

立法會
Legislative Council

Ref : CB2/PL/CA

LC Paper No. CB(2)1561/08-09
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 19 January 2009, 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
Dr Hon Philip WONG Yu-hong, GBS
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, 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
Dr Hon Priscilla LEUNG Mei-fun
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 KAM Nai-wai, MH

Members absent : Hon WONG Yung-kan, SBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP

Public Officers attending : Item III

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

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

Mrs Apollonia LUI LEE Ho-kei
Principal Assistant Secretary for Security

- Attendance by invitation** : Item IV
Democratic Party
Mr CHEUNG Yin-tung
General Secretary
Hong Kong Human Rights Monitor
Mr LAW Yuk-kai
Director
Mr KWOK Hiu-chung
Education Officer
Growing Together
Ms Virginia Wilson
Chairperson
Ms Abigail DeLessio
Member
- Clerk in attendance** : Miss Flora TAI
Chief Council Secretary (2)3
- Staff in attendance** : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2
Ms Clara TAM
Assistant Legal Adviser 9
Ms Elyssa WONG }
Deputy Head, } For items III and IV only
Research and Library Services Division }
Ms Diana WONG } For item III only
Research Officer 2 }
Mr Andy CHAN } For items III and IV only
Research Officer 4 }
Mrs Eleanor CHOW
Senior Council Secretary (2)4
Mrs Fanny TSANG
Legislative Assistant (2)3
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I. Information papers issued since the last meeting

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

II. Items for discussion at the next meeting

[LC Paper Nos. CB(2)660/08-09(01) and (02)]

2. Members agreed to discuss at the next meeting on 16 February 2009 the following items proposed by the Secretary for Constitutional and Mainland Affairs (SCMA) –

- (a) Public consultation on prisoners' voting right; and
- (b) Rules and regulations under the Race Discrimination Ordinance.

3. Ms Emily LAU said that during the Chief Executive's Question and Answer Session on 15 January 2009, the Chief Executive (CE) announced that the public consultation on the two electoral methods for 2012 would be deferred to the fourth quarter of 2009 so that the Government could focus on dealing with economic and livelihood issues arising from the financial tsunami. Ms LAU found it unacceptable that CE had made the decision without consulting the Panel. She suggested that the Panel should discuss the issue at this meeting.

4. Mr WONG Yuk-man said that the Administration should know that a deferment on the consultation on the two electoral methods for 2012 would antagonize pan-democratic Members and yet it had decided to go ahead with it. CE's unilateral decision was not conducive to improving relationship between the Executive and the Legislature. He asked the Administration to provide justifications for delaying the consultation and to advise the Panel when the Administration had made a decision on the matter.

5. Mr LEE Wing-tat said that there should be mutual respect between the Executive and the Legislature. He suggested that the post of SCMA should be suspended for six months if the consultation on the two electoral methods for 2012 would be deferred. Mr LEUNG Kwok-hung supported his view.

6. Mr Ronny TONG said that the Legislative Council (LegCo) might be able to come up with a way to enable the Administration to deal with the financial tsunami while not affecting the timetable for conducting consultation on the two electoral methods for 2012. He considered that the Administration should have consulted the Panel before making the decision.

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7. In the light of the strong views expressed by members, SCMA undertook to provide a paper setting out the timetable for the public consultation and the legislative process for the two electoral methods for 2012 for the Panel's discussion at the next meeting.

III. Judicial review on prisoners' voting right

Briefing by the Administration

8. Members noted that on 8 December 2008, the Hon Mr Justice Andrew CHEUNG handed down a High Court judgment on three applications for judicial review relating to prisoners' voting right in LegCo elections (*HCAL 79/2008, HCAL 82/2008 and HCAL 83/2008*). According to the judgment, the provisions disqualifying any prisoner across-the-board from registration as an elector and from voting in LegCo elections contravened the right to vote constitutionally guaranteed under Article 26 of the Basic Law (BL) and Article 21 of the Hong Kong Bill of Rights (HKBOR). However, it would be a matter for the Legislature and the Executive to determine whether, and if so, how prisoners' voting right should be restricted in a reasonable manner. Hon Mr Justice CHEUNG also took the view that the constitutional right to vote of remanded persons (i.e. persons who are remanded in custody awaiting trial) was not affected by any law, and arrangements should be made to enable them to vote on election days whilst being held in custody.

