. We are used to seeing this. So when the Government resorts to using its past tricks in the Race Discrimination Bill, it comes as no surprise to us at all.

Therefore, when it comes to the Second Reading later on, I hope that friends from the democratic camp will display an attitude and that is to show their non-confidence in this Bill. Of course, we will lose in the Second Reading and likewise, we will lose in the Third Reading. Then in the amendments proposed, we will lose for yet another round. But our responsibility is to point out to the world, especially the United Nations, the absurdity of this Ordinance. We also hope that when after this Bill is passed, the 26 Members from the pan-democratic camp will co-sign a declaration on the absurdity of this Bill and state to the United Nations that this Government neglects the right of the ethnic minorities to equal opportunity and that this Government makes use of the Ordinance to confirm and perpetuate its discrimination and exploitation of the rights of the ethnic minorities. I hope that after the Third Reading of this Bill, Ms Margaret NG can continue to be our leader and the 26 of us will co-sign a declaration and inform the United Nations or other places of this matter.

President, lastly, we would like to make use of this opportunity to thank Ms Margaret NG for her leadership of this Bills Committee. I have been a Member of this Council for many years and I have handled many pieces of legislation. I think that under Ms NG's leadership, she has given an outstanding performance during the deliberations. This shows beyond any doubt that she is a professional lawyer. Earlier on I read from the newspaper that some people from certain political parties or groups are making noises, accusing the Member who represents the education sector of placing the focus of his attention only on democracy and human rights issues and he does not have any performance in lawmaking. I am sure these people have never attended a meeting of this Council and they have never attended a meeting of the Bills Committee on the Race Discrimination Bill chaired by Ms Margaret NG. Therefore, with respect to these people's attacks, I think it is right for me to dismiss them as mere noises. These people are not backed up by any objective facts and it is very likely that they unleash these vicious and reckless attacks out

of their wishful thinking or to fulfil some political ends. However, I am convinced that Ms Margaret NG will never take these attacks seriously.

I wish to thank Ms Margaret NG once again for her leadership in the work of this Bills Committee and I hope that after our defeat in the Third Reading, she will again lead the 26 Members from the pan-democracy camp and co-sign a declaration to expose the unscrupulous and contemptible moves made by the Government.

MR LEE CHEUK-YAN (in Cantonese): All of us have really waited too long for the Race Discrimination Bill (the Bill) but why has the Government always treated it as though it is "chicken rib", meaning things of little value and which would be a pity to discard? However, according to the Hong Kong Human Rights Monitor, it would not be a pity to discard the Bill as it is. It would then be a pity for us because, after having strenuously fought for years, we are going to realize that discarding it would not be a pity.

The original purpose of the Bill is to protect the ethnic minorities but there are really too many loopholes that cannot possibly be plugged. Certainly, we have tried to plug these loopholes for the Government and proposed a number of amendments. Nevertheless, as we all know, these amendments would hardly be passed, and so there will still be many loopholes. We think that some loopholes are particularly outrageous: first, the loophole about the Government itself. This is the worst sort of education in the world because the Government is asking the private sector to take up all tasks, while it enjoys exemptions in many of its functions. To be sure, the Bill is applicable to the Government and there seems to be no problem at first glance, but we only need to take a closer look and we will find that many functions of the Government do not come under the Bill or the future ordinance. Therefore, the Government can still take the lead to discriminate.

We must understand a very important point, that is, in all societies, the Government's acts are very often the most influential because everyone is affected by government policies. Thus, if the Government is a loophole, there will be minimum protection for the people. To be frank, if the private sector is involved, there may only be a one-to-one relationship; for instance, a landlord against a tenant or an employer against an employee. Although we are

definitely concerned about these cases, they have relatively lower lethality than the Government's case. Conversely, the Government with the highest lethality has so many loopholes; actually, many policies hinge upon the Government's efforts. For example, many foreign domestic helpers' unions under the Hong Kong Confederation of Trade Unions (CTU) are very concerned about an issue: Why does the Immigration Department have the right to discriminate against foreign domestic helpers? They are subject to the so-called two-week rule while other foreigners working in Hong Kong do not need to be restricted by the rule and can stay here for an unlimited period. Only foreign domestic helpers are not allowed to stay here for more than two weeks after leaving their jobs; there is evidently a big difference. Precisely because the Government's functions are not placed under any restriction, it is eventually exempted and it can continue to discriminate against certain people. Thus, the first most disappointing point is that we cannot fill this loophole of the Government.

The second significant loophole involves new arrivals from the Mainland. The Government has also admitted that new arrivals from the Mainland are targets of discrimination. Why is the issue not handled as well? Actually, it is most natural to include new arrivals from the Mainland in the Bill to extend its scope to the fullest. Nonetheless, the Government is unwilling to do so though it says that there is discrimination and it will make more efforts to help new arrivals from the Mainland; that is really unnecessary. If the Government really wants to help them, it can include them in the Bill; yet, it is unwilling to do so. Thus, the second major deficiency involves new arrivals from the Mainland. Why are Chinese people discriminating against Chinese people? That is not right. Do we have to discriminate against them because they have newly arrived in Hong Kong? I sometimes find it very interesting to see that, while the Members from the royalist camp claim that they love the country, they do not love the people. I do not understand how they can love the country but not the people as the people are more important than the country. What is the purpose of having a country? It exists for the people. Nonetheless, they do not care about the people, and they think that there is no problem if the people have become the targets of discrimination. What logic is that? Hence, I think another very disappointing point is that new arrivals from the Mainland have not been taken into consideration.

The third loophole is about language. The language problem is the most straightforward. For example, when people seek medical consultation at a

hospital, they are not provided with interpreter services. This problem is the simplest and most straightforward. About equal opportunities, let me take vocational training courses as an example; these courses are frequently taught in Cantonese only but not in other languages, hence discriminating against people from other ethnic groups. For sure, the Government may say that there is a resource problem, but if it does not want discrimination to happen, it only needs to put more resources into the area. There is another language problem: clause 58 legalizes the malpractice of discrimination. The Government is very smart, and it has included clause 58 about discrimination by use of language to avoid being sued. If we pass the Bill, especially clause 58, in a way, we will endorse the legalization of discrimination. Thus, as far as language is concerned, the situation is very disappointing and discrimination continues.

The fourth loophole is the excessively narrow definition of indirect discrimination. The relevant laws in all parts of the world have been amended, and I would like to tell the Secretary that Hong Kong is actually a blessed place. Drafting the Bill is a very easy task for the Government because other countries have amended the relevant laws; they have done so after years of studies. Indirect discrimination has been very clearly defined; why should the Government adopt the oldest and most backward practice? Why must it do so? In this modern age, our society should be more advanced than other places and we should not model on the oldest practices of other places. What the Government has done in this respect is also very disappointing.

President, as a CTU member, I am certainly very concerned about the employment problem. At present, many ethnic minority workers have lower wages, especially the Nepalese construction workers. When steel reinforcement fixing workers took industrial action, I heard their views and I knew that their wages were only 70% of those of the local workers, and there was a 30% gap. That is why they have very high expectations of the Bill and they hope that they would really be paid the same wages for the same work after the passage of the Bill. We are not yet sure whether that can be done but another loophole in the Bill is a three-year transitional period for employers with not more than five employees. Why is such a long duration of three years necessary? Is that really necessary? I hope Honourable colleagues would support the amendment. The amendment is in two parts. I have actually taken good care of the employers for I have not proposed cancelling the three-year transitional period. I have listened to employers' views and understand that

they need time to adapt. Thus, regarding the final version, taking into account the working conditions and same wages for the same work, employers with not more than five employees should have a one-year transitional period.

I have really given thought to the needs of employers and given them time, that is, a one-year transitional period, to adapt to the resultant effects. But I think that there should be a zero transitional period for another part, President, which is related to employment. Why is a three-year transitional period needed for recruitment? It is just recruitment. Recruitment should be fair and interviews are required. If there are two applicants from different races, there should not be any discrimination in the employment process. Why is a three-year transitional period needed? Is it because it would be especially easy for the SMEs to discriminate against the candidates on the ground of race in the recruitment process? SMEs have not yet paid any money during the recruitment process, what is wrong for us to ask them to be fair in recruitment? Should we open a door for them so that they can continue to recruit ethnic minorities at low wages within these three years? Why should we do so? My amendment would at least be conducive to fairer employment in our society.

Therefore, we propose reducing the transitional period to zero. As employers have not yet formally employed the employees, that would not put any burden on the employers. There should not be any discrimination and there should only be equal opportunity before an employee is employed, which is an utterly reasonable requirement. I have divided my amendment into two parts because I have actually taken into consideration that some employers have already employed ethnic minorities. I am not asking them to give these employees higher wages at once, but I am asking them to allow them to solve the problem slowly and get ready within a one-year period. This is a very reasonable arrangement and I hope Honourable colleagues would support it.

President, the voting result would really be dependent on the amendment which would most likely not be passed. Many groups have asked us to abstain but I think that, in any case, even if we abstain or vote in opposition, the Bill will eventually be passed. There is still a lot of work for us in the future, and I promise that I would fight for genuine protection for ethnic minority groups, plugging all the loopholes that I have just referred to. Thank you, President.

MR ALBERT HO (in Cantonese): President, although I did not join the Bills Committee, I have been keeping a great concern about the work of this Bill. Just now, I heard numerous Honourable colleagues commend highly on the performance of Chairman Margaret NG in the Bills Committee and pay tribute to her professionalism and competent leadership. I also worked with Ms Margaret NG in some bills committees over the years, and Honourable colleagues' commendation did not come as a surprise to me at all because this is the Margaret NG as she is. Therefore, I will not "cheer her on" today. Just the contrary, I have an expectation on Ms Margaret NG. Her current efforts do not suffice and she has to work on for at least four more years, so she has to keep up with her work. I would like to make this request in place of my commendation for her.

President, just now I heard many Members from the Liberal Party, including Mr Jeffrey LAM, express grave concern about the possible abuse of this piece of legislation and the public's lack of adequate education to correctly understand its spirit. I think this precisely reflects that the public, including Members, have never received the education required to understand this piece of legislation. If they can understand it, how come there will be any abuses? Actually, whether a piece of law is subject to abuse depends on first, whether it is a good piece of law, that is, whether it is reasonable and in line with international covenants; secondly, whether it is enforced by our enforcement bodies with conscientiousness and integrity; and thirdly, whether the Court is competent to interpret and apply it properly. These are the three major conditions, and the enactment of legislation in itself is the best social education. Therefore, with the conditions of Hong Kong in mind, why do we have to worry that a piece of law passed and considered acceptable by all might be abused? This is the first point.

The second point is that the Government has all along been adopting an attitude of firm resistance in enacting this legislation. Therefore, some Members also mentioned earlier that after the repeated advice given on different occasions by the committees of the relevant covenants, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the ICESCR Committee ultimately issued a strong instruction in 2001, as far as I can remember, pointing out that Hong Kong

would have blatantly breached the ICESCR if the Hong Kong Government continued to refuse to introduce any legislation. I remember at that time the Government still defended that there was no need to perform the various duties under the ICESCR immediately as a developmental process would be required. However, the United Nations (UN) Committee further clarified that a State Party had to perform its duties immediately upon entering into the relevant covenant. This was how the Government was gradually compelled to begin considering the introduction of this legislation. It has been six to seven years or even seven to eight years from now, and during this period of time, the Government conducted consultations and was very worried whether this legislation would be acceptable to the mainstream society. Actually, this is not the proper attitude that the Government, being a State Party, should adopt.

To date, as many Honourable colleagues have criticized, the legislation introduced by the Government is not only arguably "too conservative" but has also cast doubt on whether the Government has any intention to comprehensively enforce the relevant covenant with all sincerity and whether it has correctly and comprehensively understood the ideas and values of the relevant covenant. This has caused the Government to propose the constraints and exemptions which we consider unnecessary and has resulted in the inadequate commitment on the part of the Government to eliminate racial discrimination and promote the social objective of according equal opportunities to different races. Therefore, my conclusion is that if the Bill is not reasonably amended by, for example, the amendments proposed by the Bills Committee, the Government will not have adequately performed the duties required under that covenant. Of course, one may say that some of the duties are fulfilled, but one must not regard all the duties under the covenant as being fulfilled when only one-third or one-fourth of them are because there is still a possibility that the UN will issue an instruction or even criticize Hong Kong for still breaching the relevant covenant.

We find it very unfortunate and even regrettable that Hong Kong, being an international city which should bring itself in line with other civilized, advanced and developed cities in various aspects, has failed in what the others have succeeded in achieving and has even included in the legislation many unnecessary exemptions. Can acts exempted under this legislation be regarded as equivalent to non-discriminatory acts or even legalized discriminatory acts? I believe we will never be able to arrive at this conclusion as a matter of

jurisprudence. One can only say that the Government is trying to exploit the law to unreasonably avoid its duties, which will tarnish the overall image of the Hong Kong Government.

Many Honourable colleagues mentioned that various major areas have aroused much controversy, the greatest of which is surely that the relevant legislation has failed to bind the acts of the Government comprehensively, while only treating the Government as if it were part of the private sector and only binding its acts which are of a kind similar to acts done by a private person. This has excluded the policies and acts by law enforcement agencies, including the Immigration Department, the Hong Kong Police Force and the Correctional Services Department, from the regulation of this legislation. I believe this will be the most immediate concern for ethnic minorities from the lower strata — I have highlighted the lower strata because this piece of legislation has failed to provide them with proper protection.

I believe members of the public are also aware of a news report three weeks ago about the staging of a hunger strike by a few hundred ethnic minority detainees in the Castle Peak Bay Immigration Centre. At that time, I visited them with Mr LAW Yuk-kai of the Hong Kong Human Rights Monitor. We spent a total of over 10 hours within two days to meet with almost 100 of them one by one. Among the many grievances they aired, the one which caused our greatest concern was that most of them were detained indefinitely pending repatriation instead of pending for sentencing or serving their sentence. Many of them requested to be released on bail but their request has not been replied to and there is no knowing when a reply will be given.

During our visits, we were very grateful to the only Indian staff of the Immigration Department there who worked for over 10 hours all by himself serving as our interpreter. He speaks a language known as "Urdu", which is a common language of most South Asians but is still not spoken in places such as Sri Lanka. If not for him, we would have been "unable to communicate in confused tongues". When he is the only person who speaks that language in such a large detention centre with so many detainees, I wonder how problems can be solved when the detainees need to communicate with the management. Without interpreters, there may even be problems that those taken ill in the Correctional Services Department venues will not be able to communicate their conditions to the others or those suffering from abuse will be unable to voice their complaints because they speak a language of an ethnic minority. Is this

fair? However, the existing legislation is silent to all these situations, how can we accept it? What LEE Cheuk-yan has talked about just now is the issue concerning employees.

Hong Kong is a civilized place, yet its Government even shamelessly said to the whole world that, "Sorry, we are not bound by this legislation. In sum, we can tell you that we will endeavour to satisfy those people's requests. Do not ever challenge us legally, we cannot take those challenges." May I ask how we can face the UN and the world, or even those who may have suffered discrimination? This is particularly true for the Hong Kong Police Force, and many grassroots bearing the brunt may ask where justice is. How can government departments prevail over the law? I think Secretary Stephen LAM may have to reply to questions as to why the Hong Kong Government is unable to stand these tests and challenges when he attends the next UN hearing. I have no idea how he will respond, he will probably have nothing to say in reply.

The second issue which has also aroused much controversy is the definition of "race". Actually, many sound justifications and evidence were raised during the meetings of the Bills Committee. "Race" refers not only to race but also to the so-called ethnic origin because people's right of abode or place of residence will constitute their ethnic origin. We have no reason indeed to determine that certain people are not protected by this legislation on the ground that they belong to the same race. Why do we have to provide for such a narrow definition? Some people even associated this with political considerations and queried whether it is politically incorrect to consider that these people are of a different race. We think this consideration is totally irrelevant, and a broader definition should be adopted instead.

More importantly, many existing policies, including those on the application for Comprehensive Social Security Assistance and the right to apply for public rental housing, are discriminatory against new arrivals, causing many social problems and currently exerting tremendous pressure on the Hong Kong Government, including pressure arising from the frequent cases of serious domestic violence. Many serious poverty problems of the grassroots and problems of children's rights not being adequately respected and attended to are associated with resources. Ms Audrey EU has put it right earlier that it is mostly an issue of resources. Actually, if the Government is willing to deploy a

reasonable amount of resources to care for new arrivals in Hong Kong without distinction of any kind, what problems will there be?

It is the same for language barrier, and many countries have not provided for any exception for language. I do not believe that the Hong Kong Government will initiate any prosecution against a certain organization for its failure to provide interpreting service for a particular language when a person coming from a certain African country speaking that language arrives in Hong Kong. This is out of the question as the factors of rationality and proportionality have to be satisfied. Of course, organizations providing basic services to a few tens of thousand South Asians will of course have nothing to say in reply to questions as to why they are unable to provide interpreting services, yet there is no need for them to take this as a difficulty which cannot be overcome.

Finally, Mr LEE Cheuk-yan said this is a piece of "chicken rib". However, even if there are people who would take this "chicken rib", we will have to fight on and continue to petition the UN in the end in order to improve this legislation.

MISS TAM HEUNG-MAN (in Cantonese): A number of Members from the Civic Party have made their views known and so I will not repeat their arguments. However, I wish to point out that the Race Discrimination Bill which the Government has introduced is in fact taking the lead to discriminate the ethnic minorities in many respects.

I lived in Britain for 16 years and I experienced discrimination on many occasions. At that time I was under the impression that the British government had a vehement discrimination against the Chinese people. Very often, the British would use some special words to describe people of different races, like the Pakistanis and the Chinese. They would call the Chinese chinky, meaning people from the Qing dynasty. Then they would make a sign and that is rather offensive. They would look at you and put their hands next to both sides of the eyes and say, "slitty eyes". It means that your eyes are very small. They would not just use words like chinky. And for some children or adults, they would say to us when they walk past us, "Chinese, small-eyed Chinese". At that time I was really upset. I lived in Britain for more than 10 years and I saw

many examples like the above. I hate the British for discriminating against the Chinese.

However, when I came back to Hong Kong 16 years or more later, I found out that the people of Hong Kong hold a strong discrimination against foreign nationals, be they Pakistanis, Indians or Filipinos. We would give each one of these foreign people a name. We call the Filipinos by a name. For the Indians, we call them "*ah char*". We are just like the British. And a more ridiculous thing is that we do not know that we are discriminating against other people. When we call people of various races names, we are in fact discriminating them. But if we have never lived away from Hong Kong, we would never know that these words or acts that we speak or do are disrespectful to these foreign people.

When I began to handle this law in racial discrimination, I found out a very funny thing and that is, there are many exemptions there. It turns out that the Government can get exemptions. This gives people a feeling that only the Government can do whatever it likes while the people are not allowed to do anything. The Government is taking the lead to discriminate foreign nationals. If we allow this law to get passed in the Third Reading, this would mean that Members of this Council condone the Government's move to take the lead and discriminate people in Hong Kong who belong to other races, especially the ethnic minorities.

Why do we have to discriminate against others like what people in other countries do? We do not just discriminate against people from various nationalities but also our compatriots, that is, residents from the Mainland. Some 10 to 20 years ago, we used to call our compatriots and immigrants from the Mainland "*ah charn*". When we think about this term closely, we know that we are discriminating against them. Now if we do not include our fellow compatriots from the Mainland into this anti-discrimination law, we are actually discriminating against them. If we allow this Bill to undergo the Third Reading and get passed, the Government will say in future that it is the Members from the Legislative Council who agree to the passage of this Race Discrimination Ordinance and it has nothing to do with the Government and it is a decision made by Members of the Legislative Council.

So today in this assembly, we have the obligation to say from the bottom of our hearts that we object to this Bill and the verbatim record will note that the

democratic camp, only the democratic camp that has stood up and opposed the Government. This is because we are doing our part in monitoring the Government. But Members from the pro-establishment camp only raise their hands in agreement and pass all the laws. I am sure the Bill will get passed today and that is for sure. Even as there may be many voices of opposition, the Bill will get passed in the Second Reading and in the Third Reading.

Lastly, if anything goes seriously wrong in future, the Government will say that the law is passed by Members of the Legislative Council and it has nothing to do with the Government. The case is like the row about the under secretaries last time. The authorities passed all the responsibilities to the Members, especially those from the Legislative Council. Today we have to bear a witness and that is, the democratic camp — Members with a conscience — is against the passage of the Bill without our amendments. So we will vote against it in the Third Reading.

Thank you, President.

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

(No other Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no Member wishes to speak, I will call upon the Secretary for Constitutional and Mainland Affairs to speak in reply.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, first, may I thank the Bills Committee on the Race Discrimination Bill (the Bills Committee), including its chairman and its members, for the time and efforts which they have contributed for more than one years, which have enabled us to resume the Second Reading of the Race Discrimination Bill (the Bill) today. Since the Bill was introduced to the Legislative Council in December 2006, the Bills Committee have had a total of 34 meetings, including two public hearings for members of the public to express their views on the proposals in the Bill directly to the Bills Committee. To facilitate the scrutiny of the Bills Committee, representatives of the relevant

bureaux, departments and public bodies also participated in the Bills Committee discussions, to respond to Members' enquiries and to explain the proposed provisions as well as the relevant policies and measures.

I would like to thank members of the Bills Committee and the people from different sectors of the community who have taken part in the discussions of the Bill. They have given us valuable comments and helped us further improve the Bill. Later, at the Committee Stage, I shall move the Administration's proposed amendments to the Bill. These amendments have been proposed after taking into careful consideration the views expressed by different parties concerned. I hope Members will support them.

The proposed Race Discrimination Bill, when enacted, marks a major step forward for the community of Hong Kong in our endeavours for safeguarding human rights and for the elimination of race discrimination. The legislative process has taken considerable time. During this period, the discussions in the community had helped raise public awareness on human rights protection and on racial harmony. Looking back, 83% of the respondents in the first public consultation in 1997 were against legislation on race discrimination. With years of continued government efforts and public education, the situation has, one may say, been successfully turned round. Over the years, the Government has also been steadfast in providing support services to needy members of ethnic minorities, to facilitate their integration into the community and to promote equal opportunities for them.

The commitment and dedication of the SAR Government in this regard is very clear. I should especially emphasize that we in the Government firmly uphold the principle of equality and is committed to the protection of human rights. This has been the foundation of our continued prosperity and stability. The success of Hong Kong has been the result of Hong Kong people's diligence, as well as the contribution of people from different races who share their talents in a harmonious society. Racial harmony is a particularly important and indispensable ingredient for a harmonious society. Over the years, we have done much to eliminate racial discrimination. We will continue our efforts and strengthen our services as necessary.

The main objects of the Bill are:

- (a) to make racial discrimination and harassment in prescribed areas (employment; education; goods, facilities, services and premises; election and appointment to public bodies; issues related to barristers; and clubs) and vilification on the ground of race unlawful;
- (b) to prohibit serious vilification on that ground; and
- (c) to extend the jurisdiction of the Equal Opportunities Commission (EOC) to cover racial discrimination, harassment and vilification. The related functions include conducting publicity and public education to promote equality of opportunity between different racial groups; conducting investigation and conciliation in respect of cases and complaints concerning discrimination, harassment and vilification and issue code of practice to facilitate members of various sectors to comply with the provisions of the ordinance.

The proposed legislation, when enacted, will apply equally to all people in Hong Kong, irrespective of their race. We aim at a scheme of safeguards which balances the rights and freedom of the different parties involved and at a piece of legislation which is reasonable in its justifications and practicable in implementation. On the one hand, the Bill protects the rights of the individual against racial discrimination. At the same time, it also respects the legitimate rights and freedoms of other persons affected.

