

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 15 December 2008, at 2:30 pm
in the Chamber of the Legislative Council Building

Members present :

Hon TAM Yiu-chung, GBS, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon WONG Yuk-man
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou
Dr Hon Samson TAM Wai-ho, JP

Member attending : Hon LEE Cheuk-yan

Members absent : Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Public Officers attending : Item III

The Administration

Mr Stephen LAM Sui-lung
Secretary for Constitutional and Mainland Affairs

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs

Mr Ivanhoe CHANG Chi-ho
Principal Assistant Secretary for Constitutional and Mainland Affairs

Mrs Vivian TING TSUI Wai-ming
Chief Electoral Officer
Registration and Electoral Office

Item IV

The Administration

Mr Raymond TAM Chi-yuen
Under Secretary for Constitutional and Mainland Affairs

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs

Miss Joanna CHOI Chuen-han
Principal Assistant Secretary for Constitutional and Mainland Affairs

Item V

The Administration

Mr Raymond TAM Chi-yuen
Under Secretary for Constitutional and Mainland Affairs

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs

Mr Hubert LAW Hin-cheung
Principal Assistant Secretary for Constitutional and Mainland
Affairs

Attendance by invitation : Item IV

Office of the Privacy Commissioner for Personal Data

Mr Roderick B WOO
Privacy Commissioner for Personal Data

Mrs Bonnie Y L SMITH
Deputy Privacy Commissioner for Personal Data

Mr Joseph YOUNG
Administration and Finance Manager

Ms Shirley LUNG
Corporate Communications Manager

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)3

Staff in attendance : Ms Amy YU
Senior Council Secretary (2)3

Mrs Fanny TSANG
Legislative Assistant (2)3

Action

I. Information papers issued since the last meeting

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

Action

II. Items for discussion at the next meeting

[LC Paper Nos. CB(2)437/08-09(01) and (02)]

2. Members agreed to discuss at the next meeting on 19 January 2009 the following items proposed by the Secretary for Constitutional and Mainland Affairs (SCMA) -

(a) Judicial review on prisoners' voting right; and

(b) Report of the Hong Kong Special Administrative Region (HKSAR) for the United Nations Human Rights Council Universal Periodic Review.

3. In respect of the discussion item in paragraph 2(a) above, Ms Emily LAU requested the Research and Library Services Division of the Legislative Council (LegCo) Secretariat to collate for members' reference information on prisoners' voting right and arrangements in other jurisdictions. As regards the discussion item in paragraph 2(b) above, Ms LAU suggested and members agreed that public views be sought on the Report. Members also agreed that a notice be placed in the LegCo website to invite public views on the Report.

Clerk

Clerk

III. Electoral Affairs Commission Report on the 2008 Legislative Council (LegCo) Election

[LC Paper Nos. CB(2)437/08-09(03) and (04) and Electoral Affairs Commission Report on the 2008 LegCo Election]

Briefing by the Administration

4. Chief Electoral Officer, Registration and Electoral Office (CEO/REO) introduced the Administration's paper [LC Paper No. CB(2)437/08-09(03)] which highlighted the major areas of findings and recommendations in the Electoral Affairs Commission (EAC) Report on the 2008 LegCo Election.

Discussions

Exit poll

5. Mr CHEUNG Man-kwong said that the issue of exit poll had aroused much controversy in the 2008 LegCo Election. According to media reports, some of the organizations which were given approval for conducting exit polls had connection with certain political parties or candidates. This had raised concern that exit poll data might be used for vote allocation purpose, thereby undermining the fairness of the election. The original plan of the University of Hong Kong's Public Opinion Programme (POP) to advance the release of exit poll data to the electronic media had also prompted concern about possible leakage and misuse of such information for electioneering activities. Mr CHEUNG further said that

Action

while it was specified in the EAC's Guidelines on Election-related Activities in respect of the LegCo Election (the Guidelines) that exit pollsters should refrain from announcing the results of exit polls or making specific remarks or predictions on the performance of individual candidate or geographical constituency (GC) list before the close of poll, the only sanction that could be imposed by EAC for contravention of the rule was to make a reprimand or censure in a public statement which might include the name of the organization concerned. Mr CHEUNG considered such sanction ineffective in stamping out misuse of exit poll data.

6. SCMA said that in drawing up the guidelines to regulate the conduct of exit polls, it was necessary to strike a proper balance between respect for freedom of expression and academic freedom on the one hand and the need to avoid elector behaviour being unduly affected in the election process on the other. Hence, exit pollsters had all along been requested to refrain from announcing the results of exit polls until after the close of poll. SCMA further said that POP announced on 2 September 2008 that it would advance the release of exit poll results to its media sponsors from 9:00 pm to 12:30 pm on the polling day. Nonetheless, after EAC had reminded the media and the organizations concerned to comply with the Guidelines at all time, POP subsequently announced on 3 September 2008 that it would only release the exit poll results to the media at 8:00 pm (and not 12:30 pm). SCMA further said that EAC had monitored closely the whole process of the election on the polling day. All the media and organizations concerned had abided by the guideline of announcing the exit poll results only after the close of poll.

7. Mr CHEUNG Man-kwong further said that to prevent exit polls from being used for electioneering purpose, consideration should be given to allowing only academic institutions to conduct exit polls. Organizations found to have breached the Guidelines before or during the election should be disallowed from conducting exit polls.

8. SCMA said that according to the existing Guidelines, exit polls might be conducted by any person or organization. It was also provided in the Guidelines that if a person or an organization failed to comply with the Guidelines, the approval to conduct exit poll on the polling day or during the polling hours might be revoked.