9. SCMA introduced the Administration's paper (LC Paper No. CB(2)660/08-09(03)) which set out the latest developments of the three judicial review cases on prisoners' voting right. On the way forward, SCMA said that the Administration had applied for a 10-month temporary suspension of the Court Order to ensure that prisoners' right to vote would be implemented under an amended legislative framework with appropriate polling arrangements. The Court would consider the application at the hearing on 23 February 2009.

10. SCMA further said that the issue of what reasonable restrictions, if any, should apply to prisoners' voting right was controversial and it was necessary to consult the public on the policy options. Some of the possible options under consideration included –

- (a) to remove the existing across-the-board disqualification of prisoners from registration and from voting;
- (b) to retain the disqualification for persons who were sentenced to imprisonment for a term exceeding a specified length; or
- (c) to disqualify persons who were sentenced to imprisonment for a term exceeding a specified length but to allow them to register as

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electors and to vote in the last few years of their term of imprisonment.

11. Members also noted the following papers on the subject under discussion -
- (a) background brief prepared by the LegCo Secretariat (LC Paper No. CB(2)660/08-09(04));
 - (b) information note prepared by the Research and Library Services Division of the LegCo Secretariat (RLSD) (LC Paper No. IN04/08-09); and
 - (c) submission from the Society for Community Organization (LC Paper No. CB(2)490/08-09(01)).

Discussion

12. Ms Audrey EU expressed concern about the practical arrangements under which prisoners might cast their votes at an election. She raised the following questions –

- (a) whether a prisoner could vote for candidates from the geographical constituency (GC) of his registered address;
- (b) whether a prisoner could cast his vote by post;
- (c) whether candidates could canvass for votes in prisons; and
- (d) what were the existing voting arrangements for persons who were remanded in custody awaiting trial.

Ms EU also requested the Administration to provide more information on overseas practices to facilitate consideration by members.

13. SCMA made the following responses –

- (a) the practical arrangements under which prisoners might cast their votes at an election had yet to be worked out. The Administration was preparing a public consultation document which would set out the various policy options and the practices in overseas jurisdictions;
- (b) in Australia and Canada which allowed prisoners to vote, a prisoner could vote by post or in a mobile polling station set up inside a prison. At present, registered electors in Hong Kong were not allowed to vote by post because there was difficulty in verifying whether the vote had been cast by the registered elector concerned;

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- (c) while registered electors imprisoned could receive election advertisements sent by post, the arrangements for candidates to canvass such electors for votes had yet to be worked out in conjunction with the Electoral Affairs Commission (EAC) and the relevant law enforcement agencies; and
- (d) at present, there was no special arrangement to enable remanded unconvicted persons to vote on the election day whilst being held in custody.

14. In response to Mr IP Kwok-him, Dr Priscilla LEUNG and Ir Dr Raymond HO, SCMA undertook to provide in the consultation document information on the existing disqualification of prisoners' right to register and/or to vote, a table showing the practical voting arrangements for prisoners in countries which imposed restrictions on prisoners' voting right as well as those which did not impose any restriction, and information, if available, on the justifications of countries which imposed a total ban on prisoner's voting right.

15. Mr IP Kwok-him noted that the Court had ruled the across-the-board disqualification of prisoners from registration and voting unconstitutional. He cautioned that if some form of restrictions were to be imposed on prisoners' rights to register as electors and to vote, the Administration had to ensure that the restrictions so imposed would not be subject to legal challenge in the future. He also enquired about the need to amend the Prisons Ordinance (Cap. 234), if candidates were allowed to canvass for votes in prisons before the election.