In the course of examining the Bill, and in the speeches delivered just now, some Members had expressed concerns on certain provisions of the Bill. I would like to take this opportunity to clarify and explain again the views of the Administration.

Some Members questioned the exception clauses in the Bill, which they consider to be narrowing the scope of the Bill. Some even alleged that these provisions would legitimize certain acts of racial discrimination. Such allegations are not founded on facts. Despite their nomenclature, these provisions have not been proposed purely for excluding certain activities from the application of the Bill. They have been proposed in order to ensure certain fundamental and important protection and objectives:

- (a) despite no affirmative action being required in the Bill, we need to ensure that special measures which are intended for bestowing benefits on ethnic minorities and promoting equal opportunities for them would not become unlawful;

examples include clause 49 (special measures), clause 50 (charities targeting at certain racial groups), and clause 51 (providing training to promote equal opportunity for ethnic minorities);

- (b) we need also to provide for lawful and justified protection for the legitimate rights and freedoms of others, and for other purposes which are justified on policy grounds and considerations;

examples include clause 10(7) (hiring of domestic workers), clause 11 (genuine occupational qualification for a particular racial group), and clause 29(2) and (30) (the choice of a landlord of small dwelling to decide on who can enter the premises and share the accommodation);

- (c) moreover, we need to clearly delineate the scope of the Bill and to provide for clarity and certainty of the law in areas which were not intended to be covered by the Bill;

examples include clause 8(2) and 8(3) (matters not within the definition of "race"); clause 13 (offer of overseas term of employment not on the ground of race); and clause 58 (use of language).

Some Members have expressed the concern that clause 3 as originally drafted (that is, "This Ordinance applies to an act done by or for the purposes of the Government that is of a kind similar to an act done by a private person.") might provide an exemption for the Government. On this matter, I should point out clearly that the original draft was to clarify that both the acts the Government and those of the private sector are governed equally by the Bill. There is no exemption for the Government. Nevertheless, in view of the concern raised by Members, we will introduce a Committee Stage Amendment (CSA) so as to amend clause 3 as "This Ordinance binds the Government". This is to make

clear that the proposed legislation, when enacted, will fully be applicable to the Government.

Some Members have suggested that, in addition to the prescribed areas of activities stipulated in the Bill, the Bill should also cover all the Government functions, including all acts of the Government in "the performance of its function and the exercise of its power". We should note that, unlike discrimination on the grounds of gender, disability or family status, racial discrimination involve much more complex issues and may therefore be easily abused. The inclusion of all government functions beyond the prescribed scope of the Bill could run the risk of an influx of litigation and complaints which are unreasonable and unnecessary. Such complaints and litigation are bound to detract government resources from proper use and would hamper efficient administration.

As a matter of fact, the Bill already covers all the services and facilities provided by the Government. In regard to law enforcement, the Government is bound under the Basic Law, the Hong Kong Bill of Rights Ordinance and administrative laws not to discriminate on the ground of race. Apart from the legal remedy, there are other administrative avenues (such as the Ombudsman) for redress of complaints against racial discrimination by government departments in law enforcement. Therefore, we do not consider it necessary to extend the scope of the Bill to cover such actions.

There are circumstances, for example, in the investigation and prevention of crime, which may call for target action at specific racial groups. For example:

- (a) selection of passengers of certain ethnic groups for baggage examination at border control points on the basis of information or routine risk-profiling;
- (b) stop, search and investigative actions may target individuals of certain ethnic origins if race is one of the identifying descriptors of the suspect(s) of a particular crime case; and
- (c) if intelligence gathered suggests that persons from certain countries are traveling to Hong Kong with plans to undermine the public security of Hong Kong, the law enforcement agencies might have to

take follow up actions focusing on individuals from such countries (or ethnic groups).

Hence, if the remit of the Bill were to be extended to cover all government functions (including law enforcement functions), there could be a real risk that targets of such operations could raise claims on the allegation that the law enforcement agencies' actions constituted discrimination under the Bill. This would impair seriously the capability of law enforcement agencies to prevent or detect crime. Jurisprudence in the United Kingdom has demonstrated clearly that a police officer in the pursuit, arrest and charging of criminals is not providing a facility or service to the criminals. Therefore, the Bill does not cover these activities. We also do not consider it appropriate to expand the scope of the Bill to cover these activities.

Clause 4 of the Bill defines racial discrimination. It incorporates, in clauses 4(2) to 4(4), the criteria for assessing whether a requirement or condition imposed by a person may be justifiable, and hence, does not constitute indirect racial discrimination. To address the concern raised by Members in regard to the inclusion of the alternative test of "reasonable practicability" in clause 4(2)(b), we will propose a CSA to delete clause 4(2)(b) as well as the related clauses 4(3) to 4(5).

During discussions of the Bill, a number of Members have expressed their concern for new arrivals. Some had misunderstood that new arrivals were excluded from the protection of the Bill in accordance with clause 8.

I reiterate here that the Bill does not exclude new arrivals from its ambit. Like anyone else in Hong Kong, they are protected under the Bill.

In line with the definition in the International Convention on the Elimination of All Forms of Race Discrimination, the Bill defines "race" as "race, colour, descent or national or ethnic origin". This definition does not include other matters such as the nationality, citizenship, residency status or length of residency of a person. Clause 8 is to provide clarity of the legislation to prevent future dispute on whether these matters fall within the meaning of race and to avoid unnecessary litigations which would be disruptive to society. We also do not support the idea of arbitrarily classifying new arrivals from the Mainland as a distinct racial group.

On the other hand, we are mindful that, similar to other new immigrants, some of the new arrivals from the Mainland may initially have difficulties adapting to the living in a new environment in Hong Kong. Hence, the Home Affairs Bureau has established an interdepartmental co-ordinating committee to co-ordinate the services provided by various departments for new arrivals. They also monitor closely the service needs of new arrivals and ensure that the services provided meet their needs. With a view to strengthening the work in this regard, the Family Council will also establish a subcommittee to examine their service needs and to identify new initiatives and measures to strengthen support services in this area.

Language proficiency and use of language has all along been a matter of common concern to ethnic minorities. We share this concern and fully understand the difficulties faced by those members of ethnic minorities who have difficulties in using Chinese. However, we are also cautious that it would not be practicable or reasonable for service providers in the private or public sectors to conduct their business in different languages or provide interpretation. We, therefore, believe that the provision in clause 58 is both necessary and in the interest of the community.

That said, we agree that the Government should provide appropriate support to enhance the opportunity for ethnic minorities to learn the local language to help them receive education, find employment and integrate into the community. In education, the Education Bureau has done a lot, including the exercise of flexibility in regard to the General Chinese Language requirement for admission to universities and to Secondary Six, introducing supplementary guide for non-Chinese speaking students, enhancing support services for designated schools and increasing the number of these designated schools, and so on. On vocational training, the Vocational Training Council and the Employees Retraining Board have, having regard to the needs of ethnic minority students, offered more target courses, including courses on Chinese language and job interview techniques. On 7 July, I wrote to the Chairman and members of the Bills Committee to lay out in detail the further new support measures which would be implemented to enhance the provision of vocational training for ethnic minorities.

To facilitate access to public services for ethnic minorities, the Government has allocated \$16 million in this financial year for the setting up of

four support centres in different districts to provide interpretation services for ethnic minorities. These centres would also organize Chinese and English language courses and other activities to help them integrate into the community. As regard interpretation services for patients at public hospitals and clinics, the Hospital Authority (HA) will arrange, at its public hospitals and clinics, free interpretation for those members of ethnic minorities who require such service. In 2008, the HA will further implement a series of measures to improve its service management, policies and standards, enhance the participation and training for front-line staff. It will arrange for on-site interpretation and, as necessary, telephone interpretation service.

Therefore, in response to the views expressed by Miss CHOY So-yuk earlier on, the services provided by the SAR Government to ethnic minorities will not decrease but will only increase.

In addition to the support measures described, the Administration will, with a view to strengthening support services for ethnic minorities and promoting racial harmony, prepare guidelines for the key bureaux and departments in their formulation and implementation of relevant policies and measures. The guidelines will focus on key services including medicine, education, vocational training, employment and major community services. They are expected to cover the HA, Department of Health, the Education Bureau, Labour Department, Social Welfare Department and Home Affairs Department. They are also expected to involve other organizations including the Vocational Training Council, Employees Retraining Board and Construction Industry Council.

According to our plan and the guidelines, we would invite bureaux and departments to assess the impact of their policies and measures on racial equality, to consider the measures to be implemented to eliminate unlawful racial discrimination, to promote racial equality and to enhance support services to ethnic minorities in the light of such assessments, and to formulate performance pledges, targets or indicators as appropriate. The bureaux and departments will also publicize the measures taken and the relevant assessments, and will provide training or briefing to staff on the implementation of the guideline.

We will set up an inter-departmental body to co-ordinate the preparation of the guidelines. The Constitutional and Mainland Affairs Bureau will take an

overview on the implementation in the Administration as a whole. We will consult the relevant parties, including the relevant ethnic minority groups such as the Committee on Promotion of Racial Harmony and related non-government organizations to solicit their views and suggestions.

When completed, the guidelines and implementation plan will be published for the information of Legislative Council, the general public, the relevant organizations for ethnic minorities, other interested organizations and the media. They will also be posted on the Government website for public access. We will also brief the relevant Panel of the Legislative Council on the progress of implementing the guidelines.

In respect to the provision of resources, we will ask the bureaux and departments concerned to consider the resources required and, as needed, seek additional resources through appropriate channels and procedures.

Therefore, in response to the comments made by Mr Martin LEE earlier on, although our plan is an administrative rather than a legislative measure, we will try our best in implementing it and make improvement gradually.

To assist the staff in implementing the guidelines, we will explore with the Civil Service Training and Development Institute the feasibility of strengthening training support. We will also discuss with the Equal Opportunities Commission suitable measures to enhance staff awareness in the light of the passage of the Race Discrimination Bill.

Madam President, the Race Discrimination Bill represents an important step forward in reinforcing the legal protection and promoting racial harmony within the community, so that Hong Kong people, irrespective of their race, would be protected from racial discrimination. At the same time, the Government will continue to enhance support service for ethnic minorities and new arrivals from the Mainland, in order to facilitate their fuller integration into the community. I implore Members to support the Bill and the various amendments which I would propose at the Committee Stage.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Race Discrimination 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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): Race Discrimination Bill.

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Committee Stage. Council is now in Committee.

RACE DISCRIMINATION BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Race Discrimination Bill.

CLERK (in Cantonese): Clauses 5, 6, 9, 11 to 14, 16, 19, 21 to 25, 28 to 33, 35 to 40, 47, 48, 53, 54, 57, 60 to 63, 66 to 70, 73 to 80, 82, 83, 85 to 88, 90, 91 and 92.

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 the clauses 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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clauses 1, 2, 3, 7, 15, 18, 20, 26, 27, 34, 45, 46, 64, 65, 72, 84, 89, 93 and 94, and the cross-headings immediately before clauses 89 and 94.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam Chairman, I move the deletion of clauses 89 and 94, and the cross-headings immediately before the relevant clauses, and the amendments to the clauses read out just now, the contents of which have been set out in the paper circularized to Members. These amendments are supported by the Bills Committee. I hope Members will support the passage of my proposed amendments.

Proposed amendments

Clause 1 (see Annex I)

Clause 2 (see Annex I)

Clause 3 (see Annex I)

Clause 7 (see Annex I)

Clause 15 (see Annex I)

Clause 18 (see Annex I)

Clause 20 (see Annex I)

Clause 26 (see Annex I)

Clause 27 (see Annex I)

Clause 34 (see Annex I)

Clause 45 (see Annex I)

Clause 46 (see Annex I)

Clause 64 (see Annex I)

Clause 65 (see Annex I)

Clause 72 (see Annex I)

Clause 84 (see Annex I)

Clause 89 (see Annex I)

Clause 93 (see Annex I)

Clause 94 (see Annex I)

Cross-headings immediately before clause 89 (see Annex I)

Cross-headings immediately before clause 94 (see Annex I)

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 the amendments moved by the Secretary for Constitutional and Mainland Affairs be passed. 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 of the Members present. I declare the amendments passed.

CHAIRMAN (in Cantonese): As the amendments to clauses 89 and 94, and the cross-headings immediately before the relevant clauses, which deal with deletion, have been passed, the clauses and the cross-headings are deleted from the Bill.

CLERK (in Cantonese): Clauses 1, 2, 3, 7, 15, 18, 20, 26, 27, 34, 45, 46, 64, 65, 72, 84 and 93 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses as amended 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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): Heading before Part 6, clauses 41 to 44, 49 to 52, 55, 56, 59, 71 and 81.

MS MARGARET NG (in Cantonese): Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rules 58(5) and (7) of the Rules of Procedure be suspended in order that this Committee may consider the new Part 2A, new clauses 9A and 9B and new schedule 6 before considering the clauses and headings read out just now.

CHAIRMAN (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Ms Margaret NG, you have my consent.

MS MARGARET NG (in Cantonese): President, I move that Rules 58(5) and (7) of the Rules of Procedure be suspended to enable the committee of the whole Council to consider the new Part 2A, new clauses 9A and 9B and new schedule 6 before considering the clauses and headings read out just now.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rules 58(5) and (7) of the Rules of Procedure be suspended to enable the

committee of the whole Council to consider the new Part 2A, new clauses 9A and 9B and new schedule 6 before considering the clauses and headings read out just now.

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.

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): New Part 2A	Government
New clause 9A	Government
New clause 9B	General statutory duty of the Government

New schedule 6

Specified Bureaux and
Departments of
Government and public
authorities.

CHAIRMAN (in Cantonese): Ms Margaret NG has given notice to move the addition of new Part 2A, new clauses 9A and 9B, and new schedule 6 to the Bill.

CHAIRMAN (in Cantonese): Members may now debate the new Part 2A, new clauses 9A and 9B and new schedule 6 jointly. I will call upon Ms Margaret NG to speak first but no amendments are to be moved at this stage.

MS MARGARET NG (in Cantonese): Chairman, on behalf of the Bills Committee on the Race Discrimination Bill, I propose the amendments to clauses 9A and 9B.

Chairman, I will comment briefly on the differences between clause 9A and clause 9B. Clause 9A is a new provision under new part 2A and it states, "It is unlawful for the Government to discriminate against a person on the ground of the race of that person in the performance of its functions or the exercise of its powers.". Some Members have discussed this issue in their speeches in the debate on the resumption of Second Reading, saying that the drafting of subsection (3) is unsatisfactory. Even though we have just passed the Government's amendment to clause 3, we can only say that "this Ordinance" is binding to the Government and in fact, the contents of "this Ordinance" mean the contents as specified. In other words, compared with other pieces of anti-discrimination legislation, there is a very great difference, that is, if the functions performed or the powers exercised by the Government does not fall within these specified areas, the Government will not be bound by any legal constraint imposed by this piece of legislation on racial discrimination. In view of this, we think that this will give rise to problems.

In fact, many academics have pointed out to us that this is a major loophole. Just now, I have already pointed out a loophole, that is, when a law-enforcement officer discriminates overtly against someone, it will not be

possible to accuse him of violating the law and we can only lodge a complaint with the government department concerned. For example, if the law-enforcement officer is a police officer, we have to lodge a complaint with the Complaints Against Police Office. This will fall far short of the requirement of the United Nations International Convention on the Elimination on All Forms of Racial Discrimination that such acts violating racial equality should be regulated by the law and when racial equality is violated, legal actions and remedies can be resorted to.

(THE CHAIRMAN'S DEPUTY, MS Miriam LAU, took the Chair)

As regards another difference, we have also talked about it in the past, that is, in other pieces of legislation, such as the Sex Discrimination Ordinance, there is a provision similar to clause 9A. For this reason, when the Government's education policy discriminated against girls in the allocation of secondary school places, it was possible to take legal action through the Equal Opportunities Commission (EOC) and the EOC really did so. However, even though we have amended clause 3 of the Race Discrimination Bill, such an effect cannot be achieved. This kind of effect is very important because most instances of discrimination are related to the allocation of resources. For this reason, if the Government displays discriminatory behaviour in the allocation of resources but a provision similar to clause 9A as proposed by us is not enacted, it will not be possible for us to resort to legal actions to seek fair treatment.

The third issue is: Apart from the questionable legal effect, to the whole world, this message will also be very clear. We are in fact taking a step backwards and this Bill is even worse than other pieces of anti-discrimination legislation. Moreover, since the Government has far greater power than private parties but it is bound by the law only when it is exercised in a way similar to an act done by a private person, this will represent a major setback in promoting the message against race discrimination.

Just now, the Secretary cited some oft-repeated comments and explained why race discrimination was different. He said that this was because this matter was much more complicated and he was concerned that the provisions might be easily abused. Deputy Chairman, in fact, we all know that this is unconvincing,

particularly given that one major advantage of this Bill is that the EOC has the power to enforce the law. In other words, if anyone thinks that the Government exhibits racial discrimination when performing its functions or exercising its power, as their first stop, he can go to the EOC. If there is some misunderstanding and the Government has not really abused its power, this issue can in fact be resolved at the level of the EOC. Therefore, without this provision, it will be impossible for the EOC to perform all its functions.

Deputy Chairman, the Government has steadfastly refused to include the relevant provisions in the Bill. In fact, what does this reflect? This reflects the lack of determination in promoting racial equality within the Government. We can imagine all government departments saying that if they are required to abide by the law, then resources have to be allocated to them and if the Government is unwilling to allocate additional resources, exemptions will have to be given to them. In other words, after the enactment of the legislation, they can all remain at ease and there is no need to make any change to the direction or practices of their existing policies.

Deputy Chairman, as regards clause 9B, in fact, clause 9B and clause 9A can be described as the two sides of a coin. On the one hand, clause 9A provides that it is unlawful for the Government to discriminate against a person on the ground of the race of that person in the performance of its functions or the exercise of its powers, whereas clause 9B assigns an active duty or general statutory duty to the Government, that is, "The Government shall, in carrying out its functions, have due regard to the need (a), to eliminate racial discrimination; and (b), to promote equality of opportunity and good relations between persons of different racial groups.". Why do we propose such an amendment? Deputy Chairman, in the Bills Committee, we can see that the Government has made inadequate preparation, so an active course of action is to prescribe a statutory duty for the Government. If the Government agrees that it has to make an undertaking with legal effect, it can formulate this kind of equality schemes according to its own timetable to improve the present situation. This will be highly conducive to the Government's efforts in promoting racial equality. It is unfortunate that the Government is unwilling to do so, so the Bills Committee has decided that I should propose this amendment.

Deputy Chairman, in fact, we have already specified in clause 9B(2) what should be done to implement subsection (1). This is a very specific approach to

take, that is, to specify in Schedule 6 that the 11 bureaux and departments of the Government and the public authorities most directly related to the issue of racial discrimination are to conduct reviews and make plans at intervals. Deputy Chairman, originally, the Bills Committee has made many specific proposals. For example, under subsection (2), there are paragraphs (a) to (g) and the arrangement is to begin with a review, then formulate a plan, carry out consultation and implement the plan, and ends with the provision of training, the allocation of resources and a review after a period of time. We have specifically requested that the Chief Secretary for Administration to take charge of this task and decide which departments should be covered. However, due to the opposition from the Government, which says that some of the provisions, in particular, those on "ensuring public access to information and services that the Government provides" and "reviewing the relevant policies at reasonable intervals or at the request of a committee of the Legislative Council" would involve a review of the relevant policies and on the ground that consultation and staff training would incur public expenditure, so we have not been allowed to propose these provisions. The ruling of the President is that we are allowed to propose some of them, however, the part that would really incur public expenditure cannot be proposed due to the Government's disagreement.

Deputy Chairman, even though only some of the provisions have been approved, why do I still think that I want to propose them as long as the agreement of Bills Committee members can be secured? This is because even if the Government is required to assume general statutory responsibility, to assume a positive responsibility and fully cater to the need to promote racial equality and to formulate and review its policies, we will have achieved half of our goal. For this reason, we decide that this amendment should be proposed.

Deputy Chairman, the Secretary mentioned earlier the issue of abuse, saying that if constraints were imposed on the functions and policies of the Government, a lot of unnecessary litigation would arise. The Secretary cited two examples, one being actions taken by the Immigration Department or law-enforcement officers targeting passengers of certain ethnic groups for security reasons, the other being actions targeting individuals of certain ethnic origins due to the intelligence gathered or the need to combat crime because they may be the suspects wanted by the authorities. In these situations, problems may arise. Deputy Chairman, in fact, these issues have been discussed many times in the Bills Committee. If there are reasonable grounds, these actions will by no means amount to racial discrimination. However, the Secretary has gone

so far as to raise such issues. I believe he is not someone who does not know the law, so I can only believe that he is deliberately trying to mislead and confuse, while also trying to scare people.

Deputy Chairman, I call on Members of the Liberal Party and the DAB in particular to support this amendment because just now, Members of the Liberal Party raised a number of times the problems that the business sector and private sector would encounter, saying that there were too many grey areas, and so on. However, clauses 9A and 9B have nothing whatsoever to do with the business sector, nor will they have any effect on private organizations. These provisions only request that the Government should take the lead and by doing so, educate the public. For this reason, I hope very much that this amendment can win the support of the Liberal Party and the DAB. Thank you, Deputy Chairman.

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

DR YEUNG SUM (in Cantonese): Deputy Chairman, on behalf of the Democratic Party, I speak in support of the amendments proposed by Ms Margaret NG on behalf of the Bills Committee.

The main body of the amendments is clauses 9A, 9B and schedule 6. Deputy Chairman and Honourable colleagues, this amendment in the form of clause 9A is very important. It only provides that "It is unlawful for the Government to discriminate against a person on the ground of the race of that person in the performance of its functions or the exercise of its powers.". There is nothing special about this amendment because it is only necessary to take a look at other pieces of legislation, such as the Sex Discrimination Ordinance, to find that there are also similar provisions in them.

Take the Sex Discrimination Ordinance as an example, it also states that its scope covers all government functions and powers. However, when the Race Discrimination Bill was being scrutinized, the Government said that although the Bill was binding to the Government, such a binding effect was only limited to the areas specified by the Bill, particularly in such areas as employment; education; provision of goods, facilities, services and premises; election and appointment to public bodies and so on.

As we all know, the functions and powers of the Government are multifaceted and multi-level, instead of being confined just to the areas specified by this piece of legislation. In view of this, I think that the Government often adopts a double standard. In other pieces of legislation relating to equality, such as those relating to disability or sex discrimination which I have just mentioned, the coverage is broader and all the functions and powers of the Government are covered. However, the Race Discrimination Bill is subject to various constraints and its binding effect on the Government is only partial.

Perhaps the Government thinks that the Race Discrimination Bill is related to culture, customs or social status and if the scope of the regulation imposed on the Government is wide, a lot of litigation may arise. However, I wish very much to ask the Secretary if the Government holds such a view, will the public have the impression that it lacks determination in promoting racial equality? This means the Government is afraid of being sued, so it narrows down the scope of regulation, so as to play safe. In fact, this precisely betrays the meanness of the Government, does it not? The authorities, as the governing party in society, have failed to set an example by setting a social trend and showing the public what responsibilities they have to take. I wish to express my deep regret over this.