9. Mr Ronny TONG expressed disappointment that EAC had not addressed the concerns about exit poll in the EAC Report. He said that pan-democratic Members had met with the Chairman of EAC twice before the LegCo election to discuss the issue, and had put forth various recommendations for the consideration of EAC, such as legislating on the regulation of exit polls and mandating that expenses incurred for conducting exit polls for electioneering purposes should be included as part of the election expenses. He found it unacceptable that the EAC Report contained only a few short paragraphs on exit polls and did not put forth any concrete recommendations on improvement measures.

Action

10. SCMA responded that the Administration respected the right of different organizations to conduct exit polls and considered it inappropriate to mandate that only certain types of institutions, such as academic institutions, could do so. SCMA further said that under the existing electoral laws, expenses incurred by a candidate in procuring services, including survey/polling services, for electioneering purposes had to be included in his/her election expenses. Furthermore, the Guidelines had already been amended before the LegCo election to step up the regulation of exit polls and enhance the transparency of organizations/persons with approval to conduct exit polls. He added that EAC would continue to listen to views on the regulation of exit polls.

11. Mr Ronny TONG said that during his meetings with pan-democratic Members, the Chairman of EAC had indicated that he shared the concern that a large scale exit poll conducted by an organization which had connection with a political party could impact on election results. Mr TONG asked whether SCMA had discussed the concerns raised about exit polls with the EAC Chairman.

12. SCMA responded that the Administration had conveyed the views expressed by members during past discussions on exit polls to EAC and REO. As an independent statutory body, EAC was responsible for handling matters concerning election arrangements including the drawing up of guidelines for the conduct of public elections. SCMA further reiterated that EAC would treat all organizations, irrespective of their nature, in the same manner in respect of the conduct of exit polls.

13. Ms Cyd HO said that in many jurisdictions, it was not uncommon for exit polls to be used for electioneering activities. What was important was to lay down rules regulating their conduct to ensure the fairness of elections. She pointed out that while it was stipulated in the Guidelines that organizations concerned should not announce exit poll results before the close of poll, they did not prohibit the organizations from disclosing exit poll results to candidates or other parties before the close of poll. In her view, organizations intending to conduct exit polls should be required to declare to REO their political affiliation and to make known to voters their identities clearly when conducting the poll. Moreover, organizations/persons conducting exit polls for electioneering purposes should also be required to declare to REO that their expenses would be counted as election expenses

14. SCMA said that it had been a long-standing practice of EAC to appeal to the media and concerned organizations to refrain from announcing the results of exit polls before the close of poll in order not to affect the choice of electors. He reiterated that a candidate who commissioned opinion or exit polls for electioneering purposes was required under existing laws to include the expenses incurred as part of the election expenses. SCMA further said that for the purpose of better regulating exit poll, it was stipulated in the existing Guidelines that

Action

persons or organizations intending to conduct exit polls must provide to REO their names and addresses, the names, identity document numbers and contact telephone numbers of the responsible persons, as well as a list of persons employed for the conduct of the exit poll at each polling station together with their identity document numbers. Given that Hong Kong was a free society, he reckoned that it would not be difficult for the public or the media to ascertain the background of organizations conducting exit polls.

15. Mr LEE Wing-tat also expressed discontent that the Chairman of EAC had not heeded the views of pan-democratic Members on tightening the regulation of exit polls to prevent them from being used by political parties for strategic voting manoeuvres. Mr LEE questioned whether the Chairman of EAC was too busy and unable to handle the work of EAC properly. Mr LEUNG Kwok-hung echoed similar views.

16. SCMA responded that the appointment of the Chairman of EAC was made in accordance with the relevant statutory provisions. Since Mr Justice PANG had been appointed as the Chairman of EAC in August 2006, four major elections had been held smoothly, namely the Election Committee Subsector Elections in December 2006, the Chief Executive (CE) Election in March 2007, the District Council (DC) Election in November 2007 and the LegCo Election in September 2008. Under the leadership of Mr Justice PANG, EAC had fulfilled its statutory responsibilities in handling electoral matters. As regards the regulation of exit polls, SCMA said that EAC had taken into account views expressed by members in making amendments to the relevant Guidelines. In line with the arrangements in other jurisdictions, it was set out in the Guidelines that organizations concerned should not announce the results of exit polls before the close of poll. He further reiterated that under the existing electoral laws, candidates were already required to declare any expenses incurred for conducting opinion or exit polls for electioneering purposes. He considered the existing Guidelines adequate in addressing the concerns about exit polls.

17. Mr LEUNG Kwok-hung criticized the Chairman of EAC for using academic freedom as the pretext for not regulating the conduct of exit polls by political parties or candidates for electioneering purposes. He pointed out that some exit pollsters had conducted exit polls at all the voting stations, which would not have been necessary if the exit polls were meant for academic use only. SCMA responded that in the spirit of respect for academic freedom, the concerned organizations should be allowed to decide on the arrangements for conducting exit polls, including the number of polling stations to be included.

18. Mr WONG Yuk-man expressed great disappointment at the EAC Report for failing to address the issue of regulating exit polls. He was dissatisfied that despite the concerns expressed by the public and the recommendations put forth by the pan-democratic Members on exit polls during their various meetings with the Chairman of EAC before the LegCo Election, the Report contained only a

Action

couple hundred words on the issue without any substantive recommendation on tightening the regulation of exit polls. He pointed out that the controversy over exit poll arrangements had adversely affected the accuracy of the exit poll findings of POP, which had conducted academic research on exit polls for years. He criticized that in allowing exit pollsters with political background to conduct exit polls for electioneering purposes, the Administration had damaged the credibility of exit polls and impinged on the academic freedom of academic institutions to conduct research on exit polls.