16. SCMA reiterated that the Court had not suggested that some form of restrictions on voting could not be imposed on prisoners. However, it was for the Executive and the Legislature to decide on reasonable restrictions, if any. Given the controversial nature of the issues, it was necessary to consult the public on the policy options before proceeding to propose amendments to the relevant ordinances. SCMA supplemented that the arrangements for candidates to canvass for votes in prison had to be studied.

17. Mr Ronny TONG held the view that there should not be any restriction on prisoners' voting right as it would contravene BL 25, 26 and 39. In his view, prisoners, irrespective of their terms of imprisonment, had the right to enjoy the services provided by LegCo Members and to protect the interest of their families by voting in an election. Issues such as voting by post, canvassing for votes in prison and security arrangements were all technical in nature and should not be the reasons for depriving prisoners' voting right. He also considered that the application for a 10-month suspension of the Court Order was inappropriate and the Administration should implement the Order without delay.

18. SCMA stressed that the Administration respected the ruling of the Court. The application for a 10-month suspension was necessary to allow time for public consultation and for completing the relevant legislative process.

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19. Mr LEUNG Kwok-hung said that it was regrettable that the Administration had not prepared for the possible outcome of the three judicial review cases. As a result, the Administration needed to apply for temporary suspension of the Court Order. He further expressed concern that according to law, a person who was imprisoned during the nomination period or on the election day would be deprived of the right to stand in an election. He requested that the Administration should also address the issue about the constitutionality of such restriction in the current exercise.

20. SCMA responded that in any judicial review case, the Administration would always prepare for the possible outcome of winning or losing the case. On the present judicial review cases regarding prisoners' voting right, the Administration had conducted some research studies on the issue in advance and thus was able to give an immediate response to the court's judgment when it was delivered on 8 December 2008. Nevertheless, it still required time to consult the public on the policy options for relaxing the ban on prisoners' voting right and prepare for legislative amendments to the relevant ordinances in order to implement the Court's judgment. On the arrangements of being nominated in an election, SCMA said that the Department of Justice had previously studied the issue. The High Court only ruled that the existing general, automatic, and indiscriminate restrictions on prisoners' right to vote and the right to register as electors contravened the right to vote guaranteed under BL 26 and Article 21 of HKBOR. The Administration would nevertheless consider the issue raised by Mr LEUNG.

21. Mr CHEUNG Man-kwong considered a time span of 10 months to complete the relevant legislative process too long. He pointed out that if there was no restriction on prisoners' right to register as elector and right to vote, legislative amendments to the relevant ordinances would be simpler. If restrictions were to be imposed, it was essential to decide where the cut-off line should be drawn. Consequently, it would prolong the legislative process. Mr CHEUNG stressed that the Administration should strive to complete the whole legislative process by the end of the current legislative session in July 2009. He further said that if a specified period of imprisonment was to be set as a cut-off line for any proposed restrictions, he would only make reference to section 53(5)(c) of the Legislative Council Ordinance (Cap. 542) (LCO) which provided that persons convicted of offences against the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) or the Prevention of Bribery Ordinance (Cap. 201) or the Electoral Affairs Commission Ordinance (Cap. 541) would be disqualified from being registered as an elector and from voting within three years after the conviction. He enquired about the background for setting the cut-off line at three years. Mr CHEUNG added that to expedite the legislative process, policy issues should be decided first and the practical voting arrangements could be dealt with later.

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22. SCMA said that the proposed amendments to relevant ordinances would be introduced into LegCo for scrutiny around mid-2009 and hopefully, to be enacted before the end of the current LegCo session. The relevant amendments to the subsidiary legislation in relation to practical electoral arrangements would be introduced into LegCo thereafter. The legislative process would be completed in fall 2009. He agreed that the timetable would be tight, bearing in mind the LegCo's summer recess from mid-July to early October. As regards setting of the cut-off line at three years in LCO, SCMA recalled that the cut-off line had been changed in the past. The Administration would take into account the background in formulating the policy options.