In fact, in the public hearings, we could hear complaints from quite a number of members from the ethnic minorities. Some of them pointed out in particular that when police officers took such law enforcement actions as body searches or when they went to police stations to make reports, they might have to take off all their clothes or when going through immigration control, they were subjected to unfair treatment. The Bill under deliberation now does not cover these aspects, so I think this is absolutely unfair to the ethnic minorities.

Of course, the Government said that there was no cause for concern because there was the Bill of Rights Ordinance (BRO) in Hong Kong and that the BRO could also protect the ethnic minorities. However, Deputy Chairman, you also understand that basically, invoking the BRO will involve court hearings and most members of the public cannot afford the exorbitant legal costs incurred by taking legal action. However, if they are protected by the Race Discrimination Ordinance, they only have to lodge a complaint to the EOC for the latter to carry out mediation and take follow-up action, so I think this will give them considerable protection.

The Democratic Party lends its full support to the amendments proposed by Ms Margaret NG. Thank you, Deputy Chairman.

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

MR RONNY TONG (in Cantonese): Deputy Chairman, the Secretary said he was afraid that unnecessary litigation may arise, so I wish to comment further on this. When I heard this comment, I found it very jarring. What does "unnecessary" mean? If the Government violates basic human rights and discriminates against socially disadvantaged groups in its administration and is sued as a result, this is by no means unnecessary.

If the Government says that some people may cause trouble for no good reason and take totally groundless legal action, in that case, the Government should trust our judicial system and it should also trust the approach adopted by the EOC. As we all know, the resources of the EOC are very limited, so will it take legal actions with no merit against the Government all the time and for no good reason? I think this is an absolutely irresponsible accusation.

Deputy Chairman, if the Government assumes its incumbent constitutional and international responsibilities, which I have mentioned just now, respects the core values of Hong Kong and the mentality of the Hong Kong people to look for common ground and set aside differences, there is absolutely no reason for the Government to oppose this amendment. Furthermore, our Honourable colleagues have pointed out earlier that the wording of these provisions is in fact equivalent to that in other pieces of anti-discrimination legislation. Since the Government is willing to accept the statutory regulation imposed by those pieces of legislation, why is it unwilling to subject itself to the regulation in racial discrimination?

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

(Dr YEUNG Sum raised his hand in indication)

DEPUTY CHAIRMAN (in Cantonese): Dr YEUNG Sum, speaking for the Second time.

DR YEUNG SUM (in Cantonese): Deputy Chairman, I wish to continue adding a few words concerning the amendment in the form of clause 9B proposed by Ms Margaret NG on behalf of the Bills Committee. Clause 9B is also a fairly important amendment because Ms Margaret NG's amendment requests that the Government should introduce a scheme on racial equality. This is a statutory duty but at present, the Government is only willing to adopt the approach of administrative guidelines. As Members all know, the administrative guidelines of the Government are, generally speaking, just guidelines without any legal effect, so the protection that they give to ethnic minorities is actually very limited. No matter if the Government puts them into practice or not, there is nothing we can do.

However, if a scheme on racial equality is introduced Deputy Chairman, I have to thank the EOC for proposing this method to us. It said that in the United Kingdom, basically, there was a statutory approach and the Government is required by law to implement a so-called Race Equality Scheme. Through the measures taken each year, that is, through studies, surveys, policy reviews and even measures in service provision, areas of racial inequality are gradually eliminated. Therefore, this is a very active approach and since there is a legal basis, it is incumbent upon the Government to do so. If it does not, members of the public can apply for a judicial review and take legal action against the Government.

However, at present, the Government has completely watered this matter down, that is, it has played down, sidelined and made a perfunctory gesture with regard to this matter by proposing those so-called administrative guidelines. In this regard, as I have said just now, these administrative guidelines have no legal effect, nor can they give legal protection to ethnic minorities. Personally, I find this highly regrettable. Thank you, Deputy Chairman.

DR FERNANDO CHEUNG (in Cantonese): Deputy Chairman, in fact, the provisions in this part can rank as some of the most "over-the-top" provisions in this piece of legislation. Initially, the Government maintained that it would be

regulated by this piece of legislation or this piece of legislation would apply only when an act done by or for the purposes of the Government is of a kind similar to an act done by a private person. Of course, this way of drafting has made all of us feel deeply disappointed and there is also public outcry. How can the Government be above the law? Moreover, if the legislation is written in this way, when will the acts of the Government be the same as those of a private person? The Government is always the Government and when it performs its duties, how can it be a private person? For this reason, this has been changed and this piece of legislation will also bind the Government. However, in fact, this provision is inconsistent with the other pieces of anti-discrimination legislation. Having said so much, the major underlying reason is, and the Government has also made it clear, that it does not hope that, such a concept will have real "bite". If it has real bite, anyone can sue the Government in accordance with this piece of legislation and this will lead to a lot of unnecessary disputes. All right, if the Government is unwilling to draft the law in such a way, what can one do then? One of the claims is that the Government will formulate some guidelines.

In fact, the EOC and other civilian groups have also pointed out that even in overseas countries, after enacting legislation, if no specific scheme is introduced or it is not specified in the legislation that there will be a specific scheme, sometimes, it may not be possible to put into practice this rather general piece of legislation in various government departments. That means if we want to regulate the acts of the Government, it may not be practical to do so, so it is worthwhile to make reference to this so-called equality scheme. However, in the course of our scrutiny, the Government said that these provisions could not be included in the law, nor could we have any equality scheme and that at the most, we could only have administrative guidelines. All right, it does not matter if we can only have administrative guidelines, but are they specific enough? In fact, I also wish to share this with Members here.

Throughout the process, Ms Margaret NG, as the Chairman, hopes very much that this piece of legislation can be passed. She wants this piece of legislation to be written in a somewhat more reasonable way. It is only necessary to put in place an initial framework to give protection to ethnic minorities. In fact, she also hopes that this piece of legislation can be enacted first. For this reason, I know that in fact, Ms Margaret NG has a lot of expectation for the Government, that is, she hopes that the Government can at least put in place something specific or give a substantial response in the

guidelines — even though they are just administrative guidelines and will not be included in the legislation — and that the drafting can show the public and Members the sincerity of the Government and the true wish of the Government to introduce specific measures, so as to prevent any act of racial discrimination by the Government in the future.

In the course of scrutinizing the Bill, what did we hope the Government's administrative guidelines would include? It turned out that initially, the Government did not even have a timetable for the administrative guidelines. We asked the Government to set a timetable and to confirm whether or not it would lay down performance pledges. The Government's response was that the timetable had been set and that it would publish the guidelines in the first quarter of 2009. However, could it confirm if it would lay down the performance pledges? The response of the Government was that bureaux and departments would be invited to examine the measures for eliminating unlawful racial discrimination, promoting racial equality and enhancing support services to the ethnic minorities. In this process, bureaux and departments would be invited to consider drawing up the relevant performance pledges, targets or indicators as appropriate — and I stress "consider". We asked the Government to explain how the mechanism would be devised and whether an inter-departmental body should be established. The Government responded that the Constitutional and Mainland Affairs Bureau would be responsible for co-ordinating matters in this regard. In doing so, it would work closely with the relevant bureaux and departments and would hold meetings with them collectively or individually. It would then consider setting up an inter-departmental body to co-ordinate the work on a need basis. What the Government said was to "consider as appropriate" and "on a need basis". We asked the Government to confirm whether it would undertake to provide the resources, so that the relevant bureaux and departments could have additional resources to implement the new measures. In the end, the Government replied that they understood that sufficient resources were necessary for implementing the guidelines and this was important. However, it would request the relevant bureaux and departments to consider the resources needed and if they cannot meet the relevant expenditures through internal deployment, the authorities would seek additional resources through existing established channels and procedures. We asked the Government to confirm all these matters but its responses were that it would "consider", "consider as appropriate" and "on a need basis" and that it would do the job under the existing mechanism.

Basically, concerning the Government's overall response, as a lecturer, I have a strong feeling that if these guidelines on follow-up actions were the subject of an examination question that we ask the Government and if it were to give such an answer, it would not get a pass because it is totally incapable of giving an answer. Even when we pointed out that it had to respond to the comment made by the Chairman of the United Nations Committee on the Elimination of All Forms of Racial Discrimination in a letter dated 7 March 2008 that to achieve racial equality by means of administrative measures instead of legislation could not fulfil the Government's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Government's reply was that the ICERD did not require any States Parties to introduce this kind of guidelines, still less legislate for this purpose. However, it looks as though the Government were doing a great favour in planning to introduce the guidelines now, that is, it is taking one step further in addition to enacting the Race Discrimination Bill.

Deputy Chairman, if no relevant provision is introduced and we do not have a piece of legislation that is at least similar to the other pieces of anti-discrimination legislation which regulate the acts of the Government, I find it very hard to believe that we can do so by solely relying on the existing wording in the legislation and the existing Bill of Rights Ordinance. Moreover, in this process, we are making our last stand and the Government cannot possibly retreat any further. We hope very much that at least, a better job can be done with regard to the administrative guidelines. In the end, the reply of the Government is disappointing and we fail to see any sincerity at all.

Therefore, Deputy Chairman, I hope that through my speech, Honourable colleagues will open their eyes wide and see clearly that if the amendments proposed by Ms Margaret NG cannot be passed, it will be impossible for us to regulate the Government's acts effectively and if the Government displays acts that amount to overt racial discrimination when allocating resources, performing its duties or providing public service, it will not be possible for us to regulate the Government effectively with this piece of legislation. If we are just afraid of an influx of unnecessary litigations, this is hardly convincing. If we take this argument to the extreme, then we should not introduce any law at all. If, ideally, all people know how to conduct themselves and all their behaviour is reasonable and people all act according to what we consider to be good will, there is no need for any law at all. Obviously, this is not what reality is like.

For this reason, Deputy Chairman, I hope all of us can be more realistic and look at Ms Margaret NG's amendments in earnest. It only represents a most basic requirement. Thank you, Deputy Chairman.

MS MARGARET NG (in Cantonese): Deputy Chairman, I only wish to respond to the administrative guidelines on the Government's work mentioned by the Secretary for Constitutional and Mainland Affairs in his speech delivered in the debate on the resumption of Second Reading. I have also noticed that some Members hold that it will also be acceptable if the Government proposes these administrative guidelines and that it is still acceptable even if the amendments I have proposed cannot be passed. I ask Members to consider what these two amendments seek to address and what their differences with the guidelines mentioned by the Secretary are.

Deputy Chairman, on 3 March this year, I attended a meeting of the UN Committee concerned in Geneva and also presented our work on the Bill to the Committee. I can tell you, Deputy Chairman, that this UN Committee is extremely concerned about the resolve and the degree of the undertaking made by the Government. In addition, it also understands that if the coverage of this Bill is different from other pieces of anti-discrimination legislation, the educational message conveyed will be very undesirable and will show that the SAR Government lacks resolve. For this reason, this part is very important.

Deputy Chairman, in the course of scrutiny, how did this equality scheme come into being? In fact, its origin can be traced back to the fact that in response to our request, the Government provided to us a lot of information to give an account of its existing policy. We also invited various groups, including the Equal Opportunities Commission (EOC), to voice their views. The Chief Legal Counsel of the EOC is of course an expert in this area and he is a highly experienced staff member in the EOC. He said that judging from the Government's efforts, it was obvious that firstly, the efforts made were inadequate. Moreover, they were made very hastily and only recently, that is, it was only after the Bill had been introduced that the Government took the measures hastily. These problems show that it is necessary for the Government to mainstream racial equality and the Government must achieve mainstreaming before it can solve the problems. For this reason, the Chief Legal Counsel of the EOC proposed this approach of an equality scheme. Therefore, the

amendments are based on the expert advice of the organization responsible for promoting equal opportunities in Hong Kong. This is the first point.

The second point is: In what way are the administrative guidelines different? I have not yet formally moved my amendments but when I do so later, they will be divided into two amendments. The first includes clause 9A, which points out that the Government's functions and powers have to be regulated, so that it cannot exhibit any discrimination when exercising its functions and powers. It is essential that we pass this provision. Otherwise, although Secretary Stephen LAM said just now that the Government would issue guidelines to comply with the law, what law will it comply with? What it has to comply with are these provisions, that is, the provisions in this Bill. However, the requirement that it cannot violate this piece of legislation when exercising its functions and powers is not included in it, that is, this will not be included in the legislation. Therefore, the passage of clause 9A is very important. If it is not passed, even if the Government issues administrative guidelines in good faith in the future, their bite will still be limited.

Second, what actually is the difference between the administrative guidelines and statutory duty? In the Bills Committee, what we feel the greatest unease about was the issue of resources. This is because if we really want to make greater and earnest efforts to provide more services and facilities to ethnic minorities, money is indispensable. For this reason, with the scrutiny of this Bill casting a shadow over him, the Financial Secretary also has to allocate a budget of over \$30 million hastily to implement some schemes, including interpretation schemes.

However, even if funds have been allocated this year, it does not mean that funds will definitely continue to be allocated next year. That funds are available now does not mean that they will continue to be available. We are aware that groups representing the ethnic minorities have reminded us of this time and again. For this reason, if statutory duty is prescribed by enacting legislation, the departments concerned will have strong justifications in requesting that the Government should earmark resources because they have to fulfil their statutory duty. However, if the Government does not have to assume statutory duty, it will behave in the way described by Secretary Stephen LAM, that is, the departments concerned will consider what resources are required and allocate them through the usual channels, that is, when resources are available, it will do

something. If they have no resources, they will see if they can secure some. This is a far cry from our original legislative intent.

For this reason, I hope that even as we pin a lot of hope on the Government, we must not forget that if clause 9A cannot be passed, we will not be able to achieve what we want the Government to do. If clause 9B is not passed, we will not be able to attain our goal either. If we say that even if we cannot pass these extremely important provisions today, we will still support the Third Reading of the Bill, in the future, when we have to face the whole world, what actually can our position be?

Deputy Chairman, to put it more simply, if the Government really has the resolve to comply with the law, why is it afraid of stating this explicitly in the legislation? If it is afraid of stating this explicitly in the legislation, is it not highly reasonable for the public to say that in fact, the Government does not really have the resolve and has not really made a promise? It will follow those administrative guidelines only when it likes to but when there is no pressure, it will not do anything. Can Members imagine Secretary Stephen LAM approaching various departments to request that reviews be carried out? Of course, the departments will be very courteous to him, thanking him for his concern and that they will do so when they have the time. What else can Secretary LAM do?

However, if these provisions are passed and the Government really has to assume statutory duty, it will not be necessary to ask the Chief Secretary for Administration to help and even Secretary LAM alone can do the job. Perhaps his rank is not higher but they are both principal officials and have the same status. However, I am talking about statutory duty, so putting aside whether we trust Secretary LAM or not, even if we do trust him, we should still give him greater power and back him with a piece of legislation, so that he can attain this goal.

Therefore, I hope Members will consider these two amendments and later on, pay special attention to the fact that they are crucial motions. If these two amendments are not passed, I call on Members not to support this Bill in its Third Reading.

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

(No other Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Secretary for Constitutional and Mainland Affairs, do you wish to speak again?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy Chairman, I wish to voice the Government's opposition to the amendment to be moved by Ms Margaret NG.

Although the wording of section 9A proposed by Ms Margaret NG is similar to that in existing anti-discrimination legislation, I wish to point out that:

First, in government policies and the measures, the Government does not discriminate against ethnic minorities;

Second, the present Bill will be applicable to the acts in the areas specified by the Government in the Bill, which cover all services and facilities provided by the Government;

Third, the Government is bound by the Basic Law and Hong Kong Bill of Rights Ordinance and must abide by the principle of equality before the law;

Fourth, we also have an established mechanism to monitor government departments to ensure that there will be no racial discrimination in the formulation and implementation of policies and measures and that complaint channels are also available;

Fifth, the concept of racial discrimination is different from that of discrimination on grounds of sex, disability or family status. Racial discrimination may involve more complicated issues and is therefore more likely to be abused. If all the functions of the Government instead of the areas specified in the Bill are to be included in the Bill, this may increase the number of unnecessary complaints and litigations against the Government. These

complaints and litigations will definitely require public resources and undermine the operational efficiency of the Government; and

Sixth, as I have pointed out specifically in the debate on the resumption of Second Reading, in order to enforce the law efficiently and prevent crimes for the sake of protecting members of the public and public order, in some circumstances, when enforcing the law, law-enforcement agencies may not be able to exclude the factor of race completely from their consideration. Extending the scope of the Bill to include the law-enforcement function of the Government may cause the targets of these acts to initiate litigations on the ground that the acts of these law-enforcement agencies fall within the discriminatory behaviour as prescribed by the Bill, thus seriously undermining the ability of law-enforcement agencies to prevent or detect serious crimes. In fact, this is not an appropriate approach to take.

Ms NG proposed to add a new section 9B to impose a general statutory duty on the Government to promote racial equality and implement a Race Equality Scheme. This is along the lines of the United Kingdom's Race Relations Act as amended by the Race Relations (Amendment) Act 2000.

As we have explained in detail to the Bills Committee, in the United Kingdom, the relevant amendments to the Race Relations Act in 2000 were made more than two decades after the enactment of the principal Act. These amendments were made against the background of decades of racial violence in the United Kingdom and increasing incidents of racial attacks. The amendments were triggered in particular by the murder of Stephen LAWRENCE, an 18-year-old black youth, which culminated in the MACPHERSON Inquiry and the numerous recommendations put forward before Parliament in 1999. The circumstances in Hong Kong, especially with regard to the racial relations situation, are vastly different from those in the United Kingdom, so they do not warrant the same approach and measures.

However, in order to show that the Government is committed to eliminating racial discrimination and promoting racial equality, we have proposed to compile administrative guidelines for the relevant bureaux and departments to follow. We have already presented the details on the compilation of the guidelines to the Bills Committee and will also report the progress to the relevant Panel of the Legislative Council in the future.

So far, the effectiveness of the implementation of the Race Equality Scheme in the United Kingdom has not been marked. Moreover, similar arrangements in some European countries are also implemented by administrative means, rather than by legislative means. It would not be appropriate to adopt the practice in the United Kingdom in our legislation in haste as the circumstances of the two places are different.

I so submit and implore Members to vote against these two amendments.

DEPUTY CHAIRMAN (in Cantonese): Ms Margaret NG, do you wish to speak again?

MS MARGARET NG (in Cantonese): Deputy Chairman, I wish to give the Secretary a brief response.

First, the Secretary said that at present, the Government did not discriminate against ethnic minorities and was very law-abiding. That is to say, even if it does not do anything, it has already done everything. Even if clause 9A is passed, it has already done everything. This being so, why should it be afraid of introducing this provision?

Even if statutory duty is prescribed after the legislation, the Government can also show us right away that it has already done everything. In that case, there is no need to use any additional resources. If there is no need to use additional resources, the Government does not have to cite the ground that this statutory duty will incur additional public expenditure as it opposes the proposal of the Bills Committee to prescribe statutory duty. This is the first point.

Second, the Secretary said that the issue of racial discrimination was a complex one and there was great likelihood of abuse. In fact, there are two points that the Government has to consider: First, the more complex an issue is and the more likely there will be abuses, the more necessary it is for the Equal Opportunities Commission (EOC) to provide assistance. This is because the EOC can play two roles. First, when members of the public think that the Government has violated the legislation, they can lodge a complaint with the EOC and the EOC can give them clear explanations. Second, if there are

indeed grey areas in the law, legal action can be taken through the EOC and clarification can be sought on the grey areas, so that the Court, as the authority, can clarify them once and for all. This is completely beneficial and harmless to both the Government and the public. Third, the authorities like to say that we have a tendency of following other people's examples, that is, whenever we find that other people have introduced a desirable piece of legislation and we want to borrow it, the Government will mock us, saying that we like to copy overseas practices. In fact, the issue is not about how the backgrounds of other places are like. The trigger at other places may be violence or some other cases but our trigger is different. Secretary, the trigger for us is that the EOC told us this was a mechanism worth making reference to. If even the Secretary does not trust our EOC and insists that the EOC also wants to copy from overseas countries and that this is something we should not do because our background is different, I think it would be rather difficult for the Secretary to explain to the public why we should believe that the EOC is able to perform its functions.

(THE CHAIRMAN resumed the Chair)

Chairman, the Secretary then said that so far, the effectiveness of the practice in the United Kingdom had not been marked. In fact, he has only given half of the picture but has omitted the other half. This is not what the EOC told us. The EOC pointed out that the effectiveness of the scheme was not equally marked in each department, that some departments were doing a good job but not others. Secretary, why are you so diffident, thinking that you will surely be like those people who are not doing a good job instead of being one of those who can do a good job? In addition, the representative from the EOC also told us that the greatest difference was whether one had commitment and resolve. Therefore, Secretary, if you say that you really have commitment and resolve, you should consider this scheme highly desirable, that it will really be beneficial to the Government and that it is a measure that can solve a lot of problems.

Chairman, for this reason, the Government should not oppose the amendments we have proposed. Rather, it should give them its support. Thank you, Chairman.

MS EMILY LAU (in Cantonese): Just now, I heard the Secretary make a comment that was really shocking. It had to do with law enforcement. In fact, all of us are very concerned about this area because often, members of the ethnic minorities would really be arrested.

On one occasion, I went with them and members of other socially disadvantaged groups to the police headquarters for a discussion. The Secretary said that this piece of legislation would not bind law-enforcement officers, saying that in law enforcement, instances of racial discrimination could not be ruled out completely, that such instances may occur. In other words, in the future, such instances will occur in law enforcement and cannot be ruled out. I think it is not very desirable for the authorities to say this beforehand. For one thing, the authorities say that in fact, there is no racial discrimination, that there is the Basic Law, and so on, then they say that instances of racial discrimination cannot be ruled out. I think it is a cause for concern for them to say so when this piece of legislation is about to be passed. Moreover, often, members of the ethnic minorities are actually arrested and taken to police stations for questioning, or they are frisked on the streets. Many things would make them think that there is racial discrimination. Now, it is even said explicitly that instances of racial discrimination cannot be completely avoided and that they will happen. However, the legislation cannot give them any protection, nor can anything be done. I think this will not do.

Chairman, another issue is that of resources. In fact, why has there been such a long delay over this piece of legislation? We learned about one thing, that is, the authorities in charge of education had very strong views, thinking that this would give them a lot of trouble. I wonder if the Secretary is going to talk about this area because I learnt that the Education Bureau had really raised many issues. This is perhaps the case. Schools have to enrol students and they also have to give students equal opportunities, so how are they to teach their students? They just do not know how to teach them.

Earlier on, I have read out a letter but the point is with regard to resources, recently, the Vice-President of China visited Hong Kong. If he were to assume leadership and take charge, it is possible that something can be done. However, if one party is unwilling to spend any money but wants another party to do something, of course, it will not be possible to accomplish anything. Therefore, I absolutely understand that if the authorities have resolve, they definitely have to allocate more resources. Otherwise, how can discrimination

be eliminated? On the one hand, they are unwilling to allocate resources; on the other, people are asked to do something and of course, nothing can be achieved. Since nothing is done, there will be complaints and in the end, nothing can be achieved no matter what one does.