19. SCMA said that the low response rate to the exit polls, including the one conducted by POP, on the polling day was due to the fact that some pan-democratic Members had called on voters not to respond to exit polls. Mr WONG Yuk-man expressed strong dissatisfaction at SCMA's reply for smearing the pan-democratic Members. Mr WONG said that the root cause for the low response rate to the exit polls was the Administration's failure to regulate the conduct of exit polls for the planning of electioneering activities.

20. Ms Audrey EU said that the Administration should not shift the blame to pan-democratic Members. She pointed out that the crux of the problem with the low response rate of the exit polls lay in the unfairness of the system per se. It was incumbent upon the Administration to tackle the issue which impacted on the fairness of elections. However, the only recommendation contained in the EAC Report on exit polls was that EAC would continue to listen to the views concerning exit polls. Ms EU asked when the Administration would review the policy and arrangements on exit polls.

21. SCMA said that prior to each general election, the public and LegCo would be consulted on the relevant election guidelines and amendments would also be made to the relevant primary and subsidiary legislation as appropriate. He further said that the next general election to be held was the DC Election in 2011 and the issue of regulating exit polls and other electoral arrangements would be considered prior to the election.

22. Ms EU considered SCMA's response unacceptable. She pointed out that pan-democratic Members had already discussed the matter with the Chairman of EAC a number of times before the 2008 LegCo Election and ample time had been given to EAC to tackle the matter. SCMA reiterated that the next opportunity for reviewing the matter would arise in connection with the DC Election in 2011, and in the meantime, EAC would continue to listen to the views of Members and the public on the issue.

23. Ms Emily LAU shared the view expressed by members that EAC had failed to properly regulate exit polls to prevent them from being used for electioneering purposes. She considered that the issue of regulating exit polls should be further discussed at a future Panel meeting.

Action

Sending election advertisements and related materials

24. Ms Emily LAU was of the view that to reduce the consumption of address labels and for environmental protection, REO should provide candidates with the choice of receiving the address labels of electors for sending election advertisements on an individual or household basis, instead of providing candidates with labels on an individual elector basis and grouping the labels of electors of the same registered address together.

25. CEO/REO explained that to respect and preserve the right of individual electors to access election advertisement, REO had continued with the established practice of providing candidates with address labels on an individual basis for the 2008 LegCo Election. EAC considered that the real solution lay in encouraging electors to provide e-mail addresses and candidates to disseminate election advertisements by electronic means. SCMA pointed out that a technical difficulty with Ms LAU's suggestion was that electors with the same address were not necessarily of the same household. Nonetheless, the Administration would further consider the matter and would take into account Ms LAU's views in this regard.

26. Prof Patrick LAU expressed support for the recommendation in paragraph 14.7 of the EAC Report that candidates should be encouraged to disseminate election advertisements by electronic means for the protection of the environment. He enquired about actions taken/to be taken by EAC in this regard. CEO/REO advised that various channels had been used to solicit e-mail addresses from electors. In the voter registration form, there was a field for input of e-mail address. In helping eligible people to apply for voter registration, Voter Registration Assistants would encourage applicants to provide e-mail addresses. In addition, a promotional message encouraging electors to provide e-mail addresses was printed on the envelopes when issuing poll cards to electors. In response to Prof LAU's enquiry on the percentage of electors who had provided e-mail addresses, CEO/REO said that during the DC election in 2007, about 70 000 electors had provided their e-mail addresses, and the number had increased to some 130 000 during the 2008 LegCo Election. Continuous efforts would be made to solicit e-mail address from electors in the coming years.

Power Failures in Two Polling Stations

27. Referring to the power failure at the polling station at Buddhist Chung Wah Kornhill Primary School in Quarry Bay on the polling day referred to in paragraphs 10.11 to 10.15 of the EAC Report, Mr IP Kwok-him said that the power failure occurred at 6:40 pm and power was resumed at 7:05 pm, but the press release to announce the arrangement on extension of closure time of the polling station was not issued until 9:39 pm. He considered it unacceptable that it took about three hours to make the announcement as many electors in the district might not be aware of the extension.

Action

28. SCMA said that the Chairman and members of EAC who were greatly concerned about the power failure incident met shortly after the power had resumed in the polling station and decided to extend the closure time of the polling station correspondingly by 25 minutes. CEO/REO supplemented that REO had taken prompt action to address the issue once it learnt about the power failure. The announcement was not made until 9:39 pm as it had taken some time to prepare the issue of the press release. She, however, agreed that public announcements on contingency arrangements should be made as soon as practicable in future elections.

Venue for Central Counting Station

29. Mr IP Kwok-him remarked that the central counting station (CCS) set up at the Hongkong International Trade and Exhibition Centre (HITEC) was too congested, and there were not enough seats for candidates, agents and the public to observe the counting of votes and declaration of election results. He considered that a more spacious venue with a sufficiently large public area should be used as CCS in future elections. He urged the Administration to plan early to identify suitable venue for setting up CCS in the next general election. Echoing the view that the CCS at HITEC was too crowded, Ms Emily LAU said that some polling staff had also complained about the long working hours.