23. Ms Emily LAU held the view that restriction on prisoners' voting right, if any, should be as lenient as possible. She asked whether the Administration had collected views from the community. She expressed concern that the application for temporary suspension of a court order was inconsistent with the spirit of law. She urged the Administration to expedite the legislative process so that prisoners could enjoy their long lost rights. She also suggested that the Administration should organize forums to collect views from prisoners and their family members.

24. SCMA said that the research study on overseas practices revealed that a number of countries including the United Kingdom, Japan and most states of the United States of America had imposed a total ban on prisoner voting. Other countries such as Australia imposed certain restrictions on prisoners' voting right, whereas some countries such as Canada did not impose any restriction. Since the delivery of the judgment, there were divergent views in the community as to whether restrictions on prisoners' voting right should be removed in entirety or whether reasonable restrictions should be imposed. At present, the Administration had not formed any view. The public consultation exercise to be commenced in February 2009 would last six to eight weeks. Taking into account the outcome of the public consultation, the Administration would prepare and introduce the relevant legislative amendments into LegCo.

25. Ms Margaret NG considered the Administration's application to the Court for a 10-month suspension of the Court Order unorthodox. As the Administration had decided not to appeal against the Court ruling, it meant that the Administration accepted the ruling. With due respect to the Court, the Administration should proceed with the necessary work immediately to implement the Court ruling. She considered that the Administration should have applied to the Court for a period of time to comply with the ruling instead of applying for temporary suspension of the Court Order. In her view, there should not be any restriction on prisoners' voting right. She pointed out that if restrictions were to be imposed, the Administration should provide ample justification. She also stressed that for the sake of safeguarding judicial independence, all the restrictions should be clearly stipulated in the law and not to be decided by the Court.

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26. SCMA reiterated that the application for a 10-month suspension was to ensure that prisoners' voting right would be implemented under an amended legislative framework with appropriate polling and security arrangements, and to ensure the integrity and finality of any LegCo by-elections which might be held in the meantime. As to whether an application for a period of time to comply with the ruling should be made, the Administration would defer to the advice of the Department of Justice. He also assured members that restrictions, if any, imposed on prisoners' voting rights would be stipulated in law.

IV. Report of the Hong Kong Special Administrative Region for the United Nations Human Rights Council Universal Periodic Review

Briefing by the Administration

27. Under Secretary for Constitutional and Mainland Affairs (USCMA) introduced the Administration's paper (LC Paper No. CB(2)650/08-09(01)) which briefly set out the mechanism for the United Nations Human Rights Council (UNHRC) Universal Periodic Review (UPR) and the outline of the Report of the Hong Kong Special Administrative Region (the HKSAR Report), which was part of the Report of the People's Republic of China (the China Report) submitted to the United Nations (UN) by the Central People's Government (CPG) under the UPR mechanism. Members noted that the hearing of the China Report would be held on 9 February 2009 in Geneva.

28. Members noted the information note prepared by RLSD on UPR (LC Paper No. IN05/08-09).

Presentation of deputations' views and the Administration's response

29. Mr CHEUNG Yin-tung presented the views of the Democratic Party (DP) as detailed in its submission (tabled at the meeting and subsequently issued to members vide LC Paper No. CB(2) 714/08-09 on 20 January 2009). He criticized that the HKSAR Report which only contained very flimsy information had not reflected human rights issues of public concern. These issues included the Government stalling democratic development, some Hong Kong citizens being deprived of the right to travel to the Mainland and Macau, increasing restrictions on the freedom of the press and speech, and the Government attaching insufficient importance to the education of human rights. Mr CHEUNG said that DP would attend the hearing of the China Report on 9 February 2009 to reflect the aspirations of Hong Kong people directly to UN.