Therefore, regarding this scheme, some groups told us that if there was a better and more decent scheme, they would still accept it. However, I think this is how the situation is like at present, is this not? You are all sitting here but nothing can be negotiated. In that case, what should we do? In fact, all of us have been very modest and we have kept retreating, retreating and retreating, until we can retreat no further. This is how the situation is like. The authorities are unwilling to allocate resources, yet they say that the resources should be made available from the existing ones. Tomorrow or the day after tomorrow, this Council will debate the bill concerning the CAPO and the Government also refuses to say if more resources will be allocated because it now says again, "We have already given you the CAPO and you now want another \$10 million? You just needless to say, do not hope for it. You can take from the existing ones.". It was not like this when we established the Secretariat back then, Chairman, but now, that approach has been adopted again. If we have to make the resources available from the existing ones, in other words, in terms of resource allocation, you and I will know how that is like. That means the chances are so slim, so what can we do? A lot of resources are required but the authorities just let the departments wrangle with one another slowly in resource allocation. The authorities responsible for education are already clamouring and now, the ethnic minorities are told that in law enforcement, discrimination against them cannot be ruled out completely. I think this is really laughable and also really outrageous.

I hope that after listening to me, Honourable colleagues will also find that the Secretary is really being outrageous. How possibly can this not be ruled out? If there is a reversal of roles and we tell him that in future, when he is arrested, we cannot rule out completely that he will be discriminated against, I believe he will also be furious. He now says that this does not matter because he does not belong to an ethnic minority, so one can discriminate as much as one likes. I think such an attitude will really not do. Regarding what the Secretary has said, I am really very shocked. Therefore, I call on Members to support the amendments proposed by Ms Margaret NG.

CHAIRMAN (in Cantonese): If no other Member or official wishes to speak, I now call upon Ms Margaret NG to move that new clause 9A be read the Second time.

MS MARGARET NG (in Cantonese): Chairman, I move that new clause 9A be read the Second time.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 9A be read the Second time.

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

(Members raised their hands)

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

(Members raised their hands)

Ms Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Ms Margaret NG has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (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, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the motion.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr WONG Ting-kwong voted against the motion.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG, Mr Ronny TONG and Mrs Anson CHAN voted for the motion.

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk and Mr LI Kwok-ying voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 22 were present, eight were in favour of the motion and 14 against it; while among the Members returned by geographical constituencies through direct elections, 20 were present, 12 were in favour of the motion and seven 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 motion was negatived.

MS MIRIAM LAU (in Cantonese): Chairman, I move that in the event of further divisions being claimed in respect of the motion on the Race Discrimination Bill or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Miriam LAU be passed.

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 as stated. 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 of each of the two groups of Members present. I declare the motion passed.

I order that in the event of further divisions being claimed in respect of the motion on the Race Discrimination Bill or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): As the motion moved by Ms Margaret NG has been negated, I now give leave for her to revise the terms of her amendments to clauses 4 and 41 correspondingly.

CHAIRMAN (in Cantonese): Members have been informed that Ms Margaret NG will withdraw her amendments to the heading before Part 6, clauses 42, 43, 44, 49 to 52, 55, 56, 59, 71 and 81 if her amendment to add the new clause 9A is negated. As this is the case now, Ms Margaret NG has therefore withdrawn the amendments.

CHAIRMAN (in Cantonese): Ms Margaret NG, you may move your motion.

MS MARGARET NG (in Cantonese): Chairman, I move that new clause 9B and new schedule 6 be read the Second time.

CHAIRMAN (in Cantonese): Before I put to you the question on Ms Margaret NG's motion, I wish to remind Members that if the motion is negated, Ms Margaret NG may not move her amendment to new Part 2A.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 9B and new schedule 6 be read the Second time.

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

(Members raised their hands)

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

(Members raised their hands)

Ms Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Ms Margaret NG has claimed a division. The division bell will ring for one minute, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (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 Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the motion.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted against the motion.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG, Mr Ronny TONG and Mrs Anson CHAN voted for the motion.

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk and Mr LI Kwok-ying voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 23 were present, eight were in favour of the motion and 15 against it; while among the Members returned by geographical constituencies through direct elections, 20 were present, 11 were in favour of the motion and eight 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 motion was negatived.

CHAIRMAN (in Cantonese): As Ms Margaret NG's motion has been negatived, Ms NG may not move the amendment concerning new Part 2A, which is inconsistent with the decision already taken.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the heading before Part 6, clauses 42, 43, 49, 50, 51, 55, 56 and 59 stand part of the Bill.

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 the clauses 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 of the Members present. I declare the motion passed.

CHAIRMAN (in Cantonese): Secretary for Constitutional and Mainland Affairs, you may move your amendments.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam Chairman, I move the amendments to clauses 44, 52, 71 and 81, the contents of which have been set out in the paper circularized to Members.

Proposed amendments

Clause 44 (see Annex I)

Clause 52 (see Annex I)

Clause 71 (see Annex I)

Clause 81 (see Annex I)

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 the amendments moved by the Secretary for Constitutional and Mainland Affairs be passed. 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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clauses 44, 52, 71 and 81 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses as amended 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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 4.

MS MARGARET NG (in Cantonese): Chairman, I move the revised amendment to clause 4 in order to add subclauses (1A), (1B) and (1C) to the clause. Chairman, the revised amendment is moved on behalf of the Bills Committee.

Clause 4(1)(b) of the Bill specifies that the circumstances which would constitute indirect discrimination, but the scope is very narrow and only applies if there is a "requirement or condition". The Bills Committee has therefore decided to ask me to move Committee Stage Amendments (CSAs) in its name to amend Clause 4(1) to include the application of "a provision, criterion or practice" for the purpose of enhancing the protection afforded by the Bill. I shall later on ask Members to support the CSAs.

Chairman, clause 4 is the central provision of the Bill, because it sets out what constitutes "discrimination" and what does not.

Chairman, I think I need to explain this provision in greater detail. The reason is that when the resumption of Second Reading debate was moved just now, quite a number of Members appeared not quite so clear about the meaning of discrimination, thinking that one may easily be accused of "discrimination". When referring to the use of language, they even thought that if there is no exemption, a cafeteria must use 18 languages when selling even a cup of tea, or it might be charged for violating the law. All such scenarios are far beyond the scope of this ordinance, I am sure that all the related worries are caused by the Government's failure to discharge its duty of explaining clearly the circumstances that constitute discrimination, or even its deliberate intention of aggravating people's misconception.

Chairman, during the scrutiny of the Bill, we received submissions from many educational institutions, school principals and teachers. They expressed the fear that in case an ethnic minority student is admitted, they may break the law if the whole school does not adopt the language of this student as the teaching medium and include his or her religious festivals as school holidays.

All these scenarios should not arise at all because the Government should have explained all the relevant provisions very clearly, Chairman. And, many provisions have also been passed, setting out the specific definitions. The most significant point is that clause 4 already specifies the circumstances constituting discrimination. Anything that does not fall within the scope of clause 4 will simply not be regarded as discrimination.

Discrimination may take two forms. One is direct discrimination, which occurs when a person on the ground of race treats another person less favourably than he would treat others. This is direct discrimination, and the onus of proof naturally falls on the person who claims to be discriminated against.

As for indirect discrimination, the amendment I am going to move is about this second part, that is, indirect discrimination. What is indirect discrimination? Under the existing provision of the Bill, this involves the imposition of a requirement or condition which, although applicable to all, will pose difficulties to the ethnic minorities.

For example, there is a recruitment advertisement which requires applicants to speak the Fujian dialect. Although the requirement is applicable to all, only Fujianese or Chinese people are more likely to be able speak this dialect. Does this requirement constitute racial discrimination? This requirement does not constitute racial discrimination immediately because a number of circumstances must be considered. This means that under such circumstances, the imposition of the requirement or condition concerned can be proved to be justifiable. For example, if the person to be recruited is required specifically to provide Fujianese with psychological counselling, this dialect requirement or condition will be justifiable. The reason is that under clause 4(2) of the Bill, if the requirement or condition serves a legitimate objective and bears a rational and proportionate connection to the objective, which is the provision of counselling in the present example, it will not constitute any discrimination.

Therefore, the use of 18 languages even for the selling of vegetable as mentioned by Members just now will simply not fall within the scope of the legislation. Chairman, why do we want to propose this particular amendment? The reason is that this amendment will not only make the scope of indirect discrimination much too narrow but will also make evasion very easy. There will be no problem as long as what is stated is not in the form of a requirement or condition. For example, if a person who wants to recruit a secretary for his office states specifically that he wants to recruit a Caucasian, if the requirement or condition is that the secretary must be a Caucasian, and if there is no reasonable justification given, there will be indirect discrimination.

However, if there is a slight change, if no requirement or condition is stated, and if, for example, it is only stated that preference will be given to Caucasians, then there will be no indirect discrimination. The point is that if evasion is so very easy and the scope so narrow, the whole Race Discrimination Ordinance will be rendered powerless.

The Bills Committee therefore is of the view that the scope should be amended to cover not only a requirement or condition but also the application of a provision, criterion or practice, so that there will still be indirect discrimination, even when it is said that while the company generally recruits Caucasians only, people who are not Caucasians will also be considered and their

applications will not be thrown away. This can prevent clause 4 from rendering the whole ordinance ineffective.

Chairman, just now, I heard the Government and some Members query whether this would enlarge the scope and give rise to grey areas. Actually, anyone who is observant can see that there will not be any great misunderstanding. But just in case there is still any misunderstanding, what are we going to do? I am of the view that first, the Government should try to educate the public, explaining to them racial discrimination as defined by this clause. Actually, even if I do not put forward this amendment, the Government should still take this step.

When taking this step, the authorities must explain clearly that while it is not allowed to impose any requirement or condition, the application of any provision, criterion or practice which some ethnic minorities can hardly comply with will also constitute racial discrimination. As long as a clear explanation is offered, there should not be any grey areas.

Whatever conditions we are talking about, we must remember that this Bill is based on the experience of other anti-discrimination legislation, and the Equal Opportunities Commission (EOC) is to be the enforcement agency. In case there are any grey areas, the EOC will raise them for discussions and offer an explanation to the public. Our most important task is to enact the legislation, to make sure that it can serve the desired purpose of helping the ethnic minorities and eliminating racial discrimination.

Chairman, therefore, if we do not pass this sub-clause of the Bill, it will be very easy to evade the Race Discrimination Bill after its passage, thus rendering it largely ineffective. I therefore call upon Members to support this amendment. Thank you, Chairman.

Proposed Amendment

Clause 4 (See Annex I)

CHAIRMAN (in Cantonese): Members may now debate the original provisions and the amendment jointly.

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

(No other Members indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Constitutional and Mainland Affairs, do you wish to speak?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam Chairman, on behalf of the Government, I rise to speak in opposition to the amendment put forward by Ms Margaret NG.

Clause 4(1)(b) of the Bill seeks to define the term "indirect discrimination". Generally speaking, indirect discrimination takes of the form of "a requirement or condition" which, although applicable to all, will cause a disproportionate and unjustifiable adverse impact on one particular ethnic group or another, and which the discriminator cannot show to be justifiable irrespective of the race of the person to whom it is applied.

Ms Margaret NG's amendment will broaden this definition, with the result that the Bill will cover not only the imposition of a "requirement or condition" but also the application of a "provision, criterion or practice" which are informal. This will easily lead to a rise in the number of complaints and lawsuits against the Government, individuals or private organizations. The number of lawsuits in Hong Kong will rise.

I must make it a point to say that Ms Margaret NG's amendment is based on the definition introduced by the United Kingdom when its Race Relations Act 1976 was amended in 2003. We must realize that the main body of this Act was amended only after the Act had been enacted for nearly 30 years. More importantly, the racial problems in the United Kingdom and the race relations in Europe as a whole at the time of the amendment of the Act are very different from the environment and conditions in Hong Kong today.

The legislative amendment made by the United Kingdom in 2003 was meant specifically to implement the European Race Directive issued by the European Parliament on 29 June 2000. The European Race Directive was

formulated to curb the rising tide of racial violence in Europe at that time. In the United Kingdom itself, racial conflicts (including serious crimes such as harassment, assaults and injuries of a racial nature) had also posed very serious social problems at that time. In contrast, there is greater integration and harmony among Hong Kong people (including all ethnic groups). Hong Kong people belonging to different races can all realize that different peoples have their unique cultural backgrounds and habits. Hong Kong people belonging to different social strata can all show mutual respect and tolerance in their lives. We therefore believe that the chances of having racial conflicts in Hong Kong are comparatively small.

Since we are now enacting legislation for Hong Kong, the law we draw up should take account of Hong Kong's social conditions. Clause 4(1)(b) of the Bill is in line with the time-tested provisions in the existing anti-discrimination legislation. It is unsafe and unwise for us to introduce any foreign legislation that is meant to deal with the serious racial conflicts in other countries.

Madam Chairman, with these remarks, I sincerely call upon Members to vote against this amendment.

CHAIRMAN (in Cantonese): Ms Margaret NG, do you wish to speak again?

MS MARGARET NG (in Cantonese): Chairman, to begin with, I wish to remind the Secretary that the proceedings of the Legislative Council are recorded verbatim. The international community will come to know the reasons for the Government's opposition to the amendment.

Chairman, first of all, I wish to point out that the first issue to be tackled in the enactment of any legislation should be the setting out of a criterion, a norm for our purpose, that is, the practice and approach considered acceptable to our society. If we are enacting a law on a certain criminal offence, our basis should be the identification of the mischief, that is, the issue which must be tackled. However, when enacting a piece of anti-discrimination legislation, we should mainly focus on exploring what the criterion should be, what we should focus on, and what the system to be laid down. Should we act so lightly and think that discrimination will arise only when a "requirement or condition" is

imposed? Or, should we instead make it clear that discrimination will arise once the application of a "provision, criterion or practice" can put some persons at a particular advantage? This is the first point.

I have already explained, and I wish to remind the Secretary once again, that the mere imposition of a "requirement or condition" or the application of a "practice or criterion" may not necessarily lead to any problems, because there should be circumstances that may make them "justifiable". And, "justifiable" is quite an interesting term to define, it must be said. Chairman, we have actually been adopting an attitude of much understanding towards the drafting of this amendment. We are by no means harsh, and our only aim is to make everybody do some thinking. We just wish to make people realize that no requirement, criterion, provision or practice should ever be applied if there is no justification. I only wish to make people realize that they must do some thinking beforehand. And, once they have done some thinking, they will be able to offer explanation when they are challenged by others. If our proposed clause is not added, that is, if the law allows a person to apply a "provision, criterion or practice" that puts certain persons at a particular disadvantage without offering any justification, then I would think that the whole situation will be unacceptable.

Chairman, my third point is that as expected, the Secretary once again raised the point that amendments were made by the United Kingdom only after the main body of the Race Relations Act 1976 had been enacted for 30 years. Chairman, I really do not know who should be called a blind worshipper of all things foreign. Although it took the United Kingdom 30 years to do so, I do not think that Hong Kong also needs to spend 30 years on doing the same thing. But the Secretary seems to think that if it took the United Kingdom 30 years to do so, we must at least spend 35 years. The Secretary has also said Actually, what we need to explore should not be the number of decades the United Kingdom took to introduce the amendments. Rather, we should find out which option is better. Our legislation is actually copied from that of another country. Secretary, our legislation is copied entirely from and based on the Race Relations Act 1976 of the United Kingdom. This is something we all know. Since our legislation is based on an old piece of legislation, why do we not just try to find out which option is better, is more conducive to the well-being of our ethnic minorities and groups and is more in keeping with the needs of our society? I therefore think that we need not waste 30 years as others did. This is in fact a very sensible approach.

Chairman, the Secretary mentioned that the United Kingdom had amended the legislation concerned because of the tides of racist violence in the country. He explained, however, that since our society is very tolerant, the chances of racial discrimination are very small. Chairman, if it is indeed true that the chances are small, my amendment, which seeks only to make clause 4 more reasonable, will certainly not lead to any adverse consequences or trouble. On the other hand, if our society is very intolerant, to the extent that it is not prepared to do anything at all, there will indeed be reasons for concern. The reason is that if the law is too stringent and the situation persists When she was the Permanent Secretary, Mrs LAM claimed that they had already struck a proper balance, and any extra demand would likely lead to clashes and conflicts. Since our society is so tolerant, I believe Members will agree that when inadequacies are detected, the relevant provisions should be made perfect.

Chairman, I sincerely call upon Members to support this Committee Stage Amendment. Thank you.

DR YEUNG SUM (in Cantonese): Madam Chairman, Ms Margaret NG has moved to add the application of "a provision, criterion or practice" to clause 41(1) of the Bill on top of the imposition of a "requirement or condition". The main intention is to define racial discrimination more clearly through the inclusion of a more objective criterion.

However, the Secretary has replied that while it was necessary for the United Kingdom to include this provision due to the many racist disputes and riots in the country, there is no need for Hong Kong to follow suit, as the situation in Hong Kong is very calm. Madam Chairman, common sense tells us that laws should serve the purposes of prevention, education and warning. If we wait until the situation in Hong Kong turns similar to that in downtown Paris Some ethnic North Africans who migrated to France earlier on have all the time been ostracized, so they all feel an intense animosity towards the country's mainstream society. Does the Secretary think that the Government should hasten to enact legislation only after the ethnic minorities' discontent with Hong Kong has reached extreme proportions? All will be too late by then.

Since laws can serve the purposes of education and warning, and can even prevent the eruption of discontent from the ethnic minorities, why do we not just

enact the required laws now? Must we wait until we are hit by a huge calamity and sustain great injuries before we recognize the need for further legislative enactment? The explanation given is hardly acceptable.

Thank you, Madam Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Constitutional and Mainland Affairs, do you wish to speak again?

(The Secretary for Constitutional and Mainland Affairs shook his head to indicate that there was no need for him to speak again)

CHAIRMAN (in Cantonese): Before I put to you the question on Ms Margaret NG's amendment, I wish to remind Members that if the amendment is negated, Ms Margaret NG may not move her amendment to clause 41.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Ms Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Ms Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Ms Margaret NG has claimed a division. The division bell will ring for one minute, after which voting shall proceed.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (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 Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG, Mr Ronny TONG and Mrs Anson CHAN voted for the amendment.

Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 22 were present, eight were in favour of the amendment and 14 against it; while among the Members returned by geographical constituencies through direct elections, 22 were present, 13 were in favour of the amendment and eight 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.

CHAIRMAN (in Cantonese): As Ms Margaret NG's amendment has been negatived, she may not move her amendment to clause 41 which is inconsistent with the decision already taken.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 41 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 of the Members present. I declare the motion passed.

CHAIRMAN (in Cantonese): Secretary for Constitutional and Mainland Affairs, you may move your amendment.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam Chairman, I move the amendment to clause 4 as set out in the paper circularized to Members.

Proposed Amendment

Clause 4 (See Annex I)

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 the amendment moved by the Secretary for Constitutional and Mainland Affairs be passed. 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 of the Members present. I declare the amendment passed.

CLERK (in Cantonese): Clause 4 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clause as amended 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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 8.

MS MARGARET NG (in Cantonese): Chairman, I move the amendments to clause 8 on behalf of the Bills Committee on Race Discrimination Bill (Bills Committee). Chairman, I have already explained that the Bills Committee has decided to ask me to move amendments in its name to delete the reference to different treatment on the ground of permanent residency, right of abode and length of residence from clause 8(3) to the effect that the Court can apply the existing case law to decide whether any discrimination against new arrivals from the Mainland would constitute racial discrimination under the law.

Clause 8(2) and (3) expressly state that differential treatment on the ground of indigenous villager status, nationality and resident status is not to be regarded as racial discrimination. Many members express concern that clause 8(2) and clause 8(3)(d) would have the effect of exempting any blatant racial discriminatory act claimed to be done on the ground of a person's nationality. The Bills Committee has decided to ask me to move an amendment in its name to delete the word "nationality" from clause 8(3)(d).

Chairman, during the resumption of Second Reading debate earlier, I already explained that new arrivals from the Mainland should also be protected. Chairman, since the time before the reunification, new arrivals from the Mainland have all the time been waiting for the enactment of the Race Discrimination Ordinance to give them protection, because it is a fact that they have been discriminated against in society. The most notable evidence of such discrimination can be observed from what the Secretary said during the resumption of Second Reading debate. He said that during the scrutiny of the Bill, he had already pointed out that new arrivals from the Mainland are

discriminated against not because they are new arrivals but because they are regarded as belonging to the lower strata of society and as having no educational qualifications. Actually, new arrivals from the Mainland come from many different backgrounds. Some of them are university graduates. Others are working class people. The stereotyping of new arrivals as a special category of people is itself a very negative attitude, a form of prejudice and discrimination.

As a matter of fact, Chairman, the authorities have all along not denied that the discrimination faced by new arrivals is a widespread form of discrimination. They have only said, "Sorry, we cannot help because this is a piece of legislation on racial discrimination. Since the discrimination they face is not related to racial reasons, they cannot be included in the legislation." Is this argument really valid? Chairman, let us have a look at this clause. Clause 8 of the Bill can be roughly divided into two parts. The first part is clause 8(1), where some definitions, including the definition of "race", are set out. It reads, "'Race', in relation to a person, means the race, colour, descent or national or ethnic origin of the person."

During the resumption of Second Reading debate, we have already pointed out that with the proposed subclause, new arrivals may be regarded as an ethnic group by the Court on the basis of existing case law. It is especially worth noting that this point is actually made very clear in the judgement delivered by the Privy Council in June this year in relation to an appeal case from Bermuda. Therefore, if new arrivals bring their case to Court, the Court may well rule that they do constitute a race or ethnic group on the basis of existing case law. But some may wonder why we still want to move the present amendments. The reason is that clause 8(3) provides that an act done on the ground of any matter specified therein Put simply, any discrimination on the ground of the matters specified shall not be regarded as discrimination. What are all these matters? They include whether the person is a Hong Kong permanent resident, whether the person has the right of abode in Hong Kong and the person's length of residence in Hong Kong. This means that the authorities can argue very strongly for their case. Even if the authorities really discriminate against new arrivals, they may still argue that the reasons for discrimination, the poor treatment given to new arrivals and their denial of various welfare benefits only due are to their length of residence. The authorities may then argue that discrimination on the ground of periods or lengths of residence and whether a

person is a Hong Kong permanent resident is not racial discrimination, so new arrivals will not be protected by the legislation.

It is all very clear that new arrivals are an ethnic group, but the authorities have resorted to clear legislative provisions as a means of excluding them from the ambit of the legislation. Since the authorities have adopted this approach, we must put forward this amendment. When the Government tries so blatantly to exclude new arrivals from the ambit of the legislation, how can it still succeed in fostering social harmony? Before the reunification, new arrivals faced discrimination, so they all hoped to see the passage of a law on racial discrimination which could give them protection. Hong Kong is now part of China, and the Basic Law has been implemented. But the Government now tells people that they should stop cherishing any hope of having their long-awaited law, the law that can offer them protection because the law to be enacted will not offer them any protection. The Government has indeed broken the hearts of all new arrivals. Some Members are still very optimistic, remarking that although new arrivals do face discrimination, we should only help them integrate into society. They think that a policy approach must be adopted. The Government also says that rather than adopting the legislative approach, it has sought to follow a policy approach. For this reason, we have questioned the Government what policies it has implemented so far.

Our question actually consists of two parts. First, we ask the Government to tell us what efforts it has made, or what policies and measures it has implemented, to reduce people's prejudice and discrimination against new arrivals and their rejection of them. So far, the authorities have only shown us a short film. Members of the Bills Committee saw this short film, and they found it incredibly ridiculous. Even the authorities themselves Mr NG was also present, and even he could appreciate why Members found the film so ridiculous. He also agreed that a better publicity film should be produced. However, on the last day of the scrutiny of the Bill, when we questioned whether there was any new publicity film for us to see, we were given a negative answer. I must therefore say that the Government has failed to make any efforts in this regard.