30. SCMA said that when identifying the venue for CCS, the Administration had considered HITEC and the Asia World-Expo in Chek Lap Kok. While the latter was more spacious, it was less accessible than the former. He further said that when compared with the 2004 LegCo Election, more halls had already been rented for CCS in the 2008 LegCo Election. As pointed out in its Report, EAC recognized that there were not enough seats in the counting halls and the media centre and would try to identify a venue with a sufficiently large public area for supporters of candidates and members of the public to observe the vote counting process in future general elections. As regards the working hours of polling staff, SCMA said that a record-breaking number (around 16 000) of polling staff had been recruited in the 2008 LegCo Election. It was estimated that considerable amount of work would be involved in the major elections to be held between 2011 and 2012, and the Administration would plan ahead on manpower needs to cope with the work.

Counting arrangements

31. Mr IP Kwok-him opined that the procedures for counting votes for functional constituencies (FCs) were too cumbersome, resulting in the long lead time taken for counting the votes. Mr IP considered it necessary to review the counting arrangements with a view to speeding up the process. Prof Patrick LAU shared the view. Prof LAU pointed out that there was only a small number of electors in the Architectural, Surveying and Planning FC. However, owing to the

Action

problem caused by excessive ink-flow from the tick chops, the counting process was not completed until around 7:00 am the following day. Prof LAU considered that a uniform approach in handling ballot papers with smeared mark caused by the tick chops should be adopted by all Presiding Officers to ensure consistency and expedite the vote counting process.

32. SCMA said that to facilitate electors, amendments had been made to the FC voting arrangements a few years ago to allow FC electors to cast their vote in the polling stations for GC elections. Such arrangement had made the counting procedures for FC votes more complicated. Nonetheless, the election results of all FCs were announced between 5:40 am and 8:00 am the following day, and improvement had been made in this regard when compared with the 2004 LegCo Election. CEO/REO added that REO would nonetheless take note of Mr IP's and Prof LAU's views in reviewing the relevant arrangements.

Size of ballot papers

33. The Chairman noted from paragraph 14.25 of the EAC Report the suggestion of reducing the size of ballot papers and using papers with less weight with a view to reducing paper consumption. The Chairman also noted that there were suggestions from Presiding Officers, candidates and the public that some information, such as photos and emblems of candidates, might be excluded from the ballot papers. The Chairman was concerned that these suggestions, if implemented, would make it difficult for elderly electors to identify the candidates when casting their votes.

34. SCMA said that the arrangement of allowing candidates to have certain specified particulars, such as a personal photograph of the candidate and the registered name and emblem of a prescribed body, printed on ballot papers was first adopted in the 2004 LegCo election to facilitate easy identification by voters. The arrangement was generally supported and changes would not be made lightly. The Administration appreciated that the EAC's suggestion of using smaller and lighter ballot papers was aimed at reducing paper consumption and facilitating the delivery of the ballot papers by the polling staff. He stressed that the interests of electors would be the prime consideration of the Administration in reviewing the relevant arrangement.

Complaint concerning counting of ballot papers

35. Dr Margaret NG expressed dissatisfaction about the handling of the complaint lodged by her election manager concerning the counting of ballot papers of the Legal FC. She elaborated that the excessive ink-flow of the tick chops for marking ballot papers had a tendency to smear the tick marks affixed on the ballot papers. During the counting of votes of the Legal FC, ballot papers with smeared marks were treated differently. Some of those ballot papers were ruled valid while some others invalid by the Returning Officer. When she

Action

complained about the inconsistency in the determination of the validity of the ballot papers, she was told that there was no mechanism for handling her complaint on the spot and that the determination made by the Returning Officer was final. She pointed out that as important legal issues concerning the validity of ballot papers were involved, there should be a mechanism for handling such matters on the spot. If her complaint was substantiated, all the ballot papers for the Legal FC should have been re-counted. After the incident, she had immediately written to REO on 11 September 2008 to complain against the determination of validity of votes by the Returning Officer and the lack of a complaint mechanism on the spot. So far, she had only received a short reply from REO and had not been asked to give further information on the complaint.

36. CEO/REO explained that as the complaint letter already contained a detailed account of the incident, the complainant had not been approached to provide further information relating to the complaint. She added that the complaint was now being followed up by the Complaints Committee under EAC and the complainant would be notified of the decision as soon as practicable. As all complaints would be handled in strict confidence, it was not appropriate to discuss details of the case at the meeting. CEO/REO further said that when the issue concerning the tick chops was brought to the attention of REO in the morning of the polling day, REO had immediately reminded the Presiding Officers and Returning Officers that during the counting of votes, if the tick marks on the ballot papers were identifiable although there were some ink within the circle opposite the list of candidates or candidate of his choice, the polling staff should consider these ballot papers valid in accordance with the relevant electoral laws. She also advised that under the existing electoral laws, it was indeed the case that the decision of the Presiding Officers and Returning Officers on the validity of ballot papers was final. A legal adviser was also present during the counting of the votes to give legal advice as appropriate.

37. SCMA acknowledged that there was a general problem with the excessive ink-flow from the tick chops in the 2008 LegCo Election, and assured members that care would be taken to ensure that similar problems would not recur in future elections. The Presiding Officers and Returning Officers in all polling stations had been instructed to handle ballot papers with smeared marks carefully. He added that the powers of Presiding Officers and Returning Officers were provided for in the relevant statutes and any person who would like to make a complaint concerning the election could lodge the complaint to EAC or file an election petition.

38. Dr NG expressed grave dissatisfaction that the complaint, which had bearing on the fairness of the election, had not been reflected anywhere in the EAC Report and demanded that the complaint be included therein. She further sought information on the mechanism for investigating and handling election-related complaints.