30. Ms Abigail DeLessio presented the views of Growing Together (GT) as detailed in its submission (LC Paper No. CB(2) 660/08-09(05)). She expressed concern that the HKSAR Report was silent on the rights of individuals who had special educational needs (SEN), especially those who were members of the ethnic

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minorities or non-Chinese speaking (NCS). In her view, the provision of education opportunities for NCS children with SEN was inadequate. Ms Virginia Wilson supplemented that GT held the view that denying NCS children with SEN the right to receive appropriate and effective educational services in any language other than Chinese violated BL, HKBOR and relevant international treaties and conventions applicable to Hong Kong such as the Convention on the Rights of Persons with Disabilities, 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 (ICCPR). She asked about the authorities responsible for investigating these violations and taking measures to redress the problem.

31. Mr LAW Yuk-kai presented the views of the Hong Kong Human Right Monitor (HKHRM) as detailed in its submission (tabled at the meeting and subsequently issued to members vide LC Paper No. CB(2) 714/08-09 on 20 January 2009). Members noted that a copy of the HKHRM's submission for UPR was attached to that submission too. HKHRM held the view that the HKSAR Report was more like a propaganda brochure for tourists because it only set out the existing framework and measures for promoting and protecting human rights without any critical examination of the human rights situation in Hong Kong. He cited the example that the HKSAR Government had restricted freedom of speech by seeking an injunction to prohibit the "Citizens Radio Station" from broadcasting, despite the fact that the Magistrate had ruled the relevant provision of the Telecommunications Ordinance (Cap. 106) unconstitutional. Mr LAW hoped that the Government would provide supplementary information to UNHRC before the hearing on 9 February 2009. He added that HKHRM would also attend the hearing of the China Report on 9 February 2009 to reflect the aspirations of Hong Kong people.

32. Members noted that Mr Andrew K Y CHIU, a member of the Eastern District Council, had provided a written submission [LC Paper No. CB(2)660/08-09(06)].

33. USCMA made the following responses to deputations' views expressed at the meeting –

- (a) UNHRC was established by the UN General Assembly Resolution 60/251 of 15 March 2006 to replace the UN Commission on Human Rights. Given that some of the Members States were developing countries with limited resources, UNHRC required that a national report for UPR should not exceed 20 pages. As the HKSAR Report formed only a section of the China Report, which also included a section on Macau, the HKSAR Report was limited to several pages only. The HKSAR Report, apart from setting out the existing framework and measures for promotion and protection of

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human rights, also set out the latest development on human rights matters. If Member States had any queries about the HKSAR Report before 9 February 2009, representatives of the HKSAR Government would provide supplementary information to UNHRC through CPG;

- (b) as for the two electoral methods for 2012, CE had already explained the matter at the Question and Answer Session on 15 January 2009. Although the public consultation had been slightly postponed, the objective of the Government to determine these two electoral methods within its current tenure had not changed;
- (c) on matters concerning entry into the Mainland and Macau, the HKSAR Government respected the immigration checks and control policies of other jurisdictions;
- (d) the HKSAR Government upheld the principles enshrined in the Basic Law which provided that Hong Kong residents shall have freedom of speech, of the press and of publication, etc. Radio and television stations were regulated by the licensing regime stipulated in applicable laws. He was not in a position to comment on individual cases, particularly those cases under judicial procedures;
- (e) the Administration had earmarked provision for promoting human rights. For instance, following the enactment of the Race Discrimination Ordinance (Cap. 602), the Constitutional and Mainland Affairs Bureau (CMAB) had secured \$8 million one-off allocation and \$16 million recurrent allocation for the setting up and running of regional support service centres for ethnic minorities. CMAB had also expended several million dollars for the promotion and education efforts on human rights. The Education Bureau (EDB) had embedded related learning elements in the curriculum coverage of the network of schools;
- (f) where an international treaty/convention was applicable to Hong Kong, the relevant policy bureaux had the duty to ensure that the existing laws and policies under their purview were consistent with the applicable provisions. Where necessary, the bureau concerned had to make new law or amend existing laws or adjust the relevant policy to ensure compliance with the international treaty/convention; and
- (g) EDB was the policy bureau responsible for addressing the concerns raised by GT about the training needs of NCS children with SEN. The HKSAR Government held the view that irrespective of race, mental and physical condition, children should be given equal