The second part of the question is about the policies on helping new arrivals integrate into society. What efforts has the Government made? According to the information supplied to us by the authorities, there are very few

such policies. Not only this, the information can also show that the Government has not put forward any new measures to tie in with the Bill. Therefore, Chairman, if we still hope that the Government can truly believe its own argument that this is not a legal issue and must be tackled by adopting a policy approach, we will surely be disappointed, especially because many of the policies put forward by the Government are just meant to enable certain Members to appease the public during the scrutiny of the Bill and will be brushed aside afterwards. Chairman, before the Bill was put forward Dr YEUNG Sum should remember this more clearly Even at the meetings of the relevant Panels, we often heard representatives of new arrivals express their hope of being included in the legislation. Can we still hear all such voices now? They have all stopped cherishing any hopes. They have chosen to swallow their discontent by now. Chairman, we will let them down. If we do not move these amendments, we will let them down. If we do not pass these amendments, we will let them down. If we do not pass these amendments but still support the passage of this Bill at the end, we will let ourselves down.

Chairman, with these remarks, I hope Members can support these amendments. Thank you.

Proposed Amendment

Clause 8 (See Annex I)

CHAIRMAN (in Cantonese): Members may now debate the original provisions and the amendments jointly.

DR YEUNG SUM (in Cantonese): Chairman, the discrimination against new arrivals from the Mainland in Hong Kong always reminds me of this line from a poem, "From the same root we both grew. Why is the hurry in the grill?" New arrivals from the Mainland and we are all Chinese people, but because they were brought up in other places, speaking different languages and having different customs, they are faced with discrimination in Hong Kong, where the prevalent language spoken is Cantonese. Owing to language problems and differences in life habits, these new arrivals are discriminated against. In some cases, a woman married to a middle-aged man in Hong Kong must come here

with her children to join her husband. In such cases, new arrivals are faced with rather serious discrimination when trying to rent accommodation, in their daily life, in their respective communities and in terms of promotion prospects in work. However, for political reasons, the Government has all along refused to put new arrivals under the protection of the Race Discrimination Ordinance. Instead, it has simply provided some services as a means of tackling the problem. However, very often, such services are not exclusive to new arrivals because the Government does not want to single them out.

New arrivals are understandably very dissatisfied with the discrimination they are faced with. In the public hearings, we heard many stories about the experiences of new arrivals. Some of them have returned from their overseas studies and are about to become law academics. Since they have experienced the same situation, they all know very clearly how new arrivals feel. Thinking that Hong Kong is a civilized society, they all wonder why Hong Kong can still turn a blind eye to the discrimination against new arrivals. We can actually offer them legal protection, but we have nonetheless chosen to marginalize them. Why do we treat our compatriots that way in a society as civilized as ours? The fact is that no matter what, the Government can never deny the existence of discrimination against new arrivals. But the Government simply explains that because new arrivals are after all Chinese people, not any ethnic group, it does not want to adopt any legislative approach. However, as I have already mentioned, the Hong Kong Bar Association has reminded us that in September last year, the Privy Council of the United Kingdom already made a judgment that "nationality" and "citizenship" may be regarded as elements of "race". The Hong Kong Bar Association has also reminded us that the passage of the Bill may lead many new arrivals to file applications for judicial review. In that case, the Government, which intends to avoid lawsuits, may have to face frequent litigation in Court. Must we treat our compatriots that way? I hope that Members and those political party members who have not spoken can support the amendments moved by the Bills Committee.

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

(No other Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Constitutional and Mainland Affairs, do you wish to speak?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam Chairman, on behalf of the Government, I oppose the amendments moved by Ms Margaret NG.

Ms Margaret NG's amendments seek to delete all references to "Hong Kong permanent resident", "right of abode in Hong Kong" and "length of residence in Hong Kong" from clause 8 of the Bill. Her proposed amendments will add uncertainties to whether these specified matters should fall within the definition of "race", thus defeating the objective of the Bill, that is, achieving clarity and avoiding unnecessary lawsuits.

The Bill follows the definition adopted by the International Convention on the Elimination of All Forms Racial Discrimination and defines "race" as "race, colour, descent, or national or ethnic origin". All other matters (such as nationality, citizenship, residency status and length of residence) do not fall within the definition of "race". The purpose of clause 8 of the Bill is to set out a clear definition of "race", so as to avoid any future disputes over whether these matters should fall within the definition of the term.

Besides, we do not support the idea of defining new arrivals as a special ethnic group either. We do understand the social concern for new arrivals. I wish to reiterate that the Bill does not exclude new arrivals from its ambit. Like all other Hong Kong people, they are protected by the Bill.

We are aware of the difficulties faced by new arrivals, particularly in respect of adapting to the new living environment in Hong Kong. For this reason, the Home Affairs Bureau has set up an inter-departmental working group to co-ordinate the services provided to new arrivals by different government departments and to closely monitor the service demand of new arrivals, with a view to ensuring that all relevant services can cater for their needs.

In a bid to enhance the services in this regard, the Family Council will set up a committee with the tasks of studying the service needs of new arrivals and formulating new measures that can strengthen the services concerned. The

policy bureaux and departments concerned will also implement new measures to enhance the services they provide:

- (1) In respect of education, the Education Bureau will extend the initiation and induction programmes to cover new arrival students aged under 18;
- (2) in respect of vocational training, the Employees Retraining Board (ERB) plans to introduce a pilot "Community Harmony Course" (CHC), which is an enhanced version of the current "Job Search Skills Course", in Tin Shui Wai. A youth version of the CHC will also be developed to cater to the training needs of young new arrivals; and
- (3) in respect of welfare services, the Social Welfare Department (SWD) plans to seek additional resources to link up the hotline operated by SWD and those run by NGOs for new arrivals, so as to enhance the provision of information on welfare services as well as enhancing support for new arrivals. Those identified to be in need will be referred to related services for appropriate follow up.

In addition, taking into account the population distribution of new arrivals and other social factors (such as the case distribution of family violence, single-parent families, low-income families and jobless families), the Government will target resources at the priority districts with more pressing needs. For example:

- (1) the SWD plans to organize more targeted programmes for new arrivals, including mutual help groups, community education, family life education, and so on in the priority districts;
- (2) the Labour Department plans to organize more job fairs in these districts to assist new arrivals in seeking employment; and
- (3) the ERB would provide more training places for part-time generic skills training courses in these districts.

We believe that the provision of appropriate services is an effective measure of assisting new arrivals in integrating into the society of Hong Kong.

Miss CHAN Yuen-han has also mentioned the difficulties faced by the spouses of Hong Kong residents who are still living in the Mainland, particularly the difficulties in looking after their children in Hong Kong. Under the Basic Law, people from other parts of China wishing to enter Hong Kong must first apply for approval. The receipt and vetting of applications as well as the issuance of One-way Permits and Two-way Permits are all processed by mainland public security authorities in accordance with mainland laws and rules. However, in case a person applying for a permit has any special reasons (such as strong humanitarian or compassionate grounds) and approaches the Hong Kong Immigration Department for assistance, the department may, upon receipt of the request, consider the circumstances of the case and draw it to the attention of the mainland public security authorities.

As for those Mainland people coming to Hong Kong as visitors or for visiting relatives, they must depart before the expiration of the permitted period of stay. If they want to extend their stay for special reasons, they may apply to the Hong Kong Immigration Department before the expiry of the permitted period of stay. The Immigration Department may make flexible arrangements on the basis of the actual circumstances.

Madam Chairman, Ms Margaret NG has made a special point about a judgement of the Privy Council in relation to a recent case from Bermuda. I wish to repeat very briefly here that in course of drafting the Bill, we already sought the advice of the Department of Justice to ensure its compliance with international human rights conventions. That is why "race" in the Bill is defined as "race, colour, descent, or national or ethnic origin". This is in line with the definition in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination. Clause 8 of the Bill specifies that the status of "Hong Kong permanent resident", "the right of abode in Hong Kong" and "the length of residence in Hong Kong" are excluded from the definition of "race", and the purpose is to achieve a clearer definition of the term.

Madam Chairman, with these remarks, I call upon Members to vote against the amendments.

MS MARGARET NG (in Cantonese): Chairman, the Secretary has talked about the United Nations. I wish to remind the Secretary that when we were in the United Nations in March, it so happened that they were discussing at their meetings whether the term "race" should be defined more restrictively or more broadly, and whether the definition should be brought more up-to-date. Their viewpoint was very clear, and during our face-to-face discussions with them, they also made their viewpoint very clear.

Chairman, if the Secretary does not believe me, he may read this letter, which was issued after our meeting with the committee concerned on 7 March 2008. One of the paragraphs reads, "The committee is also concerned about the omission from the Bill of provisions on discrimination on the basis of nationality and residency status, which rules out the recognition of discrimination against immigrants newly arrived from the Chinese mainland, and the omission of provisions on indirect discrimination on the basis of language." I shall return to the issue of "language" a moment later. It is obvious that the United Nations Committee on the Elimination of Racial Discrimination had already considered this matter, and in the particular case of this Bill, the Committee thought that certain provisions of clause 8(3) should merit their concern.

Chairman, I wish to add a few words regarding a point raised earlier. The clause is targeted on new arrivals, but the authorities' are really very unreasonable, thus leading to some "unintended consequences". They may not have foreseen all this, but the fact remains that there may be some very absurd consequences. What I mean is that treating someone less favourably than others or discriminating against someone on the ground of nationality will not be regarded as racial discrimination. For example, if a person discriminates against the Japanese or the Japanese as a race, his act will constitute racial discrimination. But if the person charges all Japanese passports holders or Japanese citizens higher fees and treats them less favourably than others, his acts will not constitute any racial discrimination under this Bill. Chairman, despite our repeated questions on such absurdity, the authorities have so far failed to give us any satisfactory answers.

Chairman, let me now respond briefly to the several arguments advanced by the Secretary just now. First, the Secretary is of the view that since clause 8(3) is meant for achieving clarity, uncertainties may arise if all references to the terms concerned are deleted. Actually, how can there be any uncertainties

concerning the term "race"? There is actually an abundance of case law to enable us to ascertain what should fall within the definition of "race" and what should not. I do not think that there should be any uncertainties. In case there is any, the authorities can always make more efforts to explain to the public. The inclusion of nationality, citizenship and permanent resident status will only enable the Government to discriminate against certain people on the ground of nationality and length of residence without any worries. This is the real purpose of clause 8(3). And, we cannot agree to such a purpose.

Chairman, the second argument advanced by the Secretary is that the Government has already been providing lots of services, and there is also an inter-departmental working group in existence. He is of the view that new arrivals should not be singled out, for this will achieve the opposite result. But we must ask the Government, "How great is the demand for such services?" Using Mr Alan LEONG's favourite term, I must ask, "How big is the 'shortfall'?" It is only when we know this that we can ascertain how many additional services are required. But the Government has refused to make any such assessments on the ground that such assessments will single them out as a special group, and that this is a form of discrimination against them too. The Government has resorted to this lame excuse, so that it can justify its refusal to conduct any service demand assessment. I find this approach unacceptable. On the other hand, the Government claims that it will do this or that. What counts is not whether the Government has provided such services. The important thing is whether such services are adequate. Besides, who is going to decide whether such services are adequate? If new arrivals are not excluded from the anti-racial discrimination legislation, if they are protected, then they can actively make allegations of "government discrimination" and "less favourable treatment by the Government". They can make such allegations actively. But if they are excluded from the legislation, they will be plunged into a passive position and deprived of their rights. They will only be able to enjoy whatever services the Government is willing to offer them. If they are not satisfied, they can only beg the Government for more, or exert pressure on the Government. But if the Government ignores them, they can do nothing at all. Chairman, this is the greatest difference. Therefore, Chairman, I must say that the Secretary's remarks are neither new nor convincing. I call upon Members to support the amendments. Thank you, Chairman.

DR FERNANDO CHEUNG (in Cantonese): Chairman, why is "resident status" excluded from the scope of protection? What does the Government look at new immigrants, or to be politically correct, new arrivals, from such a perspective? Why should they be excluded from the ambit of the Race Discrimination Ordinance?

In a document supplied by the Government at the very beginning, the Government also agreed that there was discrimination against new arrivals from the Mainland. The document was supplied by the Home Affairs Bureau. In this document, it is said, "Discrimination against new arrivals from the Mainland has been a matter of concern in the community. There has also been continued pressure from human rights groups and new arrivals organizations for the Bill to make specific provisions against such discrimination." It is then further pointed out, "There can be no questions that new arrivals should, as of right, enjoy the same protection against racial discrimination as everybody else in Hong Kong. However, as almost all of the new arrivals are of the same ethnic origin as the local Chinese, they do not constitute a separate racial group under the definition of 'race' in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination. More importantly, the discrimination which may at times be experienced by some new arrivals is in essence a form of social, not racial, discrimination." All this shows that the Government actually admits the existence of discrimination. The only thing is that it does not think that such discrimination is racial discrimination. As a result, it does not think that legislative control should be imposed. However, its real intention is exposed as it carries on its argument in the document. It is said, "It is wrong in principle to seek to address these issues through legislation on racial discrimination." What then is the greatest problem? The document states, "An extension of the scope of the Bill, as proposed by some advocates, would also have significant adverse implications on established Government policies and practices which are based on the seven-year residency requirement (such as the Comprehensive Social Security Assistance Scheme and eligibility to public housing)."

Chairman, the meaning of all this is very simple. If the Government includes "resident status" for protection when drafting the legislation, it will be admitting that it has been breaking the law. The reason is that according to the requirements it sets down, people with less than seven years of residence in Hong Kong are not eligible to Comprehensive Social Security Assistance and public housing. How can we expect the Government to enact an ordinance

under which its acts will be deemed illegal? This is the real reason. This is the real reason for its stubborn refusal to include new arrivals within the scope of protection. It argues that there is discrimination, but such discrimination is not racial discrimination, so it can be put aside for the time being. In that case, the logic is very simple indeed. Chairman, the Government also admits the existence of such discrimination in society, and some organizations such as the Society for Community Organization and the New Immigrants Mutual Aid Association have conducted a survey earlier which indicates that 98% of the new arrivals interviewed think that discrimination exists in Hong Kong, and that 91% of them admit having been discriminated against. Discrimination is therefore a very widespread and serious problem.

If the Government admits that the discrimination against new arrivals is a form of social discrimination, our scrutiny of the Bill will be very simple. I once asked the Government, "Since you admit that there is a problem, how are you going to deal with it? If the Race Discrimination Ordinance cannot apply to this type of discrimination, will you enact another ordinance to deal with it?" The Government answered in the negative. On the one hand, the Government admits the existence of this problem; it thinks that what is involved is social discrimination rather than racial discrimination; and, it has chosen to ignore this problem on the ground that the Bill is on racial discrimination. However, it does not intend to enact another ordinance to protect the new arrivals. What then is in the mind of the Government?

Therefore, the Government can only explain that it provides many services and conducts extensive public education. As mentioned by Ms Margaret NG just now, the kind of public education referred to by the Government is really ridiculous. Yes, when it comes to the provision of services, it is certainly true that we have been providing new arrivals with many services. But are these services adequate? Can discriminatory acts thus be prevented? Can new arrivals thus integrate into society, thereby easing the problem of discrimination and making it unnecessary for this Bill to tackle the problems they are faced with? I am not going to discuss any legal points of view here, for I am no lawyer. And, I do not know whether any applications for judicial review will result from the judgement delivered by the Privy Council of the United Kingdom as mentioned by Ms Margaret NG. I am a social worker by profession. This type of discrimination is real, occurring every day. New arrivals are discriminated against by Hong Kong people. Any Members expressing any

views on protecting new arrivals in any public forum will come under very heavy pressure, because, very sadly, discrimination against new arrivals in our society is really very great. Hong Kong is an immigrant society, but we can all observe that new arrivals from the Mainland are looked upon with a "special respect". However, the Government is reluctant to provide them with any protection under the ordinance, and it only offers services to them. Chairman, in 2003, the Government closed down all the service centres for new arrivals, saying that they could be replaced by certain family service centres, which could avoid any labelling effect. What the Government means is that since the ordinary integrated family service centres are open to all people, be they new immigrants, old immigrants or even non-immigrants, there will not be any labelling effect. It claims that this is good to new arrivals and can foster their social integration.

Actually, this is a regression. In the past, specialized services were provided, and some services centres were dedicated to serving the new immigrant families. As a result, these families did not have to worry about any discrimination. The Government is now adopting the opposite approach. All the service centres for new arrivals are shut down, thus forcing them to use mainstream services. If all new immigrant families already know how to access these services immediately upon their arrival, if they are not afraid of being discriminated against, if they can all communicate with local mainstream families with very great confidence, if they can all speak fluent Cantonese, and if they can thus integrate into our culture immediately, there will of course be no problems at all. But this is not the case in reality. The Government used to provide new arrivals with specialized services, but all these services are now shut down, and the resources cut. It even claims that their problems can be solved by using mainstream services, and that it is not necessary to provide them with any protection under the law. Chairman, what is the implication of all this? At present, people with less than seven years of residence in Hong Kong are treated very differently by the Government under existing legislation. Speaking of the safety net, I must point out that when any individual or family fails to earn enough for maintaining a basic living standard, the safety net is supposed to perform its function, so that they will not fall down, will not suffer hunger, and will not be deprived of medical care and rendered homeless through lack of means. The safety net is the basic requirement. But why is eligibility for the safety net not based on the basic needs of applicants? Why is the provision of assistance not based on actual needs, but on the applicant's length of residence in Hong Kong, that is, "resident status", or whether the applicant has resided in

Hong Kong for seven years or more? This is in itself a form of discrimination. The result is that Many such families are single-parent families. In a typical case, the mother has resided in Hong Kong for less than seven years, and her children were born in Hong Kong. Under the existing system, children under the age of 18 are exempt from the residency requirement, so her children are eligible for Comprehensive Social Security Assistance (CSSA). The result is that a family of two must live on the CSSA payment for one person. Or, a family of three must live on the CSSA payment for two persons. This is what I mean by discrimination, the kind of discrimination that plunges new arrivals into extreme hardship. The Government's reluctance to extend the ambit of the ordinance to people with less than seven years of residence in Hong Kong can aptly reflect the Government's overall policy of treating these people less favourably than others. The needs of these people are not considered, nor are they necessarily offered any assistance to meet their basic needs. The implication is that they may choose not to come to Hong Kong, and that if they really choose to do so, they must look after themselves, or they must face the consequences themselves. We are not talking about any Third World places. Rather, we are talking about a place that boasts of itself as Asia's World City and a metropolis. We have an abundance of resources, and the Government is so very rich, but we have tried to be mean to new immigrants in every possible way, and we have refused to accept them.

Therefore, the exclusion of new immigrants from the ordinance can actually reflect the long-standing attitude and policy of the Government. But at this very time of Hong Kong-China integration, marked by increasing social and economic ties between the two places and by a rising number of cross-boundary families, such an attitude and policy will only create more and more social problems. If the Government continues to hold this attitude, turning a blind eye to the necessity of legislative protection, ignoring the needs of new arrivals, and continuing to tolerate such discrimination, then the whole thing will amount to discrimination against an ethnic group in many ways. The languages spoken by the new immigrants are different from those spoken by the Hong Kong people. Their cultural backgrounds are also different from that of the Hong Kong people. This explains why they face so many difficulties in social integration. What is more, cross-boundary marriages have also caused many difficulties and family problems.

If the Government does not tackle all these problems proactively, if it does not adopt the legislative approach to tell society very clearly that acts and attitudes that discriminate against new immigrants are not acceptable, if it takes the lead in discriminating against new immigrants instead, then I suppose it will be more and more difficult for us to continue to tread this path. The path of Hong Kong-China integration will be beset with difficulties. Thank you, Chairman.

MR RONNY TONG (in Cantonese): Chairman, just now, the Secretary maintained that the definition of "race" upheld by the Government is totally in line with the definition adopted in the International Convention on the Elimination of All Forms of Discrimination. Chairman, this is a completely illogical argument, one which is hardly tenable. The reason is that if the Government's definition, which excludes new immigrants, is really in line with the definition adopted in the international convention, why should there be any need for making new immigrants an exception? This can show precisely that the Government has a guilty conscience, knowing that new immigrants should be covered by the definition. This explains why it wants to make them an exception.

Chairman, what I hate to hear most is the Government's saying that it does not wish to see any unnecessary and meaningless lawsuits. Chairman, only those who have erred and those who have a guilty conscience, are afraid of lawsuits. If the Government is right in all respects, it does not have to fear any lawsuits. But, Chairman, what is more important is that if the Government clings to its present position, it will itself stir up many lawsuits, lawsuits that we all consider necessary and meaningful. The reason is that the definition it upholds and its approach to the matter are in contravention of Article 2 and Article 26 of the International Covenant on Civil and Political Rights (ICCPR).

Chairman, the International Convention on the Elimination of All Forms of Racial Discrimination is not mentioned specifically in the Basic Law. But the ICCPR is mentioned specifically in Article 39 of the Basic Law. This means that if this Bill contravenes the anti-discrimination principle concerned, it will also be violating the standard found in Article 2 and Article 26 of the ICCPR. In that case, the Government's present action will result precisely in the necessary and meaningful lawsuits we have been talking about.

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

MS EMILY LAU (in Cantonese): Chairman, the Secretary said just now that he had sought the advice of the Department of Justice, explaining that the definition was in line with the relevant international convention. I do not know so much about any Secretary for Justice, nor do I know whether he has ever read the letter concerned. The highest authority of interpreting the international convention concerned is the Committee on the Elimination of Racial Discrimination. Is the Secretary for Justice literate? He only says yes when others tell him of this definition. Does he consider himself the supreme ruler? This is really absurd. The Amnesty International has also requested us to vote against the Bill because it does not include new immigrants. All this is international advice, given by renowned international organizations on the upholding of human rights. I do not think that the Government of the Special Administrative Region (SAR) can have such authority. The SAR Government claims that its definition is in compliance with the international convention. But whose advice should we listen to? Chairman, you surely know the answer, but I am not going to give you any award for that.

Dr Fernando CHEUNG's remarks are all very correct. There is nothing so complicated about the SAR Government's attitude. Put simply, it dislikes poor people; poor people are up to no good; and, poor people must be looked down upon and discriminated against. I do not know whether Members can still remember what the Chief Executive said earlier on. He remarked that the wealth gap problem was serious, and there were many poor people. He added that this was well-known to all, as there were 150 people entering Hong Kong every day. This was a Freudian slip. He actually thinks that all new immigrants are poor. He thinks that rich people will only visit Hong Kong for sight-seeing and buying luxury flats at the Mid-levels. He thinks that most of the new immigrants are poor. He thinks that all these people are up to no good, and no help should be given to them. This explains why they are excluded from the ambit of the legislation.

Chairman, the authorities claim that assistance will be offered in some areas. I have read the documents they supplied to us. How much is granted to the Home Affairs Department for the purpose in 2008-2009? It is \$1.6 million. Of this, \$700,000 is for the production of a services guide. Non-government

organizations are allocated \$600,000, and the 18 District Offices receive \$300,000. Members can easily imagine how much can be done with this sum of money. There is just \$1.6 million, but there are several hundred thousand new arrivals. How much is granted to the Education Bureau? The answer is \$29 million. Of this, 10 million will be used for induction programmes. The school-based assistance project will be granted \$16 million. And, there will be \$3.5 million for initiation programmes. The total is therefore some \$29 million, about \$30 million.