Action

39. CEO/REO said that EAC attached great importance to any complaint received, which would be handled in accordance with the established procedures. She explained that as all complaints would be handled in a confidential manner, details of individual complaints would not be included in the Report. Dr NG said that her concern was that the EAC Report had not mentioned at all how complaints concerning the counting of questionable ballot papers arising from the problem with the tick chops, such as the one she had lodged, were handled, which showed that the Administration did not attach any importance to the fairness of elections. In response to Dr NG's request for including such information in the Report, SCMA advised that the EAC Report had already been submitted to and accepted by CE. REO would follow up on the complaint with Dr NG.

Admin

Financial assistance

40. Ms LI Fung-ying said that her claim for financial assistance in respect of expenses incurred for the production of election pamphlets had been rejected by REO on the ground that it was not an election expense given that she was returned uncontested. She considered such an arrangement inappropriate and unfair as she did not know that she would be returned uncontested when she prepared for the publication of the pamphlets.

41. SCMA said that irrespective of whether a candidate was returned through a contested or uncontested election, the general principle for the financial assistance scheme was that each eligible candidate would receive a subsidy at the rate of \$11 per vote, capped at 50% of the actual election expenses of the candidate. All claims for financial assistance would be processed by REO in accordance with the relevant requirements. CEO/REO undertook to follow up the complaint lodged by Ms LI concerning her claim.

Admin

42. Ms Emily LAU said that she had submitted a claim for financial assistance more than a month ago and had not yet received payment. She considered that the processing of claims for financial assistance should be expedited. She further expressed the view that the subsidy rate of \$11 per vote for candidates was inadequate and urged the Administration to conduct a review on the subsidy rate with a view to facilitating the development of political talent in Hong Kong.

43. SCMA said that all claims for financial assistance would be processed in accordance with the relevant statutory provisions as soon as practicable. As regards the subsidy rate, it would be reviewed having regard to the level of inflation, the Government's financial position and the enthusiasm of candidates in participating in LegCo elections.

IV. Financial provision for the Office of the Privacy Commissioner for Personal Data in 2008-2009

[LC Paper Nos. CB(2)437/08-09(05) - (07)]

Briefing by the Administration

44. Under Secretary for Constitutional and Mainland Affairs (USCMA) briefed members on the Administration's paper [LC Paper No. CB(2)437/08-09(05)] on the financial provision for the Office of the Privacy Commissioner for Personal Data (PCPD) in 2008-2009. USCMA informed members that, as compared with 2007-2008, the total additional allocation provided to PCPD in 2008-2009 amounted to \$6.62 million (or 18.2% increase). Of the additional provision of \$6.62 million, \$4.2 million was dedicated for strengthening PCPD's enforcement team, \$1 million for stepping up promotion and educational work to promote public awareness on protection of personal data, and the remaining \$1.42 million for pay rise of PCPD staff.

Views of PCPD

45. Privacy Commissioner for Personal Data (PC) introduced the submission of PCPD [LC Paper No. CB(2)437/08-09(06)] outlining its deployment of the additional financial allocation provided by the Administration in 2008-2009. A copy of his speaking note was tabled at the meeting and issued vide LC Paper No. CB(2) 506/08-09 on 16 December 2008.

Issues raised by members

Resource requirements of PCPD

46. Referring to the remarks made by PC during his presentation that he had to enlist the help of his friends and allies to volunteer their services in inspecting the Hospital Authority's patients' data system following the incidents involving loss of patients' data, Mr CHEUNG Man-kwong criticized the Administration for not providing adequate resources to PCPD for discharging its statutory functions. He sought information on the financial provision to be allocated to PCPD in 2009-2010.

47. USCMA responded that the Administration would strive to provide the resources required by PCPD in the effective enforcement of the Personal Data (Privacy) Ordinance (the Ordinance) (Cap. 486). He further said that in view of public concern over the recent personal data leakage incidents, the Administration had conducted an in-year review of the resource requirements of PCPD and would provide from the Constitutional and Mainland Affairs Bureau (CMAB)'s operating expenditure envelope for 2008-2009 an additional allocation of \$2.4 million to PCPD for strengthening its enforcement work. The Administration was now discussing with PCPD on its financial provision for 2009-2010 and would

Action

positively consider whether more resources should be provided to PCPD to address its operational needs, including the need to strengthen its manpower and in-house information technology expertise to support its enforcement work. Mr CHEUNG Man-kwong, however, pointed out that according to PCPD's submission, while notionally the additional allocation of \$2.4 million was to enable PCPD to create two new permanent posts under its establishment, in reality PCPD had already recruited two officers to take up the two posts since 2006-2007, with their salaries being paid out of PCPD's Reserve Fund, which had resulted in a significant drain on PCPD's Reserve Fund.

48. Ms Emily LAU also expressed strong dissatisfaction with the Administration's failure to render adequate resources support for PCPD and considered it unacceptable that PCPD had to rely on volunteer support to carry out its statutory duties. She pointed out that the lack of resources had constrained the work of PCPD on protection of personal data privacy. For instance, apart from carrying out an inspection of the Hospital Authority's patients' data system arising from the spate of incidents involving loss of patients' data, PCPD should also have initiated investigations into incidents of data leakage involving the Police. She urged the Administration to enhance the financial provision for PCPD in the 2009-2010 Budget.