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opportunity to receive education in schools. In public sector schools, resources were given to render support to children with SEN, including NCS children with SEN. If there was any justifiable case, the English Schools Foundation could discuss with EDB for further provisions in the learning support classes in its mainstream schools.

Discussion

34. Mr WONG Yuk-man criticized the Administration for being perfunctory in preparing the HKSAR Report, which only gave a superficial account of human right policies and directions without touching on matters infringing human rights in Hong Kong. He expressed concern that nine incumbent and former LegCo Members who had participated in a radio programme as guests had been prosecuted under the Telecommunications Ordinance for involving in unauthorized broadcasting. He queried the basis for the Government to institute legal proceedings when the Magistrate had ruled that the relevant provision of the Ordinance was unconstitutional. Mr WONG expressed dissatisfaction that the HKSAR Report had not covered that incident, or incidents of police abuses, such as conducting unnecessary strip searches which infringed human rights.

35. Mr LEUNG Kwok-hung shared the view that the HKSAR Report was a propaganda brochure for tourists. He criticized that the Report had not covered infringements of human rights such as police abuses, stalling democratic development, implementing laws that were inconsistent with BL and HKBOR, etc.

36. Ms Emily LAU considered the HKSAR Report unacceptable. She said that although the HKSAR Report had to be short, the Administration could have reflected the human rights problems in Hong Kong concisely. She was disappointed that the HKSAR Report had not covered the following issues –

- (a) CE had retracted his word about taking forward constitutional development by deferring the consultation on the two electoral methods for 2012;
- (b) the Government had not pursued the implementation of dual universal suffrage in 2012 for the people of Hong Kong and it had not been stated unequivocally in the HKSAR Report that universal suffrage for the LegCo election would be implemented in 2020;
- (c) the UN Committee on the Elimination of Discrimination against Women had expressed concern that the electoral system of functional constituencies (FC) might constitute indirect discrimination against women resulting in unequal participation of women in political life; and

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- (d) the existing mechanism to handle complaints against police officers was defective as all complaints against the police would be referred to and investigated by the Complaints against Police Office, which was a branch of the Police Force.

37. USCMA responded that –

- (a) on constitutional development, the HKSAR Report had given an account of the Decision of the Standing Committee of the National People's Congress (NPCSC) made on 29 December 2007. If UNHRC wished to know about the latest development, the Administration was more than willing to give supplementary information; and
- (b) on women's rights, the Administration had considered the concluding comments made by the UN treaty bodies, and did not find any plausible argument that the electoral system of FC had been structurally unfair to women.

38. In response to members' comments on police abuses, Principal Assistant Secretary for Security (PAS(S)) said that –

- (a) for the Police's undercover operations against vice activities, strict internal guidelines were in place governing such operations, with which police officers engaged in such operations were required to strictly comply; and
- (b) taking into account comments of LegCo Members, the Police had revised their procedures and introduced new guidelines on searching of detained persons which had taken effect from 1 July 2008. The new procedures required that searches on detainees (in particular searches involving removal of clothing) should not be conducted arbitrarily and the reasons for and scope of searches had to be properly documented. The Police Force would conduct a second stage review to ascertain whether additional measures were warranted to further improve the handling of searches of detainees and would report the outcome of the review to the Subcommittee on Police's Handling of Sex Workers and Searches on Detainees under the LegCo Panel on Security in due course.