This sum of money is only half of the annual salaries of the newly-appointed Under Secretaries and political assistants. The salaries of these appointees are already as big as this sum of money. While there are only 10 to 20 Under Secretaries and political assistants, there are several hundred thousand new immigrants. But the monetary value of the services received by the latter from the two policy bureaux is just half of the annual salaries of the former. They will understand what I mean when the matter is expressed in such money terms because they know nothing but just money, Chairman. We all think that resources are very important. But some people were really very generous, and they approved so much funding for employing all these appointees. But even those people who supported the funding approval are now extremely angry, thinking that these appointees are very poor in performance.

New immigrants hope that society can treat them better. We must also remember that new immigrants are now also members of our society. We may need to spend billions, but if we can thus provide them with better education and welfare services, I can always say on behalf of the public that it is well worth the money. But Dr Fernando CHEUNG was right in saying that this would stir up lots of hatred. Some people in the districts do not like this idea. But Emily LAU is a person of principle. If people do not like me, they can decide not to vote for me.

Whether a society is civilized depends very much on how it treats its vulnerable members. The authorities have turned the legislation on ethnic minorities into something which is neither ass nor horse. Some people have been waiting for a very long time, in the hope that they can receive some help. Dr Fernando CHEUNG even read aloud a document supplied by the authorities, pointing out that some people were being discriminated against and in need of assistance. But even when there is now such a good opportunity, the authorities

are still deliberately refrained from doing anything. Although the United Nations and the Amnesty International have both requested the authorities to do something, they have nonetheless refused. They even claim that they have spent several dozen millions on helping these people. But this sum of money is just like a drop in the bucket, right? The dimensions of the problem are so great, but the authorities have still decided to behave like this. I think they are just too heartless. The authorities argue that since ethnic minorities are not Han people, they are capable of being discriminated against. But the fact is that even Han people are also being discriminated against.

What on earth is this Government made of and what kind of rice does it eat? I so submit to support the amendments.

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

(No other Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If no other Member wishes to speak, may I ask whether the government official concerned wishes to speak again?

(The Secretary for Constitutional and Mainland Affairs shook his head to indicate that there was no need for him to speak again)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Ms Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Ms Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Ms Margaret NG has claimed a division. The division bell will ring for one minute, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

CHAIRMAN (in Cantonese): Among the 45 Members present, 21 are in favour of the amendments and 23 against them. Since the question is

(The screen displayed the voting outcome for Government Motions)

CHAIRMAN (in Cantonese): Clerk, this is not correct. The outcome of separate voting should be displayed. I am sorry that I must declare this voting outcome not valid. Although Members have made no mistake in voting, the outcome analysis is wrong. Since this is not a Government Motion but a Members' Motion, the outcome of separate voting should be displayed.

Please ask the technicians to come back for inspection.

(The technicians inspected the computer again)

CHAIRMAN (in Cantonese): I now request Members to vote again. Clerk, please display the voting outcome again.

(Members pressed the buttons again to cast their votes)

CHAIRMAN (in Cantonese): Would Members please cast their votes again? If the outcome of separate voting is displayed this time, the outcome can be accepted.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Ms LI Fung-ying, Dr Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendments.

Dr Raymond HO, Dr LUI Ming-wah, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted against the amendments.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG and Mr Ronny TONG voted for the amendments.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendments.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 23 were present, eight were in favour of the amendments and 15 against them; while among the Members returned by geographical constituencies through direct elections, 22 were present, 13 were in favour of the amendments and eight against them. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendments were negatived.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 8 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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 10.

MS MARGARET NG (in Cantonese): Chairman, I move that clause 10 be amended.

Chairman, I move the amendment to clause 10 on behalf of the Bills Committee. Chairman, whether our amendment today can be passed, all our remarks, opinions and voting decisions will be put on permanent record. Anyone who wishes to see the record can do so in the future.

Chairman, clause 10 of the Bill makes it unlawful for an employer to discriminate between job applicants or employees in offers of employment, the terms of employment, promotion, transfer, training and dismissal. Clause 10(3) and (8) provide for an exception for small employers with not more than five employees during the first three years after the enactment of the Bill. Some Members have queried the need for the exception. The Bills Committee has decided to ask me to move amendments in its name to reduce the duration of the

transitional period to one year and to exclude Clause 10(1) relating to employment from the application of the proposed transitional period.

Chairman, during the resumption of Second Reading debate just now, Mr LEE Cheuk-yan already explained the need for separate treatment in the legislation. As pointed out by Mr LEE Cheuk-yan, clause 10(1) provides that there shall be no exception to the clause in the case of new employees. But if the targets are existing employees, the Bills Committee agrees with Mr LEE Cheuk-yan that one year is already enough. As a matter of fact, the various regulatory provisions in this Bill are the same as those in other anti-discrimination legislation. They are all time-tested and contain no new concepts. We can therefore pass the amendment without any worries. Thank you, Chairman.

Proposed Amendment

Clause 10 (See Annex I)

CHAIRMAN (in Cantonese): Members may now debate the original provisions and the amendments jointly.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Constitutional and Mainland Affairs, do you wish to speak?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam Chairman, on behalf of the Government, I would like to raise objection to Ms Margaret NG's proposed amendment.

Ms Margaret NG's proposed amendment would achieve the following effects:

- (a) abolish the three-year exemption period, counted from the date of enactment of the Bill, provided by the Bill for small enterprises in respect of the selection of employees;
- (b) shorten the duration of the exemption period for small enterprises in respect of the treatment of employees from three years to one year; and
- (c) absolve the Chief Executive in Council from exercising the power to, by subsidiary legislation published in the Gazette, amend the exemption period.

We do appreciate the position reflected by the proposal, but I must point out that the short-term exemption proposed in the Bill is aimed at addressing the needs of small employers with not more than five employees. Compared with enterprises in general, the resources available to these employers are actually very limited. Their operation is also subject to greater constraint. The exemption period is thus required for them to cope with the requirements of the new legislation and for its smooth implementation.

Certainly, other anti-discrimination ordinances are already in place in Hong Kong. On the surface of it, members of the community in general should find it easier to adapt to new legislation and control than in the past. However, the Race Discrimination Bill, if passed, is a new piece of legislation. More importantly, race discrimination and its scope of application are different from discrimination arising from sex, disabilities or family status. So, as with other existing anti-discrimination ordinances, we consider it necessary, reasonable and sensible for a three-year exemption period to be given to small enterprises.

With these remarks, Madam Chairman, I implore Members to vote against this amendment.

MR LEE CHEUK-YAN (in Cantonese): Chairman, just now the Secretary pointed out that the most important reason for his objection to the amendment was that additional resources would be incurred by small enterprises. May I ask the Secretary this question: What resources would be required for the purpose of employment? For instance, there are two job-seekers, one being a

person of ethnic minorities, and another a local Chinese. I am only asking the employer not to be discriminatory in considering which one is to be employed, and no additional resources will thus be involved.

For existing employees, however, it can be argued that resources might be involved. For instance, there are two existing employees, and one of them earns more than the other. When the legislation comes into effect, they should be offered the same salary. In other words, they should enjoy equal pay for equal work provided that their lengths of services, and so on, are the same, or else their employer shall be deemed breaching the law. This is why I propose to give employers a one-year transitional period to enable them to accumulate resources gradually and, after one year, give their employees equal pay during pay rises.

Actually, the issue of resources has been taken into consideration, and the recruitment of new employees will absolutely not involve any additional resources. Furthermore, Chairman, the small enterprises are very often sub-contractors. As far as sub-contractors are concerned, especially in the context of construction sites, one year is enough for them to consider the issue of resources during tendering. Therefore, one year is absolutely sufficient for employers, even small enterprises, to adapt to the new environment. It is actually absolutely possible for sub-contractors to adjust the bidding prices with contractors or major contractors. Therefore, regarding the issue of resources mentioned by the Secretary just now, I think that the resources involved are absolutely allowed for by our amendment, and what is more, the newly-recruited employees will not involve any additional resources.

Thank you, Chairman.

DR FERNANDO CHEUNG (in Cantonese): Chairman, I speak in support of Ms Margaret NG's amendment.

I also find Mr LEE Cheuk-yan's amendment very humble. We certainly cannot see why there should be a transitional period for the recruitment of new employees, for this is actually discriminatory and totally unacceptable.

But as far as existing employees are concerned, why should the discriminatory acts of employers be allowed to continue for one more year? Frankly speaking, this is, in principle, hardly acceptable. In reality, people of ethnic minorities are employed by many sub-contractors to undertake some most demanding and backbreaking tasks, such as operating machinery to carry out road digging works, and yet their salaries are relatively low. According to the findings of some surveys, their salaries are 20% to 30% lower (compared mainly with Chinese workers), and basically this is commonly found in the construction industry.

However, Chairman, this situation must be improved. As this is evidently an act of bullying another race, why should it be allowed to continue for one more year? Furthermore, as I pointed out just now, the Government already agreed in 2003 that there was a need to enact the Race Discrimination Bill, and the discussion, which was not brought up only yesterday, has actually been dragged on for a long time, not less than five years from the date the idea of enacting legislation was floated. It is simply unacceptable for employers to continue to treat their employees in such a discriminatory manner today and discriminate against them in various areas, including remuneration, working attitude, working conditions, and so on.

Frankly speaking, I simply do not see the need for a transitional period. We are actually going through the transition as we engage in our discussion. Why are improvements yet to be made as it is known to everyone that the Bill will be enacted? Why does the Government allow discrimination to continue for one more year? This is really puzzling.

Nevertheless, it is futile for us to behave with great modesty. As the Government will not give in, so why should we be humble?

Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Ms Margaret NG, do you wish to speak again?

MS MARGARET NG (in Cantonese): Chairman, before I proposed the resumption of the Second Reading debate earlier, Mr James TIEN already made it clear that he was not opposed to my amendment. Nevertheless, he thinks that the Government should step up publicity and education for SMEs. Chairman, I very much agree with Mr TIEN's remarks.

Concerning the remarks made by Mr Jeffrey LAM that SMEs are facing enormous pressure, what is the pressure he was referring to? To illustrate the difficulty faced by employers, he cited an example to show that the followers of some religion would accuse their employers of not allowing them to take a day off on the Sabbath day. Actually, I already explained in moving to amend clause 4 just now that this requirement for employers is not imposed by the legislation. It is thus evident that the Government should really upgrade its publicity and education efforts. If more publicity and education efforts can be made, one year should actually be enough. Without publicity, even extending the transitional period to 10 years would still not achieve anything. I do not entirely agree with Dr Fernando CHEUNG's remark that the request is extremely humble. Although I think that we can adopt a more understanding attitude towards the private sector and the public, we must be absolutely strict with the Government. Therefore, the most important reason for our opposition turns out to be just the opposite. Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment to clause 10(3) moved by Ms Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Ms Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Ms Margaret NG has claimed a division. The division bell will ring for one minute, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (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 Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr WONG Ting-kwong voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr James TO, Miss CHAN Yuen-han, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG, Mr Ronny TONG and Mrs Anson CHAN voted for the amendment.

Mr CHAN Kam-lam, Mr Jasper TSANG, 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.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, nine were in favour of the amendment and 15 against it; while among the Members returned by geographical constituencies through direct elections, 22 were present, 14 were in favour of the amendment and seven 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 negated.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment to clause 10(8) moved by Ms Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Ms Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Ms Margaret NG has claimed a division. The division bell will ring for one minute, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (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 Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr WONG Ting-kwong voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG, Mr Ronny TONG and Mrs Anson CHAN voted for the amendment.

Mr CHAN Kam-lam, Mr Jasper TSANG, 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.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, nine were in favour of the amendment and 15 against it; while among the Members returned by geographical constituencies through direct elections, 23 were present, 15 were in favour of the amendment

and seven 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.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment to clause 10(10) moved by Ms Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Ms Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Ms Margaret NG has claimed a division. The division bell will ring for one minute, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (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 Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr WONG Ting-kwong voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG, Mr Ronny TONG and Mrs Anson CHAN voted for the amendment.

Mr CHAN Kam-lam, Mr Jasper TSANG, 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.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, nine were in favour of the amendment and 15 against it; while among the Members returned by geographical constituencies through direct elections, 23 were present, 15 were in favour of the amendment and seven 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 negated.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 10 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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 17.

MS MARGARET NG (in Cantonese): On behalf of the Bills Committee on Race Discrimination Bill (the Bills Committee), I move the amendments to clause 17 of the Bill.

Clause 17 makes it unlawful for partnerships consisting of not less than six partners to discriminate against persons seeking partnership or against existing partners. Some Members have queried the basis for exempting partnerships of less than six partners, given that a similar provision in the Race Relations Act 1976 of the United Kingdom (UK) was repealed in 2003. The Bills Committee has decided that a CSA be moved by me on behalf of the Bills Committee to delete the proposed exemption for partnership with less than six partners. I urge Members to support the amendment.

Chairman, I would like to give a brief explanation here. Although the Secretary has repeatedly advised us not to follow overseas practices in handling everything, this provision is completely devoid of local justifications. It is merely a copycat of a piece of legislation enacted in the UK more than three decades ago.

During the scrutiny of the Bill, I urged the Bureau to consult whether there is an actual need for the exemption to be provided. In the legal profession, the Law Society of Hong Kong is established in the form of a partnership, with other partners coming from sectors other than the legal profession. However, the Bureau has failed completely in conducting any consultations and is therefore not supported by any justifications. It has merely blindly followed others in

proposing the exemption. Notwithstanding the Bureau's bid to follow others blindly, the part has already been repealed in the UK, and yet it remains intact in Hong Kong. This is absolutely not what we should follow.

Chairman, Mr Jeffrey LAM pointed out earlier in the resumption of the Second Reading debate that these small companies or partnerships should not be regulated by law. Otherwise, it would appear that there is intervention in a small organization, and this would arouse concerns. Actually, Mr Jeffrey LAM should set his mind at ease because the amendments to clause 17 are not intended to restrict partners to certain people. Instead, they seek to provide that whether certain people should become partners should not be decided on the basis of racial discrimination. Unless Mr Jeffrey LAM indicates that he will definitely take into account the racial discrimination factor in choosing his partners, this provision will simply not have any impact on him.

Therefore, Chairman, I urge Members to support the amendments proposed by the Bills Committee. Thank you.

Proposed amendment

Clause 17 (see Annex I)

CHAIRMAN (in Cantonese): Members may now debate the original provision and the amendments jointly.

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

(No Member indicated a wish to speak)

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam Chairman, on behalf of the Government, I would like to raise objection to Ms Margaret NG's proposed amendments.

Ms Margaret NG's proposed amendments seek to extend the provisions related to discrimination practices of partnerships, as provided for in the Race

Discrimination Bill (the Bill), to cover partnerships consisting of less than six partners, and absolve the Chief Executive in Council from exercising the power to, by subsidiary legislation published in the Gazette, amend the number of partners or abolish the power related to exemptions altogether.

I hope Members will understand that partnership is different from the relationship between an employer and an employee, for partnership is a much closer business relationship. In particular, partners are exposed to liability and debts incurred by other members of the partnership. Therefore, partnership, especially when the number of partners is relatively small, actually embraces a high degree of mutual trust and commitment on a personal basis. Compared with the relationship between an employer and an employee in general, partnership is by nature much more personal and, therefore, warrants a wider choice and greater freedom. Based on these considerations, there is indeed a need to allow partnerships comprising less than six partners to enjoy exemption in respect of the status of their partners. Furthermore, similar exceptions are provided in the existing Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance. Having regard to the high degree of trust and confidence required by partnership and the experience of the existing anti-discrimination ordinances, we consider the proposed provisions of the Bill appropriate.

With these remarks, Madam Chairman, I implore Members to vote against the amendments.

CHAIRMAN (in Cantonese): Ms Margaret NG, do you wish to speak again?

(Ms Margaret NG indicated that she did not wish to speak again)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Ms Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Ms Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Ms Margaret NG has claimed a division. The division bell will ring for one minute, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (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 Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the amendments.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Prof Patrick LAU voted against the amendments.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Miss CHAN Yuen-han, Dr YEUNG Sum, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms

Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mrs Anson CHAN voted for the amendments.

Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendments.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 26 were present, nine were in favour of the amendments and 17 against them; while among the Members returned by geographical constituencies through direct elections, 22 were present, 13 were in favour of the amendments and eight against them. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendments were negatived.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 17 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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 58.

MS MARGARET NG (in Cantonese): Chairman, on behalf of the Bills Committee on Race Discrimination Bill (the Bills Committee), I move the amendments to clause 58 of the Bill.

Chairman, this provision has already been debated by many people, so there is no need for me to repeat the principles here. However, I would like Members to take one more look at clause 58 and the contents of our proposed amendments. Chairman, I do not mind the presence of different voices in the Council, but I hope Members can seriously execute their legislative powers and fulfil their obligations and carefully examine the reasons for their approval or disapproval.

Chairman, from the speeches delivered by a number of Members during the Second Reading debate, I heard, for instance, Mr Andrew LEUNG question the justifications for clause 58 because, in the absence of the exemptions, abundant resources would be required, or else a lot of litigations would arise. For instance, it would be unlawful unless hundreds of interpreters are provided for the delivery of health care services. Mr James TIEN also stated that, without the exemptions, interpretation services would need to be provided for all the speeches delivered by Members and also for all medical and health care terminologies. These requirements will evidently pose great difficulties. Miss CHOY So-yuk also shared the same view by saying that, without the exemptions, interpretation services for all languages would have to be provided, but this was an impossible task.

Chairman, what is clause 58 all about? Clause 58 provides exemption for vocational training providers, employment agencies, and so on, so that they would not be rendered unlawful for the use of, or the failure to use, certain languages. What will happen should there be no such exemption? Would the use of, or the failure to use, certain languages be rendered unlawful?

Chairman, I have already explained that the crux of the issue lies in circumstances when exemption is not provided — there is no need for examination should there be an exemption because anything can be done — then reference has to be made to clause 4 to ascertain or define discrimination. This means certain persons are put in a disadvantaged position as a result of the imposition of a requirement or condition without justifications. It is only under such circumstances would there be a need for other languages to be provided.

Chairman, should a request be made for exemption to be granted in this regard, the meaning of this is the imposition of a requirement or condition to the detriment of a person without justifications would still not constitute discrimination provided that language is employed as a means to achieve the purpose. Chairman, this is extremely unfair and unjust. Therefore, this is absolutely unacceptable to us. Moreover, discrimination in this manner is, in our opinion, absolutely not in line with international covenants.

Chairman, I have repeatedly stated in my speech that we are not seeking a "one-step accomplishment". It is only that the minimal requirement must be met. What are our requests in proposing the amendments today? What is clause 58(1A) all about? It provides that the exemption cannot be applied to vocational training. In other words, language discrimination can be allowed only when it is justified, or else differential treatments will not be permitted. I would like to remind Members once again that "justified" means that there are legitimate and reasonable justifications, and the exemption can be applied only if there is direct and reasonable relevance, and the exemption is proportional.

We propose that no exemption be granted for vocational training because, judging from the actual circumstances, ethnic minorities will not be able to find employment and achieve success as a result. This is why we consider that exemption should not be allowed in such an important area. The providers must give serious consideration, and differential treatments can only be accorded when there are real justifications. Actually, Chairman, this is in line with the Government's initial action plans. Should inequalities be found with these action plans, more resources can be injected to resolve the problem expeditiously.

What is clause 58(1B) all about? It provides that the exemption should not be applied to medical services provided under the Medical Clinics Ordinance (Cap. 343). During the resumption of the Second Reading debate, a number of Members mentioned that, when ethnic minorities required medical services under certain urgent circumstances, their lives were often put at risk owing to the language barrier. This is why this provision has to be included.

Chairman, I would also like to draw Members' attention to clause 58(1C) to illustrate that even without the granting of exemption for medical services, it does not mean that it is required that a verbatim translation should be provided

for patients seeking medical treatment. There is no such requirement. Therefore, Mr James TIEN, all medical terminologies would not be required to be translated. Even if a doctor explains medical terminologies to me, I will not entirely understand. I believe Mr TIEN will not be much better than me. Therefore, there is no such requirement here.

Furthermore, it is pointed out in paragraph (b) of clause 58(1C) that the presence of an interpreter knowing a patient's dialect is not required. In other words, so long as the patient understands what is going on, the immediate presence of an interpreter would not be required. Just as a Member mentioned earlier, providing interpretation service through the telephone or speaker phone to give the patient a rough idea of what is happening would already serve the purpose.

Chairman, Members may note that education is not included here at all. Why do we not propose changes even though education is not exempted? Chairman, in the course of deliberation, we have already requested the Government to exert its utmost to help us take practical steps to resolve the education problem. We will not propose amendments if we consider that the worst part of the problem has generally be resolved and a direction has already been set for the problem to be resolved progressively. Therefore, the attitude of the Bills Committee has been most reasonable and tolerant. However, we must not be too tolerant because this would mean being generous at the expense of others. We are being tolerant for the sake of the ethnic minorities, not for the sake of ourselves. Therefore, there has to be a limit for us to be tolerant.

We propose amendments because we find it intolerable for exemptions to be granted in the areas of vocational training and medical services. I will not use such expression as "humble", but I will use the expression "minimal requirement" because our request is to turn a new bill into legislation to help the public but, at the same time, ensure that the Bill will not "turn gold into iron" as a result of certain exemptions.

Therefore, on behalf of the Bills Committee, Chairman, I propose this amendment and hope Members can support it. Thank you, Chairman.

Proposed amendment

Clause 58 (see Annex I)

CHAIRMAN (in Cantonese): Members may now debate the original provision and the amendments jointly.

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

DR YEUNG SUM (in Cantonese): Chairman, many people of South Asian descent have actually been living in Hong Kong for generations. Born and raised in Hong Kong, they speak very fluent Cantonese but they still face great difficulties in reading and writing Chinese because it is not their mother tongue.

As regards education, since the local curriculum and examination standards are adopted for local students attending the Hong Kong Certificate of Education Examination (HKCEE) and Hong Kong Advanced Level Examination (HKALE), very few ethnic minority students manage to attend matriculation courses after sitting the HKCEE or study in the universities by passing the HKALE. As they cannot climb up the mainstream academic ladder for personal advancement, so to speak, they would enrol in some vocational training programmes in the hope of equipping themselves with a skill to make a living. However, as many of the vocational training programmes are either conducted in Chinese or consisted of a Chinese curriculum, they encounter tremendous difficulties in vocational training.

As for hospitals, many persons of ethnic minorities told us in the public hearing that the doctors simply did not understand what they said when they sought emergency treatment at the hospitals. Moreover, they had often taken wrong medicines as many medicines were not labelled or had any instructions. Chairman, hospitals now turn to the Court for interpreters. However, we are told by many court interpreters that they are actually not interested in going to the hospitals because, first, their workload at the Court is very heavy and, second, the pay they get as an interpreter in the hospitals is lower than what they will get in the Court.

In the areas of vocational training and public health care, ethnic minorities are actually faced with many unfair treatments. We felt deeply ashamed after learning about this situation during the deliberation process. Why can this situation be tolerated for such a long time here in Hong Kong? Therefore, the

Democratic Party fully supports the amendments proposed by Ms Margaret NG on behalf of the Bills Committee. Thank you, Chairman.

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

(No other Member indicated a wish to speak)

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam Chairman, on behalf of the Government, I object to Ms Margaret NG's proposed amendment.

Pursuant to clause 58, the use of, or the failure to use, any language in circumstances relevant to specified provisions (including the provision of services or facilities) is not unlawful. Ms NG's proposal, however, will render this provision not applicable to the following:

- (a) the language used for vocational training courses specifically provided for persons speaking a particular vernacular; and
- (b) the language used during the provision of medical treatment.

This amendment might lead to relatively serious consequences for it would affect not only the operation of the Government, but also private training providers and small enterprises, as well as the operation of private hospitals and clinics.