49. USCMA said that since CMAB took over the human rights portfolio in July 2007, the Bureau had made its best endeavour to grant additional resources to PCPD to complement its needs. As regards the financial provision for 2009-2010, the Government had in place a resource allocation mechanism for Government departments and subvented bodies to review regularly their resource requirements. The Administration was liaising with PCPD on its resources and manpower needs for the 2009-2010 Budget exercise and would positively consider bids submitted by PCPD for extra resources to cope with its work. PC said that PCPD had completed investigations into two incidents concerning loss of personal data by the Immigration Department, and was currently undertaking a comprehensive investigation into data loss incidents involving the Police. PC added that notwithstanding its limited resources, PCPD would make the best use of available resources to render quality services to the public.

50. Mr CHEUNG Man-kwong and Ms Emily LAU asked about the amount of resources and manpower required by PCPD for discharging all its statutory duties effectively. PC responded that he was now discussing with the Administration the subvention for PCPD for 2009-2010 and did not consider it appropriate to divulge details of the discussion at this stage. Nevertheless, he assured members that he would make his best endeavour to seek additional resources for PCPD. He also informed members that the level of PCPD's Reserve Fund had reached a dangerously low level, at some \$1.3 million, as compared to the \$26 million and \$53.8 million reserve fund held by the Equal Opportunities Commission and Estate Agents Authority respectively as at 31 March 2007.

Action

51. Mr LEE Wing-tat said that when the issue of information security was discussed at the meeting of the Panel on Information Technology and Broadcasting on 8 December 2008, members had expressed concern about the low awareness of privacy protection on the part of many public and private organizations. Given the importance of personal data protection and the public's expectations for PCPD to enforce the Ordinance more vigorously, he considered it necessary to provide more resources to PCPD to strengthen the enforcement work. He held the view that having regard to the nature of the work of PCPD, a mechanism should be put in place for allocating supplementary provision to PCPD for handling unexpected incidents involving personal data privacy.

52. USCMA reiterated that the total additional allocation to PCPD in 2008-2009 amounted to \$6.62 million, of which \$2.4 million was provided from the operating expenditure envelope of CMAB for 2008-2009 following a recent in-year review of the resource requirements of PCPD at the request of PCPD. He elaborated that PCPD had originally requested \$0.6 million to pay for the staff cost of two officers in the enforcement team for three months. To strengthen the compliance enforcement work of PCPD, the Administration had decided to provide it with an additional allocation of \$2.4 million to meet the staff cost of the two posts for the whole year. The total financial provision to PCPD in 2008-2009, inclusive of all the additional allocation, would be \$42.92 million, representing a 18.2% increase over the previous year.

53. USCMA further said that under the existing mechanism, there were various channels through which PCPD could get supplementary resources for coping with ad hoc tasks not budgeted for. PCPD's reserve could be used for such purpose. Indeed, the additional provision of \$2.4 million would provide PCPD with flexibility in resource deployment by maintaining its reserve at a healthier level. Furthermore, consideration could be given to allocating additional funding to PCPD from the operating expenditure envelope of CMAB upon receipt of such requests from PCPD. He reiterated that the Administration would positively consider proposals on additional provision to be allocated to PCPD in the 2009-2010 Budget exercise.

54. Ms Cyd HO said that there were three key elements that ensured the independence of statutory organizations responsible for monitoring the executive authorities and handling public complaints, such as PCPD, the Equal Opportunities Commission, the Office of the Ombudsman and the Independent Commission Against Corruption: Firstly, a fair and open appointment mechanism for selecting suitable candidates; secondly, the conferral of adequate statutory powers on the organizations by legislation; and thirdly, stable and sufficient resources to support their long-term operation. She stressed that there were many pressing tasks that had to be dealt with by PCPD to enhance protection of personal data privacy in the light of technological advancements and considerable additional resources would be needed. The annual resource allocation exercise, which was based on an incremental approach, was not the

Action

appropriate mechanism for evaluating the resources requirements of PCPD. Ms HO was of the view that the Administration must undertake expeditiously, in conjunction with PCPD, a comprehensive review of the PCPD's work (including investigation and prosecution) and the resource requirements in order to ensure that PCPD could perform its statutory duties effectively and independently. She also requested the Administration to provide a time frame for such review.

55. USCMA stressed that the Administration was responsive to the resource requirements of PCPD, as evidenced in the additional allocation granted to PCPD in 2008-2009. As regards Ms HO's suggestion of conducting a review on the work of PCPD, he pointed out that during the preparation of the draft estimates, all Government departments and subvented bodies would be requested to review their work and set objectives and performance targets and indicators for the coming year. PCPD had always met its targets and delivered quality services. He reiterated that should PCPD put forth proposals for additional resources to cope with its work, the Administration would positively consider such proposals.

56. Mr LEE Cheuk-yan shared Ms Cyd HO's view on the need to undertake a comprehensive review of the financial and manpower requirements of PCPD. While the Administration stressed that there was a 18.2% increase in the funding allocation for PCPD in 2008-2009 as compared with 2007-2008, the actual amount of increase in dollar terms was not substantial given the low level of the existing funding resources of PCPD. Mr LEE was concerned that due to its financial constraint, PCPD did not have sufficient resources for undertaking legal proceedings to vigorously enforce compliance with the Ordinance. A case in point was the decision of PC not to appeal against the High Court's decision to allow the judicial review application by Cathay Pacific Airways Limited (Cathay) against the decision of PC which had been affirmed by the Administrative Appeals Board, to issue an enforcement notice on Cathay directing it to cease the practice of collecting past medical records under the threat of a disciplinary process and to destroy the data collected. Mr LEE considered that it gave the impression that PC was powerless in enforcing the Ordinance against large corporations. He asked whether there was any mechanism for providing financial support to PCPD to undertake legal proceedings in its enforcement work.