39. Dr PAN Pey-chyou said that human right was essential and precious, but the price for it was high. He noted that while some non-government organizations (NGOs) had criticized the human rights situation in Hong Kong, opinion surveys conducted in the past 10 years had indicated that the public did not perceive a deterioration in the human rights situation in Hong Kong. In fact, progress had been made in a number of areas including privacy, equal

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opportunities, freedom of the press and speech, etc. In his view, the human rights situation in Hong Kong was close to that of western countries.

40. Mr WONG Yuk-man said that while protection for human rights had improved as compared with the 1960's and 1970's, the following examples indicated that human rights protection had been deteriorating after the handover in 1997 –

- (a) the abolition of the two municipal councils whose members were returned by direct election;
- (b) the NPCSC Decisions on 26 April 2004 and 29 December 2007 to maintain the 50:50 ratio between Members returned by GCs and FCs respectively not in accord with the principle of "gradual and orderly progress" in constitutional development;
- (c) the retention of appointed membership in District Councils; and
- (d) the majority of owners of media organizations in Hong Kong being pro-establishment and exercising self-censorship in conducting their business.

41. Ms Cyd HO concurred with Mr WONG adding that –

- (a) there was insufficient monitoring over law enforcement agencies carrying out covert operations under the Interception of Communications and Surveillance Ordinance (Cap. 589);
- (b) the Public Order Ordinance (Cap. 245) had been amended to further restrict the freedom of assembly;
- (c) the problem of police abuses had become more prevalent; and
- (d) Ms Anna WU, the former Chairperson of the Equal Opportunities' Commission, had not been re-appointed because of her taking legal action to challenge against the Secondary School Places Allocation System adopted by the then Education Department.

42. Ms Cyd HO further pointed out that as the HKSAR Report had failed to report the actual human rights situation, it had defeated the purpose of having a meaningful dialogue with other Member States at the UN hearing. She asked about the criteria in determining the contents of the HKSAR Report.

43. USCMA explained that UNHRC required that a report on UPR should cover four to five key areas. In this connection, the HKSAR Report provided background information on the legal and constitutional framework within which human rights were protected, applicable human rights treaties, relevant local

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legislations and their progress (such as the enactment of Race Discrimination Ordinance), as well as several areas of public concern (such as constitutional development, the political appointment system) and some issues previously raised by UN treaty bodies.

44. Ms Emily LAU said that the consultation document inviting views on the HKSAR Report was issued to LegCo on 2 September 2008 and the consultation ended on 13 September 2008. As the majority of Members were heavily involved in the 2008 LegCo election at that time, neither the public nor Members were given sufficient time to give views on the consultation document. She queried the validity of the outcome of the consultation exercise.

45. Mr LEE Wing-tat held the view that the consultation exercise on the contents of the HKSAR Report, which lasted two weeks only, was a sham. He asked whether publicity had been carried out to inform the public about the consultation. He also requested the Administration to provide a chronology of the HKSAR Government's communications with the Mainland authorities on the submission of the HKSAR Report. Echoing Mr LEE's view, Ms Cyd HO said that the information would help improve future arrangements for conducting the consultation exercise.

46. USCMA responded that the HKSAR Government had issued the proposed outline of the report with the background and objectives of the review to consult the public. The document was sent to a broad spectrum of the community, including LegCo, relevant NGOs, members of Human Rights Forum and Ethnic Minorities Forum, etc, and was distributed through the district offices and on the Internet. The Administration had also issued a press release setting out the proposed outline of the report and informed the media about the work schedule. USCMA further explained that the HKSAR Government had made the best endeavour to compile the HKSAR Report within the required timeframe, and given that that was the first time for China to submit its report under the new UPR mechanism, the Administration would learn from the experience and improve the relevant arrangements in future. USCMA added that it was inappropriate for the Government to disclose details of internal discussion within the Government and its communication with the Mainland authorities.