In vocational training courses, vocational training comprises training courses provided not only by public training providers, such as the Vocational Training Council (VTC), but also by smaller private training providers and small workshops. It is not practically feasible to require vocational training courses to be taught in the languages used by ethnic minorities. Neither would it be necessarily helpful to the integration of ethnic minorities into society and conducive to the preparations to enable them to join the local employment market.

Worse still, the amendment might deter private providers and small enterprises wishing to provide ethnic minorities with training courses from

operating such courses for the avoidance of litigations and troubles. Therefore, the amendment may be counter-productive.

We consider it most appropriate to enhance vocational training for ethnic minorities. In this connection, I would like to cite some examples of training efforts:

- (a) The Employees Retraining Board (ERB) has, since mid-2007, been operating placement-tied training courses for ethnic minorities, and a total of 80 places were provided in 2007-2008. In 2008-2009, the number of places will be increased to 2 000. If necessary, the ERB will provide additional training places to meet the demand. In addition to placement-tied training courses, the ERB has also planned to offer comprehensive courses for ethnic minority job-seekers to enhance their understanding of the local employment market, work culture and job-seeking channels as well as upgrading their job-seeking skills;
- (b) From 2006-2007 onwards, the VTC has been operating courses specifically designed for ethnic minorities. In order to meet the training needs of ethnic minorities, the VTC has substantially raised the number of training places from 296 in 2006-2007 to 625 in 2007-2008. With reference to past experience and demands, the VTC will continue to make these arrangements in 2008-2009;
- (c) To cater for the training needs of ethnic minorities, the VTC and ERB will adopt a flexible approach in handling the minimum class size of the courses organized specifically for ethnic minorities. Provided that a certain number of students have enrolled, courses specifically for ethnic minorities will be offered without having to meet the minimum enrolment requirement of 15 students;
- (d) The VTC and ERB will provide interpretation services, on a need basis, for non-Chinese speaking and non-English speaking students to facilitate teaching and learning. Furthermore, the ERB plans to launch an interpretation training programme to enhance the learning effectiveness and employment opportunities of ethnic minorities. The programme will be focused on the skills of interpreting from

English into Hindi or Urdu. During the first phase, the ERB will provide 50 training places and will, depending on the needs, consider the provision of more places;

- (e) The VTC and ERB will continue to maintain close ties with ethnic minority groups to determine the training needs of ethnic minorities and develop training programmes suitable for them. The VTC and ERB will also enhance publicity for training programmes operated specifically for ethnic minorities; and
- (f) As regards organizing activities and training, we will organize, for instance, instructors' sharing seminars and workshops, in order to enhance the understanding of the culture and customs of ethnic minority students and the sensitivity and capacity in providing assistance.

Lastly, I would like to point out that, with respect to medical services, Ms Margaret NG's amendment will regulate not only the hospitals and clinics operated under the Hospital Authority (HA), but also, as I stated earlier, the medical services provided by private practising doctors. In the HA, arrangements have been put in place for the provision of part-time interpreters. Currently, support in this area is also being enhanced through interpretation provided over the telephone and the recruitment of more part-time interpreters. However, for private practising doctors and private hospitals, the amendment might result in the relevant doctors or hospitals being accused of engaging in indirect discrimination due to their failure to communicate in a certain language. Although the defence is allowed by the law to invoke clause 4, the provision regarding whether a certain practice is justifiable as a defence, such litigations will bring unnecessary disputes to Hong Kong society.

With these remarks, Madam Chairman, I implore Members to vote against this amendment.

MS MARGARET NG (in Cantonese): Chairman, I cannot stand it any more if I refrain from giving a response now. The Secretary's speech has finally made me realize why so many Members from the Liberal Party, who are usually exceptionally smart, can have such a serious misunderstanding of the Bill. The reason is even the Secretary himself is spreading such a distorted view. He

even says that my amendment, if passed, would bring people wishing to provide vocational training to ethnic minorities face to face with litigations. I have really never heard anything as ridiculous as this before.

Regarding the Secretary's remark that the amendment will have serious consequences, although I have no idea whether the amendment will really bring any serious consequences, I am certain that existing discrimination has been bringing serious consequences to ethnic minorities. So, what can ethnic minorities do? This problem has already been in existence for a long time. Although just now the Secretary has recited to us, as if enumerating his family valuables, an array of new services, why are these problems not yet resolved? If the Government has really been providing these services with due attention and whole-heartedly, these problems should not have occurred. These services, which have not been provided until now, are now being provided in a half-hearted manner. Should the Bill be passed, will the situation become one that the Secretary will act as he likes and not do anything if he does not like it? If the authorities are determined to provide the services, why would they ask for such an exemption?

When it comes to medical services, we had listened to the views expressed by many ethnic minority groups during the deliberation of the Bill. Many Members were former residents in foreign countries. For instance, Dr Fernando CHEUNG had lived in the United States, while some other Members had lived in Britain and Canada. We can also see from the information collected what the situation in Australia is like. Each of the places mentioned has come up with its own solutions. One of the most feasible solutions is to discuss with ethnic minorities on the provision of interpretation by ethnic minorities who are proficient in many languages to offer assistance. This is perfectly achievable. However, the authorities have all along failed to act in this manner because of their lack of conviction. Now the authorities would like to seek exemptions so that they can continue to act without conviction, thus allowing these serious consequences continue to make their impact.

The authorities have even resorted to threatening us, saying that private medical services will also be affected. Chairman, doctors are persons of compassion. If people who attend a private clinic cannot communicate with the doctor, will the doctor try to help them? If the doctor does not want or cannot do anything to help them, they will go somewhere else to find another doctor who can help them. So, if the public sector does not wish to offer assistance,

the private sector can make other arrangements. What is involved is merely the profit-making issue, so why can this not be done?

Therefore, Chairman, from the angle of the Government, it is most important that the Government must not be prosecuted, whether or not the practice is right and clause 4 is complied with. In short, it is most important to ensure that no one would have the right to prosecute the Government. As regards whether or not some people do not understand the medical services provided to them, or the wrong diagnosis is made or the wrong medicines are prescribed, all these issues are unimportant. Chairman, this is a Bill that is heartless and treating human lives with utter disrespect. This explains why clause 58 could have aroused such a fierce debate in the Bills Committee and such a large number of Members, including those who do not normally speak against the Government, have found clause 58 go too far. Therefore, the more Secretary Stephen LAM talks about it, the better people understand that this Government can really reach such a low level.

Chairman, I really cannot go on anymore. Thank you.

DR FERNANDO CHEUNG (in Cantonese): Although Ms Margaret NG cannot go on any longer, I must say a few more words because this amendment which is related to medical and vocational training services is extremely important. I believe Members will agree that these services are vital public services. While the former is about treating illnesses and saving lives, the latter is about providing training to enable job-seekers to find employment and become self-reliant, as all along advocated by our Government.

Now the Bill is telling us that they are unimportant, and it is not unlawful or problematic for vocational training providers, such as the VTC, and even hospitals or clinics to use, or refrain from using, whatever languages according to their preference. It is now absolutely plain that all languages, whether they be Cantonese, English or French, can be used. We can even dispense with any one of them. What sort of legislation is this? Does the Government consider it all right even if there is a breakdown of communication with persons seeking medical treatment at hospitals? It turns out that there is no need for communication during medical consultations — Dr KWOK Ka-ki is not present

at the moment. Should he be present, we can seek his advice on how medical consultations can dispense with communication. It seems that it is against the spirit of the entire Bill for persons in charge of these organizations, such as vocational training providers, to do according to their wishes.

Regarding exemptions with such a significant impact, Ms Margaret NG is of the view that such exceptions and exemptions must not be allowed. Is it not absolutely reasonable as far as vocational training and medical services are concerned? This is simply fundamental. During our deliberation process, we heard many persons from the ethnic minorities complain about the difficulties they faced in seeking medical consultation and the frequent occurrence of mistaken diagnoses due to communication breakdowns.

Some employers have expressed their fears of being sued after the passage of the Bill. They may not be convicted in the end because they have reasonable defence and they can also argue with many basic conditions. However, they still dislike being sued. Will it be the case that because they do not want to be challenged that they just disregard those people who are in need of service but who have made it clear that they do not speak Cantonese?

Chairman, both Chinese and English are our official languages. Is it problematic if an English-speaking person seeks medical attention at a hospital and is denied proper treatment? I think at least Chinese and English must be allowed as they are both official languages. However, this is not the case at present. As everything can be exempted under this piece of legislation, any language can be used according to one's preference. Even the United States, where there is a diversity of ethnic groups, manages to do so although, compared with Hong Kong, the languages involved there are far more numerous and complicated. It would be completely wrong to think that the country is a welfare society. Of all the advanced countries in the world, the United States is basically the most conservative in terms of welfare. However, Hong Kong is even more conservative than the United States.

How much resources will be required? The need for resources is basically limited. Furthermore, given today's technologies, Chairman, there is no need for interpretation service to be provided on the spot, for even diagnoses can be conducted through computer network or on the Internet. Although I have no idea whether diagnoses can be conducted in this manner on every

occasion, when it comes to an important matter like interpretation service, frankly speaking, tri-band phones can be used nowadays, and with just a telephone call, the transmission of one's face and voice is already possible. Members may also make reference to overseas countries where there is a so-called language bank in which a group of interpreters speaking different languages are on standby duty. It may not necessarily be one interpreter for each language, and they may not necessarily be pooled under one roof. In the case of overseas countries, the interpreters are often pooled under one roof. Yet, for some uncommon languages, this practice may not be absolutely necessary, provided that some interpreters are put on standby duty. Given current technologies, it is absolutely possible that this can be done. The resources involved will not necessarily be that much, too. Even if exemptions are not provided in the legislation, it does not necessarily mean that we must go to this state. Why do we not make an attempt to do so? At least, the public sector may try to provide such service. How difficult can it be for vocational training providers to provide such service?

We have seen some Nepalese people who wished to, for instance, enrol in an instructors' programme for engineering work. While elementary courses were available, for more advanced programmes we are only talking about English, not the Nepalese language. Chairman, we are talking about courses conducted in English. We are now talking about how difficult it is in using English in the medical consultation process. But we have now reached the state that the aim is merely to ensure that the organizations concerned will not encounter any problems and nobody will be prosecuted as a result.

Medical service is a most basic requirement. That means that the issue of vocational training providers can be considered again in greater detail as it is not a matter of life and death, but can better interpretation service be provided for medical service? Should ethnic minorities be given proper treatment and should the language problem be addressed as far as possible? Given that medical service is aimed at saving lives, can this not be done? This is why I think that Ms Margaret NG's amendment is essential. If this amendment is not passed, it will simply demonstrate to us the Government's complete disregard for human lives, as Ms NG has said just now. It is really ridiculous that we are allowed to turn a blind eye to such an urgent service and when complete exemption is given to language. Can the authorities concerned make an attempt to dispense with exemptions? They will not necessarily contravene the law even if they fail to do

that. So, why do they not attempt to put in place a system by allocating some resources and demonstrating their sincerity? I am afraid Hong Kong with its aspiration to become an international metropolis, will become a laughing stock in the end. Thank you, Chairman.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I also have a personal experience to share with Members. When I was in Germany, I went to see a doctor because I was not feeling well. However, the doctor did not talk to me in English. After taking the X-ray examination, he asked me whether or not I smoked. When I told him I was a smoker, he said that he used to advise people not to smoke. He also said that I might have lung cancer. I was very terrified, then I asked a friend of mine to accompany me to see the doctor. It was later found out that a large shadow appeared on my X-ray film because I did not inhale properly during the X-ray examination.

This is a real example showing that communication is simply impossible between a doctor and a patient should there be a language barrier. As the old saying goes, when I am given a peach, I should offer a plum in return. But this is not the case with Secretary Stephen LAM today. When he was asked a question concerning a peach, he gave a reply concerning a plum. This means when he was asked a question concerning a plum, he gave a reply concerning a peach. Was he calling a stag a horse? Actually, I have no intention to criticize him this way. May I consult the Secretary after having listened for such a long time by putting this question to him again: Has the Government ever estimated the cost involved if new initiatives are implemented? What is the amount of resources required? What will be the consequences if new initiatives are not implemented? Has a comprehensive estimate been made?

Secretary, although I find your earlier remarks about vocational training clear and logical, according to Ms Margaret NG, efforts have not been made on vocational training until the very end. Dr YEUNG Sum also pointed out in his speech that persons of South Asian descent can hardly have any opportunities to receive higher education in Hong Kong. Finding a job is certainly important. I know from their previous complaints to me that it is very important to find a job. However, does it ever occur to the Secretary that young people of South Asian descent can hardly receive higher education in Hong Kong should the

status quo be maintained? In other words, like the black people or black slaves in the 1960s, they are actually second-class citizens.

Despite his eloquent remarks that efforts have been made in vocational training, has the Secretary ever considered the issue of higher education? There is hardly a chance for them to receive higher education because the Government has not provided them with any study programmes.

I think you need to publicly answer this question in this Chamber, for a large number of people of South Asian descent may be watching the live broadcast of our meeting this evening. It will certainly be most preferable if you can give them a reply. Should that be the case, I will be convinced and support you. However, if you cannot give them a reply, I would have to say "sorry".

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

MR ALBERT CHAN (in Cantonese): Chairman, I pointed out in my speech on the Second Reading that the real objective of the Bill is to enable the Government to discriminate, through the enactment of legislation, against ethnic minorities blatantly and justifiably. The Government's opposition to Ms Margaret NG's amendment precisely proves this and manifests its ugly side.

In his speech delivered just now, the Secretary pointed out repeatedly that the authorities would provide additional retraining places, enhance training and so on. Obviously he has absolutely no idea of what opposing or prohibiting discrimination means. Providing some additional places or enhancing some training are completely different from prohibiting discrimination. This is why I pointed out repeatedly in my speech on the resumption of the Second Reading that the Secretary was seeking to distort and shift our attention again and again by playing around with concepts and calling a stag a horse.

The real or desired objective of the Bill is to make discrimination disappear, so that discrimination will not be seen again. This is an attitude that all places in the world, especially those advanced or civilized countries or societies, should hold. The amendment to clause 58, seeks to rectify or correct

the Government's distortion and total departure from protecting ethnic minorities so that they can have opportunities to equal treatment. But unfortunately, it seems that it will fail completely.

Therefore, Chairman, if I go on with my speech, I would only repeat what I said during the resumption of the Second Reading debate, for the principle and spirit remain unchanged. I can only express my extreme disappointment again over the fact that in this day in the 21st century, such a large number of Members in this Chamber would support the Government which uses this law to discriminate against ethnic minorities in Hong Kong.

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

DR KWOK KA-KI (in Cantonese): Madam Chairman, I speak in support of Ms Margaret NG's proposed amendment to clause 58.

Evidently, the Bill seeks mainly to offer minimal protection to ethnic minorities and people not capable of using the languages commonly used in Hong Kong, namely Chinese and English. It must be noted that the amendment to clause 58 is primarily targeted at vocational training providers funded by the Government. Vocational training is one of the most important ways to facilitate the integration of ethnic minorities into society. It is also the best way for them to acquire vocational skills.

On behalf of the Government, a former Financial Secretary once said to the effect that the Government would only provide fishing nets or teach people how to catch fish rather than handing out fish. Even though Members might find such remarks cold-blooded, the Government had at least provided people with fishing hooks or a way to make a living. According to the present approach, however, the Government is even reluctant to provide minimal vocational training. The call by these people for the provision of vocational training is precisely a manifestation of their spirit of self-reliance. It is important that they hope opportunities can be provided for them to receive subsidized training under the Government's training framework. These ethnic minorities are a part of Hong Kong. The spirit of the entire Bill is to protect

them through the law and to ensure that they can enjoy various social services provided in Hong Kong and equal opportunities like everybody else.

Language barrier poses special difficulties to these people. The Bill, if not passed, would become a total failure as minimal support would then not be provided by government training providers. I am absolutely certain no one would like to see the Bill reduced to an ornamental vase, although we can then publicly declare that the Race Discrimination Ordinance has already been enacted. Neither will the legislation be useful nor can it offer any assistance. Just think about this, these people are at the lowest stratum of society, they hope to acquire some skills through normal channels to earn a living. Even though this is a most humble and minimal request, the Government can still turn a blind eye to it. Actually, these people can hardly receive training through other means. They must have adequate resources before they can receive training offered by commercial or profit-making providers. If they have sufficient money, why would they want to call on the Government to provide subsidized training? If they have the means to make a living, they would not have to make such a request. This is why I find the Government's attitude extremely undesirable. Moreover, the Government has set a very bad precedent by taking the lead in refusing to assume the responsibility of providing training.

The next issue concerns medical services. I have personally witnessed a number of cases, including those involving many of my colleagues, who encounter great difficulties when faced with ethnic minorities in hospitals. Most of the ethnic minorities who come to the hospitals are sick people. Everyone knows that, in many medical cases or blunders, the greatest obstacle is how to communicate with the patients. As not all ethnic minorities are proficient in Chinese or English, many of them are actually in need of language support. Actually, language support can help not only the patients, but also health care personnel. Should the latter make any judgment when they do not have a clear understanding of the situation or a patient's condition, they would have to pay the price of being regarded as failing to fulfil their duties and provide professional services. So, the Bill would not only bring harm to the patients, but also set an enormous trap for health care personnel. This is an extremely difficult situation for health care personnel because especially for those working in the Hospital Authority or Department of Health, they are left with no alternative. Can they say this to their patients, "Sorry, I cannot treat you

because I do not understand your language and communicate with you"? Can they say anything like this? No way. In particular, in some emergency cases, the patients are in real need of medical services. Now, the Government is saying that there is no need to provide language support and protection will also not be offered in this area. Even in the case of certain government services, the Government still does not consider it necessary to legislate to provide certain people with essential protection. I can envisage that this would mark a very bad beginning for both the patients and providers of medical services.

It is most disappointing that we have no idea when these issues will be brought up again for discussion after the passage of the Bill. Many people might have to suffer badly as a result of the legislation, even at the cost of their health, or even their lives, before the Government would apologize by saying, "It turns out that the Bill passed on 9 July 2008 does not work. It is such a great pity that some people have become seriously ill, some have failed to receive early treatment and some have even passed away." By then, this piece of legislation would have to be tabled to this Council again. The Government would only say, "Excuse us, we were actually wrong at that time. However, there was nothing we could do but to test-try this." Good health is priceless, and so are our lives. Should any society or system fail to protect the most basic needs of the ethnic minorities, including their medical needs, it would be considered as in dereliction of its duty, failing to protect them, and being indifferent to the reality and their lives. I have to express my deepest regret about the Government's refusal to accept this most humble and minimal amendment. I am very upset. I think that the Government has failed to fulfil its responsibility and is being irresponsible, for it has failed to take the initiative to enable the Bill to get passed.

I so submit. Thank you, Chairman.

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

MR WONG KWOK-HING (in Cantonese): Chairman, I speak in support of Ms Margaret NG's amendment. In my opinion, this amendment is actually a most fundamental and minimal requirement to address the problem of racial

discrimination because that involves a communication barrier. To address this barrier through language is the most fundamental and minimal requirement for preventing race discrimination.

I have listened very attentively to the Secretary's speech in which he cited numerous reasons in appealing to Members to oppose Ms Margaret NG's amendment. In the final analysis, he is of the view that should the amendment be passed, private organizations, be they vocational training providers, private medical institutions or other service providers, will refrain from providing services to ethnic minorities for fear of getting into trouble or contravening the Ordinance. I think the Secretary is putting the cart before the horse, and his argument is untenable.

If it is said that there are difficulties with resources, then resources should be vigorously provided by the Government; if there are technological difficulties, support should be given; and if there are difficulties with raising capital, government funding should be provided. Actually, not a lot of money would be involved. Therefore, the Government's argument that Ms Margaret NG's amendment will make private organizations even more reluctant in providing services, and this is used as a ground for objection, is actually illogical and can hardly be substantiated. Therefore, this ground for objection is absolutely unacceptable to me.

On the contrary, I think that the Government should take the lead in doing a better job. In addition, the Government should also set a good example in such areas as medical services, education, vocational training, and so on. Given its administrative capacity, the Government should be absolutely capable of supporting the private sector in addressing a wide range of hardships and obstacles. Therefore, I hope Members will support Ms Margaret NG's amendment.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Ms Margaret NG, please wait a minute. May I ask how many Members would like to speak? It is now 10.10 pm. As the meeting will last a few more days, I hope Members can get enough sleep. If many Members or two or three Members still wish to speak, we can debate the

subject in greater detail tomorrow morning. Apart from Ms Margaret NG, is there any Member who wishes to speak?

(No other Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If no, I will now call upon Ms Margaret NG to speak.

MS MARGARET NG (in Cantonese): Chairman, I only wish to speak briefly, and I would also like to thank Mr WONG Kwok-hing for speaking out boldly just now in the name of justice. Actually, language barrier is the most important factor leading to some people being marginalized.

Chairman, when I attended the meeting of a committee of the United Nations in March in a briefing session attended by ethnic minorities groups, every one in the room was sadly moved when one of the representatives complained in tears of being subject to language discrimination.

Chairman, why are officials of the SAR Government and some Members in this Council be so cold and indifferent? Chairman, after days of debate, we have now come to the very last important amendment. I also have a rough idea of what will turn out in the end, but the language exemption provision is the most unforgivable provision.

I hope Members can spend more energy on considering this matter. Can they express support for this amendment with limited effects, as what Mr WONG Kwok-hing has done? Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member or public officer wish to speak?

(No other Member or public officer indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Ms Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Ms Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Ms Margaret NG has claimed a division. The division bell will ring for one minute, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (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, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the amendments.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr WONG Ting-kwong voted against the amendments.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss CHAN Yuen-han, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mrs Anson CHAN voted for the amendments.

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendments.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 26 were present, 11 were in favour of the amendments and 15 against them; while among the Members returned by geographical constituencies through direct elections, 25 were present, 15 were in favour of the amendments and nine against them. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendments were negatived.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 58 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.

(Members raised their hands)

Ms Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Ms Margaret NG has claimed a division. The division bell will ring for one minute, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr James TIEN, Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Tommy CHEUNG, Mr Vincent FANG, Mr LI Kwok-ying, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming and Mr WONG Ting-kwong voted for the motion.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Dr David LI, Mr Fred LI, Ms Margaret NG, Mr CHEUNG Man-kwong, Miss CHAN Yuen-han, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Ms LI Fung-ying, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Alan LEONG, Mr LEUNG Kwok-hung, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr Ronny TONG, Mr KWONG Chi-kin, Miss TAM Heung-man and Mrs Anson CHAN voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 51 Members present, 24 were in favour of the motion and 26 against it. Since the question was not agreed by a majority of the Members present, she therefore declared that the motion was negatived.

CHAIRMAN (in Cantonese): As the motion that clause 58 stand part of the Bill has been negatived, clause 58 is therefore deleted from the Bill.

SUSPENSION OF MEETING

CHAIRMAN (in Cantonese): I think the meeting should now be suspended. Will Members please attend the meeting at nine o'clock sharp tomorrow.

Suspended accordingly at nineteen minutes past Ten o'clock.