57. PC said that while PCPD had only limited resources, it would not hesitate to take on large corporations which had contravened the Ordinance. As regards the Cathay case, he explained that as Cathay had agreed to adopt certain measures recommended by PCPD and having regard to the high cost of litigation, he decided not to lodge an appeal against the decision of the High Court with a view to making the most effective use of its limited resources. USCMA said that one of the main purposes for setting up PCPD's reserve was to provide a funding source for litigation. The Administration recognized that PCPD's reserve was limited and would consider providing financial support to PCPD to undertake legal proceedings on a case-by-case basis upon the request of PCPD.

Action

58. Mr LEUNG Kwok-hung said that in the light of the recent spate of personal data leakage incidents involving Government bureaux/departments and public bodies, the Administration should act promptly to provide more funding to PCPD to support its work. He asked whether SCMA had given any specific instructions on how to handle the issue of funding requirements of PCPD. USCMA reiterated that the Administration recognized the public concern over recent personal data leakage incidents and the expectations for PCPD to enforce more vigorously the Ordinance. He assured members that the Administration would strive to provide resources at an appropriate level to support PCPD to strengthen its compliance enforcement work.

59. Noting that an additional allocation of \$1.42 million had been allocated to PCPD for pay rise, Mr Ronny TONG said that it would be difficult to justify a pay rise amidst the present economic situation, particularly considering that adjustments to civil service salaries would likely be frozen this year. Deputy Privacy Commissioner for Personal Data (DPC) clarified that as the pay adjustment of PCPD staff was in line with that of civil servants, the \$1.42 million was allocated to PCPD for making corresponding adjustment to the salary of PCPD staff in the light of the civil service pay adjustment in 2008-2009.

Promotion and public education

60. Ms Miriam LAU considered it pivotal for PCPD to strengthen its work on the preventive front by stepping up promotion and public education on protection of personal data. She suggested that PCPD should take a proactive role in advising and assisting private organizations to put in place a mechanism for protection of personal data, akin to the advisory services provided by the Independent Commission Against Corruption to the private sector on practices to prevent corruption. She considered the additional allocation of \$1 million to PCPD for promotion and educational work inadequate.

61. In response to Ms Miriam LAU's enquiry on the initiatives taken/to be taken by PCPD in respect of promotion and public education, PC said that he shared Ms LAU's views about the important role of education in enhancing protection of personal data privacy. He pointed out that there was only one training officer in PCPD to organize seminars on the Ordinance and other educational work. He would like to recruit at least two more staff to handle promotion and educational work but lacked the resources to do so.

62. USCMA said that the Administration recognized that, apart from monitoring and enforcing compliance with the Ordinance, promotion and education was also a key component of PCPD's work, and had allocated an extra provision of \$1 million to PCPD in 2008-2009 to strengthen its work in this regard. To the Administration's understanding, the \$1 million would be used by PCPD to organize two promotion and education programmes. As contractors would be engaged for the production of promotion materials and videos, the implementation of the two programmes would not generate much extra work for PCPD's in-house

Action

promotion and education staff. As regards the manpower needs of PCPD in promotion and educational work in the medium to long term, the Administration was prepared to positively consider proposals submitted by PCPD. As a matter of fact, PCPD had written to the Administration recently on proposals to strengthen its promotion and educational work. The Administration was currently studying the proposals.

Review of the Ordinance

63. Mr LEE Cheuk-yan said that one of the loopholes in the Ordinance was the absence of an indemnity clause to limit the potential liability of PCPD. He asked whether consideration would be given to amending the Ordinance in this regard. USCMA responded that the issue would be considered in the context of the overall review of the Ordinance.

64. While expressing support for providing more resources to PCPD, Dr Margaret NG considered that there was one particular area of work which had not been properly dealt with by PCPD. She expressed concern that, due to the lack of clarity of the Ordinance, the Administration had made use of the Ordinance to block access to information which was of public interest and should be made available to the general public. She pointed out that there had been cases where the Administration had refused to release statistical information concerning the Census for academic research purpose on grounds of privacy. She urged PCPD to address this issue in reviewing the Ordinance.

65. PC said that many overseas jurisdictions, such as the United Kingdom, had had in place both personal data protection and freedom of information legislation to protect personal information and provide right of access to official information. Hong Kong, however, had only personal data protection legislation but not freedom of information legislation. He further said that under the Ordinance, he was not empowered to order any person to produce any information in his/her possession.

66. Dr Margaret NG stressed that, as it was the statutory duty of PCPD to enforce the Ordinance, PC was duty-bound to clarify whether it was proper for the Administration to refuse requests for information on the ground of contravention of the Ordinance. It was also incumbent upon PC to review whether there were any grey areas in the Ordinance in this regard.

67. DPC informed members that there had been a case in the past where the Administration had sought the views of PCPD on whether it would be in breach of the Ordinance to disclose information concerning suicide in the mass transit railway system requested by a university researcher. On the advice of PCPD, the Administration had provided the information to the researcher. She added that PCPD would provide its views on matters relating to the Ordinance at the request of the public or any organization. In this regard, PCPD had provided written answers to about twenty written enquiries each week.