47. Ms Emily LAU said that the Administration should have included in the HKSAR Report a progress report listing out the follow-up actions taken in response to the observations and recommendations made by various UN treaty bodies over the years. Echoing Ms LAU's view, Mr Albert HO urged the Administration to prepare such a report and release it to the public before the hearing on 9 February 2009.

48. Mr Ronny TONG said that the HKSAR Government should be shameful of its indifference towards the implementation of various human right treaties. He pointed out that different UN treaty bodies had reprimanded the HKSAR

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Government for inadequate protection of human rights on various fronts. However, the reports submitted to UN were often silent on the deficiencies and measures taken to address the concerns raised by the relevant UN treaty bodies. He cited the example that the UN Human Rights Committee had clearly indicated that it was unacceptable for HKSAR to continue the reservation of its right not to apply Article 25(b) of ICCPR.

49. USCMA responded that –

- (a) according to his recollection, the HKSAR Government had never been reprimanded by any UN treaty bodies for infringing human rights. These bodies had noted that the HKSAR Government had implemented measures to protect human rights, and had commented on the improvement made by the HKSAR Government in certain areas, while making recommendations in their concluding observations for HKSAR in some other areas;
- (b) in response to these recommendations, relevant government bureaux and departments had discussed how to follow up the recommendations and the HKSAR Government had reported the progress to UN accordingly. The Administration had also implemented some of the recommendations made by treaty bodies. For instance, the Race Discrimination Ordinance (Cap. 602) was enacted in July 2008 which reflected the Government's commitment to combat racial discrimination;
- (c) prior to the UPR Working Group session, each Member State would receive a compilation of the recommendations made in the concluding observations of treaty bodies in respect of HKSAR to facilitate review and examination. In the coming three weeks and during the UPR hearing, the Administration would be prepared to provide supplementary information to UNHRC to address concerns raised by Members States, if any; and
- (d) upon ratification of ICCPR in 1976, a reservation had been made reserving the right not to apply Article 25(b) to Hong Kong. After the establishment of HKSAR, in accordance with the CPG's notification to UN Secretary-General in June 1997 and Article 39 of the Basic Law, that reservation had continued to apply to HKSAR.

50. Referring to the Administration's responses, Mr LAW Yuk-kai said that –

- (a) UNHRC had notified HKHRM six months in advance to compile a submission for UPR but the Administration did not release the consultation document until early September 2008;

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- (b) at a previous hearing on the HKSAR Report submitted under ICCPR, the Chairman of UN Human Rights Committee had rebutted the explanation given by representatives of the HKSAR Government for the reservation against Article 25(b) of ICCPR as "shameless". Recently, the UN Committee on Elimination of Racial Discrimination (CERD) had called for more information and improvements on the Race Discrimination Bill. As the HKSAR Government had failed to do so, CERD had written to CPG expressing "regret" that its request had not been acceded to; and
- (c) the human rights situation in HKSAR had deteriorated since the handover in 1997. For example, according to a survey on press freedom commissioned by the Hong Kong Journalists Association, almost 60% of journalists considered that HKSAR enjoyed less press freedom when compared to 1 July 1997. Another example was EAC, under the undue influence of the Administration, had not introduced more stringent measures to regulate the conduct of exit polls to ensure fairness in an election.

51. USCMA reiterated that he did not recall any treaty bodies having ever reprimanded the HKSAR Government on human rights issues, but he would ascertain with colleagues on the point raised by Mr LAW after the meeting.

52. In response to members, USCMA said that the China Report, the report of UN which compiled information contained in the reports of treaty bodies, and a summary of stakeholders information were available on the UN website. He would provide the relevant link to members after the meeting.

(Post-meeting note: The information was issued to members vide LC Paper No. CB(2)716/08-09 on 20 January 2009.)

53. The meeting ended at 5:21 pm.

Council Business Division 2
Legislative Council Secretariat
14 May 2009