RACE DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Constitutional and Mainland Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting “to extend unlawful sexual harassment under the Sex Discrimination Ordinance to cover rendering the environment in which a person works, studies or undergoes training sexually hostile or intimidating;” and substituting “to amend certain definitions, and the provisions on discrimination against contract workers, in existing anti-discrimination legislation as well as the provision on unlawful sexual harassment by creating a hostile or intimidating environment in the Sex Discrimination Ordinance for alignment with corresponding provisions in this Ordinance;”.
1(2)	By deleting “Secretary for Home Affairs” and substituting “Secretary for Constitutional and Mainland Affairs”.
2(1)	In the definition of “club”, by deleting everything after “purposes” and substituting “and which provides and maintains its facilities, in whole or in part, from the funds of the association;”.
2(1)	By deleting the definition of “estate agent” and substituting – ““estate agent” (地產代理) has the same meaning as in the Estate Agents Ordinance (Cap. 511);”.
2(1)	By deleting the definition of “near relative” and substituting – ““near relative” (近親), in relation to a person, means – (a) the person’s spouse; (b) a parent of the person or of the spouse;

- (c) a child of the person or the spouse of such a child;
- (d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;
- (e) a grandparent of the person or of the spouse; or
- (f) a grandchild of the person or the spouse of such a grandchild,

and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent or parents and a step child as the child of both the natural parents and any step parent;”.

3 By deleting the clause and substituting –

“3. Application to Government

This Ordinance binds the Government.”.

4 By deleting subclauses (2), (3), (4) and (5) and substituting –

“(2) For the purposes of subsection (1)(b)(ii), a requirement or condition is justifiable if it serves a legitimate objective and bears a rational and proportionate connection to the objective.”.

7(2) By deleting everything after “that” and substituting “creates a hostile or intimidating environment for the second-mentioned person.”.

15(1) By deleting everything after “but” and substituting “by a contractor or sub-contractor of the principal.”.

15 By adding -

“(7) In this section –

“contractor” (承判商) means a person who undertakes any work for the principal under a contract that is entered into by the person

directly with the principal;

“sub-contractor” (次承判商) means a person who enters into a contract with another person (whether or not a contractor of the principal) to undertake all or any part of the work that a contractor of the principal has undertaken.”.

18 By deleting the heading and substituting –

“18. Organizations of workers or employers or professional or trade organizations, etc.”.

18 By deleting subclause (5) and substituting –

“(5) Where, immediately before the enactment of this Ordinance, the main object of an organization to which this section applies was to enable the benefits of membership to be enjoyed by persons of a particular racial group (defined otherwise than by reference to colour), then, in so far as that continues to be its main object, this section is not to be construed as affecting that object and does not render unlawful an act which is done in order to give effect to that object.”.

18(6) By deleting “an organization of workers, an organization of employers, or an organization of both workers and employers” and substituting “an organization to which this section applies”.

20(2)(b) By deleting “on those matters” and substituting “regarding holidays or medium of instruction”.

26 By deleting subclause (2)(b) and substituting -

“(b) to make different arrangements regarding holidays or medium of instruction for persons of any racial group.”.

- 27 In the Chinese text, by deleting subclause (1)(b) and substituting –
- “(b) 前者在正常情況下，會按某方式及某些條款向其他公眾人士，或(如後者屬於某部分的公眾人士)向屬該部分的其他公眾人士，提供具有某種品質或質素的貨品、設施或服務，然而前者拒絕按相同方式及相同條款(或故意不按相同方式及相同條款)向後者提供具有相同品質或質素的該等貨品、設施或服務。”.
- 34 By deleting subclause (2).
- 44(1)(b) In the English text, by deleting “threatening” and substituting “threatening to subject”.
- 45 In the Chinese text, by deleting subclause (1) and substituting –
- “(1) 任何人如藉公開活動，煽動基於另一人的種族或屬某類別人士的成員的種族的、對該另一人或屬該類別人士的成員的仇恨、嚴重的鄙視或強烈的嘲諷，即屬違法。”.
- 45 By adding –
- “(1A) For the purposes of subsection (1), it is immaterial whether a person is actually incited, by an activity, to –
- (a) hatred towards;
- (b) serious contempt for; or
- (c) severe ridicule of,
- another person or members of a class of persons on the ground of the race of the person or members of the class of persons.”.
- 45 By deleting subclause (2)(b) and substituting –
- “(b) an activity in public that –
- (i) is a communication or the distribution or dissemination of any matter; and
- (ii) consists of a publication which is subject to a defence of absolute privilege in proceedings for defamation; or”.

46 By deleting subclause (1) and substituting –

“(1) A person commits an offence if –

- (a) the person, by any activity, incites hatred towards, serious contempt for, or severe ridicule of, another person (“the second-mentioned person”) or members of a class of persons, on the ground of the race of the second-mentioned person or the members of the class of persons;
- (b) the person intentionally incites such hatred, serious contempt or severe ridicule on such ground; and
- (c) the activity is an activity in public and consists of threatening physical harm, or inciting others to threaten physical harm –
 - (i) towards, or towards any premises or property of, the second-mentioned person or the members of the class of persons; or
 - (ii) towards the premises or property of any other person to which the second-mentioned person or the members of the class of persons have access.

(1A) For the purposes of subsection (1)(a), it is immaterial whether a person is actually incited, by an activity, to –

- (a) hatred towards;
- (b) serious contempt for; or
- (c) severe ridicule of,

another person or members of a class of persons on the ground of the race of the person or members of the class of persons.”.

- 52 By deleting the heading and substituting –
- “52. Discriminatory training by employers, organizations of workers or employers or professional or trade organizations, etc.”.**
- 64(3) By deleting “Secretary for Home Affairs” and substituting “Secretary for Constitutional and Mainland Affairs”.
- 65 By deleting the clause and substituting –
- “65. Power to conduct formal investigations**
- Without limiting section 60 –
- (a) if the Commission thinks fit, it may conduct a formal investigation for any purpose connected with the carrying out of any of its functions under that section; and
- (b) if required by the Chief Secretary for Administration, the Commission shall conduct a formal investigation for any purpose connected with the carrying out of any of its functions under that section.”.
- 71 By deleting subclause (1) and substituting -
- “(1) A claim by or on behalf of any person (“the claimant”) that another person (“the respondent”) –
- (a) has committed an act of discrimination against the claimant which is unlawful by virtue of Part 3 or 4;
- (b) has committed an act of harassment against the claimant which is unlawful by virtue of Part 3 or 4;
- (c) has committed an act which is unlawful by virtue of section 45; or

(d) is to be treated, by virtue of section 47 or 48, as having committed an act of discrimination or harassment referred to in paragraph (a) or (b) against the claimant or an act referred to in paragraph (c),

may be made the subject of civil proceedings in like manner as any other claim in tort.”.

72(5) By deleting “67(4)” and substituting “67(5)”.

81(3) By deleting “conciliation under section 79 was concluded” and substituting “the complaint was disposed of under section 79(3) or (4)”.

84(1) By deleting “Secretary for Home Affairs” and substituting “Secretary for Constitutional and Mainland Affairs”.

89 By deleting the cross-heading immediately before the clause and the clause.

93 By deleting the clause and substituting –

“93. Interpretation

(1) Section 2(1) of the Sex Discrimination Ordinance (Cap. 480) is amended –

(a) in the definition of “club”, by repealing everything after “purposes” and substituting “and which provides and maintains its facilities, in whole or in part, from the funds of the association;”;

(b) by repealing the definition of “estate agent” and substituting –

““estate agent” (地產代理) has the same meaning as in the Estate Agents Ordinance (Cap. 511);”;

(c) by adding –

““near relative” (近親), in relation to a person,

means –

- (a) the person’s spouse;
- (b) a parent of the person or of the spouse;
- (c) a child of the person or the spouse of such a child;
- (d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;
- (e) a grandparent of the person or of the spouse;
or
- (f) a grandchild of the person or the spouse of such a grandchild,

and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent or parents and a step child as the child of both the natural parents and any step parent;”.

(2) Section 2(4) is repealed.

(3) Section 2(5)(b) is amended –

- (a) by repealing “sexually”;
- (b) by repealing “work”.

- (4) Section 2(6) is repealed.”.

New By adding immediately after clause 93 –

“93A. Discrimination against contract workers

(1) Section 13(1) is amended by repealing everything after “but” and substituting “by a contractor or sub-contractor of the principal.”.

- (2) Section 13 is amended by adding –

“(5) In this section –

“contractor” (承判商) means a person who undertakes any work for the principal under a contract that is entered into by the person directly with the principal;

“sub-contractor” (次承判商) means a person who enters into a contract with another person (whether or not a contractor of the principal) to undertake all or any part of the work that a contractor of the principal has undertaken.”.

93B. Discrimination in provision of goods, facilities or services

Section 28 is amended, in the Chinese text, by repealing subsection (1) and substituting –

“(1) 從事向公眾人士或部分公眾人士提供貨品、設施或服務(不論是否為此而收取款項)的人，如藉以下做法歧視一名謀求獲得或使用該等貨品、設施或服務的女性，即屬違法 —

(a) 拒絕向她提供或故意不向她提供任何該等貨品、設施或服務；或

(b) 該人在正常情況下，會按某方式及某些條款向男性公眾人士，或(如她屬於某部分的公眾人士)向

屬該部分的男性公眾人士，提供具有某種品質或質素的貨品、設施或服務，然而該人拒絕按相同方式及相同條款（或故意不按相同方式及相同條款）向她提供具有相同品質或質素的該等貨品、設施或服務。”。

93C. Discrimination in disposal or management of premises

Section 29(3) is amended, in the Chinese text, by repealing “地產中介人” and substituting “地產代理”.

93D. Claims under Part III or IV

Section 76(1) is amended –

- (a) by repealing paragraph (b);
- (b) in paragraph (c), by repealing the comma and substituting “; or”;
- (c) by adding –
 - “(d) is to be treated, by virtue of section 46 or 47, as having committed an act of discrimination or sexual harassment referred to in paragraph (a) or (c) against the claimant,”.

93E. Period within which proceedings to be brought

Section 86(2A) is amended by repealing “conciliation under section 84 was concluded” and substituting “the complaint was disposed of under section 84(3) or (4)”.

Disability Discrimination Ordinance**93F. Interpretation**

(1) Section 2(1) of the Disability Discrimination Ordinance (Cap. 487) is amended –

(a) in the definition of “club”, by repealing everything after “purposes” and substituting “and which provides and maintains its facilities, in whole or in part, from the funds of the association;”;

(b) by repealing the definition of “estate agent” and substituting –

““estate agent” (地產代理) has the same meaning as in the Estate Agents Ordinance (Cap. 511);”;

(c) by adding –

““near relative” (近親), in relation to a person, means –

- (a) the person’s spouse;
- (b) a parent of the person or of the spouse;
- (c) a child of the person or the spouse of such a child;
- (d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;
- (e) a grandparent of the person or of the spouse; or
- (f) a grandchild of the person or the spouse of such a

grandchild,
and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent or parents and a step child as the child of both the natural parents and any step parent;”.

- (2) Section 2(5) is repealed.

93G. Discrimination against contract workers

(1) Section 13(1) is amended by repealing everything after “but” and substituting “by a contractor or sub-contractor of the principal.”.

- (2) Section 13 is amended by adding –

“(6) In this section –

“contractor” (承判商) means a person who undertakes any work for the principal under a contract that is entered into by the person directly with the principal;

“sub-contractor” (次承判商) means a person who enters into a contract with another person (whether or not a contractor of the principal) to undertake all or any part of the work that a contractor of the principal has undertaken.”.

93H. Vilification

- (1) Section 46 is amended by adding –

“(1A) For the purposes of subsection (1), it is immaterial whether a person is actually incited, by an activity, to –

- (a) hatred towards;
- (b) serious contempt for; or
- (c) severe ridicule of,

another person with a disability or members of a class of persons with a disability.”.

(2) Section 46(2)(b) is repealed and the following substituted –

- “(b) an activity in public that –
- (i) is a communication or the distribution or dissemination of any matter; and
 - (ii) consists of a publication which is subject to a defence of absolute privilege in proceedings for defamation; or”.

93I. Section substituted

Section 47 is repealed and the following substituted –

“47. Offence of serious vilification

- (1) A person commits an offence if –
- (a) the person, by any activity, incites hatred towards, serious contempt for, or severe ridicule of, another person (“the second-mentioned person”) with a disability or members of a class of persons with a disability;
 - (b) the person intentionally incites such hatred, serious contempt or severe ridicule; and
 - (c) the activity is an activity in public and consists of threatening physical harm, or inciting others to threaten physical harm –
 - (i) towards, or towards any premises or property of, the second-mentioned

person or the members of the class of persons; or

- (ii) towards the premises or property of any other person to which the second-mentioned person or the members of the class of persons have access.

(2) For the purposes of subsection (1)(a), it is immaterial whether a person is actually incited, by an activity, to –

- (a) hatred towards;
- (b) serious contempt for; or
- (c) severe ridicule of,

another person with a disability or members of a class of persons with a disability.

(3) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 6 and to imprisonment for 2 years.”.

93J. Claims under Part III or IV

Section 72(1)(d) is repealed and the following substituted –

“(d) is to be treated, by virtue of section 48 or 49, as having committed an act of discrimination or harassment referred to in paragraph (a) or (b) against the claimant or an act referred to in paragraph (c),”.

93K. Period within which proceedings to be brought

Section 82(2A) is amended by repealing “conciliation under section 80 was concluded” and substituting “the complaint was disposed of under section 80(3) or (4)”.

Family Status Discrimination Ordinance**93L. Interpretation**

(1) Section 2(1) of the Family Status Discrimination Ordinance (Cap. 527) is amended –

(a) in the definition of “club”, by repealing everything after “purposes” and substituting “and which provides and maintains its facilities, in whole or in part, from the funds of the association;”;

(b) by adding –

““near relative” (近親), in relation to a person,

means –

(a) the person’s spouse;

(b) a parent of the person or of the spouse;

(c) a child of the person or the spouse of such a child;

(d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;

(e) a grandparent of the person or of the spouse; or

(f) a grandchild of the person or the spouse of such a grandchild,

and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent

or parents and a step child as the child of both the natural parents and any step parent;”.

- (2) Section 2(4) is repealed.

93M. Discrimination against contract workers

(1) Section 9(1) is amended by repealing everything after “but” and substituting “by a contractor or sub-contractor of the principal.”.

- (2) Section 9 is amended by adding –

“(6) In this section –

“contractor” (承判商) means a person who undertakes any work for the principal under a contract that is entered into by the person directly with the principal;

“sub-contractor” (次承判商) means a person who enters into a contract with another person (whether or not a contractor of the principal) to undertake all or any part of the work that a contractor of the principal has undertaken.”.

93N. Discrimination in provision of goods, facilities or services

(1) Section 19(1)(a) is amended, in the English text, by adding “or” at the end.

- (2) Section 19 is amended, in the Chinese text, by repealing subsection (1) and substituting –

“(1) 從事向公眾人士或部分公眾人士提供貨品、設施或服務(不論是否為此而收取款項)的人(“前者”),如藉以下做法歧視任何具有家庭崗位且謀求獲得或使用該等貨品、設施或服務的人(“後者”),即屬違法 —

- (a) 拒絕向後者提供或故意不向後者提供任何該等貨品、設施或服務；或
- (b) 前者在正常情況下，會按某方式及某些條款向並無家庭崗位或並無某家庭崗位的公眾人士，或(如後者屬於某部分的公眾人士)向屬該部分的並無家庭崗位或並無某家庭崗位的公眾人士，提供具有某種品質或質素的貨品、設施或服務，然而前者拒絕按相同方式及相同條款(或故意不按相同方式及相同條款)向後者提供具有相同品質或質素的該等貨品、設施或服務。”.

930. Period within which proceedings are to be brought

Section 64(3) is amended by repealing “conciliation under section 62 was concluded” and substituting “the complaint was disposed of under section 62(3) or (4)”.

94 By deleting the cross-heading immediately before the clause and the clause.

Schedule 1 (a) In item 14, by deleting “and Manpower”.
 (b) By deleting item 15.

Schedule 2, By deleting “remains to be” and substituting “remains”.
 section 7

Schedule 2, By deleting “remains to be” and substituting “remains”.
 section 8

Schedule 2, (a) By deleting “remains to be” and substituting “remains”.
 section 9
 (b) In paragraph (b), by deleting “and Manpower”.

- Schedule 2, section 11
- (a) In the definition of “public officer”, in paragraph (b), by deleting “and Manpower”.
 - (b) In the definition of “specified English teacher”, in paragraph (c)(i), by deleting “and Manpower”.

RACE DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable Margaret NG

<u>Clause</u>	<u>Amendment Proposed</u>
4 NEGATIVED	<p>By adding—</p> <p style="padding-left: 40px;">“(1A) In any circumstances relevant for the purposes of any provision referred to in subsection (1B), a person (“the discriminator”) also discriminates against another person if the discriminator applies to that other person a provision, criterion or practice which the discriminator applies or would apply equally to persons not of the same racial group as that other person, but—</p> <ul style="list-style-type: none"> (a) which puts or would put persons of the same racial group as that other person at a particular disadvantage when compared with other persons; (b) which puts that other person at that disadvantage; and (c) which the discriminator cannot show to be a proportionate means of achieving a legitimate aim. <p style="padding-left: 40px;">(1B) The provisions mentioned in subsection (1A) are—</p> <ul style="list-style-type: none"> (a) Part 2A;

- (b) Part 3, except sections 24 and 25;
- (c) sections 26, 27, 28 and 29;
- (d) sections 34 and 35; and
- (e) Part 5, in its application to the provisions referred to in paragraphs (a), (b), (c) and (d).

(1C) Where, if by virtue of subsection (1A), a person discriminates against another person, subsection (1)(b) does not apply to the first-mentioned person.”.

8(3)(b)
[NEGATIVED]

By deleting subparagraph (i).

8(3)(b)
[NEGATIVED]

By deleting subparagraph (ii) and substituting—

“(ii) has or has not the right to land in Hong Kong;”.

8(3)(b)
[NEGATIVED]

In subparagraph (iv), by adding “or” after “(Cap. 115);”.

8(3)
[NEGATIVED]

By deleting paragraph (c).

8(3)(d)
[NEGATIVED]

By deleting “nationality,” where it twice appears.

New
[NOT PROCEEDED
WITH]

By adding immediately before Part 3—

“PART 2A

GOVERNMENT

[NEGATIVED]

9A. Government

It is unlawful for the Government to discriminate against a person on the ground of the

race of that person in the performance of its functions or the exercise of its powers.”.

[NEGATIVED]

9B. General statutory duty of Government

(1) The Government shall, in carrying out its functions, have due regard to the need—

- (a) to eliminate racial discrimination; and
- (b) to promote equality of opportunity and good relations between persons of different racial groups.

(2) For the purpose of subsection (1), each of the bureaux and departments of the Government and the public authorities specified in Schedule 6 shall—

- (a) state those of its functions and policies, or proposed policies, which it has assessed as relevant to the performance of its duty under subsection (1);
- (b) ensure public access to information and services that it provides; and
- (c) review the assessment referred to in paragraph (a) at reasonable intervals or at the request of a committee of the Legislative Council.

(3) The Chief Secretary for Administration may, by notice published in the Gazette, amend Schedule 6.

(4) No exceptions or exclusions provided in this Ordinance shall operate to abrogate or limit the duty of the Government referred to in subsection (1) or release the Government from such duty or any part thereof.”.

10(3)
[NEGATIVED]

By deleting “subsections (1) and (2) do” and substituting “subsection (2) does”.

10(8)
[NEGATIVED]

By deleting “third” and substituting “first”.

10(10)
[NEGATIVED]

By deleting everything after “in the Gazette,” and substituting “amend subsection (3) by substituting another number for the number appearing after the word “exceed” in that subsection.”.

17(1)
[NEGATIVED]

By deleting “firm consisting of not less than 6 partners,” and substituting “firm,”.

17
[NEGATIVED]

By deleting subclause (7).

41
[NOT PROCEEDED
WITH]

By deleting subclause (1) and substituting—

“(1) In this section, “discriminatory practice” (歧視性的做法) means—

- (a) the application of a requirement or condition which results in an act of discrimination which is unlawful by virtue of any provision of Part 2A, 3 or 4 as read with section 4(1)(b), or which would be likely to result in such an act of discrimination if the persons to whom it is applied were not all of the same racial group; or

- (b) the application of a provision, criterion or practice which results in an act of discrimination which is unlawful by virtue of any provision of Part 2A, 3 or 4 as read with section 4(1A), or which would be likely to result in such an act of discrimination if the persons to whom it is applied were not all of the same racial group.”.

42(1)
WITHDRAWN

By adding “2A,” before “3”.

43
WITHDRAWN

By adding “2A,” before “3”.

44(1)
WITHDRAWN

By adding “2A,” before “3”.

Part 6
WITHDRAWN

In the heading, by adding “2A,” before “3,”.

49
WITHDRAWN

By adding “2A,” before “3,”.

50(1)
WITHDRAWN

By adding “2A,” before “3,”.

51(1)
WITHDRAWN

By adding “2A,” before “3,”.

52(1)
WITHDRAWN

By adding “2A,” before “3,”.

55
WITHDRAWN

By adding “2A,” before “3,”.

56
WITHDRAWN

In the heading, by adding “**2A,**” after “**Parts**”.

56
WITHDRAWN

By adding “2A,” before “3,”.

58

NEGATIVED

By adding—

“(1A) Subsection (1) does not apply to section 20 when the vocational training course is specifically provided for persons speaking a particular vernacular.

(1B) Subsection (1) does not apply to section 27 when the service provided is medical treatment within the meaning of section 2 of the Medical Clinics Ordinance (Cap. 343).

(1C) For the avoidance of doubt, it is declared that nothing in subsection (1B) requires—

- (a) a provider of medical treatment to provide to a patient a verbatim translation in the vernacular of that patient of any written or oral communication or medicinal label; or
- (b) the presence of a translator of a patient’s vernacular when the patient is receiving medical treatment.”.

58(3)

NEGATIVED

By adding “and “vernacular” (本國語文) means the language spoken by a person but does not include a dialect” after “the language”.

59(2)

WITHDRAWN

By adding “2A,” before “3”.

71(1)(a)

WITHDRAWN

By adding “2A,” before “3”.

81(9)(b)

WITHDRAWN

By adding “2A,” before “3”.

New
[NEGATIVED]

By adding—

“SCHEDULE 6 [s. 9B]

SPECIFIED BUREAUX AND
DEPARTMENTS OF GOVERNMENT
AND PUBLIC AUTHORITIES

1. Home Affairs Bureau
2. Home Affairs Department
3. Food and Health Bureau
4. Department of Health
5. Labour Department
6. Education Bureau
7. Social Welfare Department
8. Hospital Authority
9. Vocational Training Council
10. Employees Retraining Board
11. Construction Industry Council”.

Appendix I

WRITTEN ANSWER

Written answer by the Secretary for Commerce and Economic Development to Mr CHAN Kam-lam's supplementary question to Question 1

In relation to the Labour Contract Law and its Implementation Regulations, the HKSAR Government has relayed the views of the trade and trade associations to the relevant mainland bureaux/ministries. Their views mainly concern the following issues:

1. Financial compensation for failing to sign a labour contract within the specified time limit;
2. Worker's refusal to sign a labour contract;
3. Definition of a labour contract with a fixed period being concluded for two consecutive times;
4. A suitable method to calculate financial compensation;
5. Termination of a labour contract without a fixed period;
6. Requirements on the recruitment of part-time workers by labour dispatch service providers;
7. Retrospective effect of labour dispute;
8. Calculation of training expenses and penalties for breach of contract;
9. Provision of a longer adaptation and buffer period upon policy formulation and amendment;
10. Compatibility of the Labour Contract Law with the existing laws and regulations and social security system;

WRITTEN ANSWER — *Continued*

11. Flexibility of certain requirements; and
12. Enhanced education of employers and workers.