Action

68. Ms Cyd HO considered that legislation providing for the policy and procedures governing management of government records and the public's right of access to such information should be put in place to ensure the proper preservation of government records and enhance the transparency of the Government. She further said that in the review on the Ordinance conducted by the former Privacy Commissioner, Mr Stephen LAU Ka-man, it was recommended that the Ordinance should provide for exemptions in certain circumstances subject to a public interest test being met. She enquired about PC's views on this recommendation and whether any follow-up actions would be taken in this respect.

69. PC said that PCPD had already submitted to the Administration its proposals on the various issues to be covered in the review of the Ordinance, including exemptions from applications of the Ordinance where it would be in the public interest to do so. USCMA indicated that in reviewing the Ordinance, a right balance should be struck between protection of personal data privacy and the need to safeguard public interest. The Administration was discussing the various amendment proposals with PCPD with a view to mapping out the way forward, and members would be consulted on the review at an appropriate time.

V. Report of the Hong Kong Special Administrative Region (HKSAR) under the International Convention on Elimination of All Forms of Racial Discrimination

[LC Paper Nos. CB(2)437/08-09(08) and (09); Part Two of the Tenth to Thirteenth Reports of the People's Republic of China under the International Convention on the Elimination of All Forms of Racial Discrimination on HKSAR]

Briefing by the Administration

70. USCMA briefed members on the Administration's paper [LC Paper No. CB(2)437/08-09(08) outlining the background and the content of the second report of HKSAR submitted to the United Nations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 2008. The report on HKSAR was submitted as part of the Report of the People's Republic of China, the hearing on which was tentatively scheduled for August 2009. USCMA further informed members about the progress of its follow-up actions following the enactment of the Race Discrimination Ordinance (Cap. 602) in July 2008. Apart from the proposed implementation plan for the establishment of four regional support service centres for ethnic minorities and the draft Code of Employment under the Race Discrimination Ordinance prepared by the Equal Opportunities Commission discussed at the last Panel meeting, the Administration was compiling the administrative guidelines on promotion of racial equality within the Government for the key Government bureaux and departments to follow in their formulation and implementation of relevant policies and measures.

Discussions

Judicial cases on violations of ICERD in HKSAR

71. Mr IP Kwok-him noted from paragraph 19 of the Concluding Observations of the United Nations Committee on the Elimination of Racial Discrimination (UNCERD) on the first report of HKSAR under ICERD submitted in 2000 [Appendix I to LC Paper No. CB(2)437/08-09(09)] that UNCERD had requested the provision of detailed information on judicial cases relating specifically to violations of ICERD in HKSAR in subsequent reports. Mr IP asked why no such information was included in the second report on HKSAR. USCMA explained that as the relevant judicial cases were still ongoing, detailed information on the cases could only be included after the completion of the legal proceedings concerned. Mr IP considered that while the judicial cases were yet to be concluded, the number of ongoing cases should have been included in the report. USCMA responded that subject to the progress of the judicial cases concerned, consideration could be given to providing further information to UNCERD on these cases as appropriate when the hearing was held in August 2009.

Interpretation service for ethnic minorities

72. Ms Emily LAU enquired about the progress of the measures taken by the Hospital Authority to enhance its interpretation support for ethnic minorities in gaining access to medical services. She stressed that such interpretation services were essential as human lives were at stake.

73. USCMA advised that since mid June 2008, the Hospital Authority had commissioned a non-governmental organization (NGO), the HKSKH Lady MacLehose Centre, to provide telephone and on-site interpretation service for four common ethnic minority languages, viz. Urdu, Nepali, Hindi and Punjabi, in all hospitals under the Hospital Authority for accident and emergency services, general and specialist out-patient services, in-patient services as well as individual cases where advanced bookings had been made. At the request of Ms Emily LAU, USCMA undertook to provide supplementary information on the usage of such service, including the usage rate of the interpretation service for each ethnic minority language for different types of hospital services, any special requests by users and whether such requests could be met.

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74. In response to Ms Emily LAU's enquiry on further measures to strengthen the interpretation service for ethnic minorities, USCMA said that the four regional support service centres to be set up would also provide interpretation service to ethnic minorities to facilitate their access to public services and critical non-government services. Such service would be provided for seven common ethnic minority languages primarily through telephone and, subject to pre-booking and availability of resources, might be provided on site. The Administration had

Action

earmarked a total of \$16 million as the operating expenses of these centres in their first year of operation and an additional \$8 million to subsidize their start-up costs. An open invitation had been issued to all relevant NGOs to invite applications for the establishment and operation of these support service centres. Upon the close of applications in mid January 2009, a vetting committee would be formed to assess the applications and select the operators. It was the Administration's target to implement the proposals in March/April 2009. In response to Ms LAU, USCMA further said that financial provision had been made for the establishment and operation of the four regional support service centres, which would be run on a trial basis for two years.

Administrative guidelines on promotion of racial equality within the Government

75. Responding to Ms Emily LAU's further enquiry on the implementation progress on the administrative guidelines on promotion of racial equality within the Government, USCMA said that CMAB was liaising with the relevant bureaux and departments providing the key services required by the ethnic minorities on the preparation of the administrative guidelines and aimed to consult the Panel on the draft proposed administrative guidelines in the first half of 2009.

Clerk

76. Ms Emily LAU suggested and members agreed to further discuss the report on HKSAR and receive views from the public in May/June 2009. Ms LAU considered that as the report was prepared before the enactment of the Race Discrimination Bill in July 2008, the Administration should prepare a supplementary report on the progress and developments since then when the subject was next discussed in May/June 2009.

77. The meeting ended at 5:16 pm.

Council Business Division 2
Legislative Council Secretariat
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