

**立法會**  
**Legislative Council**

Ref : CB2/PL/CA

LC Paper No. CB(2)114/09-10  
(These minutes have been seen  
by the Administration)

**Panel on Constitutional Affairs**

**Minutes of meeting**  
**held on Monday, 15 June 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 Miriam LAU Kin-ye, GBS, JP  
Hon Emily LAU Wai-hing, 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 Kwok-kin, BBS  
Hon WONG Yuk-man  
Hon IP Wai-ming, MH  
Hon IP Kwok-him, GBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Dr Hon PAN Pey-chyou  
Dr Hon Samson TAM Wai-ho, JP

**Member attending** : Hon Frederick FUNG Kin-kee, SBS, JP  
Hon Paul TSE Wai-chun

**Members absent** : Hon WONG Yung-kan, SBS, JP  
Hon LAU Wong-fat, GBM, GBS, JP  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon WONG Sing-chi

**Public Officers attending** : Item IV

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

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

Item V

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

Ms IP Ling-bik  
Principal Assistant Secretary for Education  
(Education Commission and Planning Division)

Mr CHOW Wing-hang  
Principal Assistant Secretary for Security

Dr MA Chi  
Deputy Executive Director (Training Services),  
Employees Retraining Board

**Attendance by  
invitation** :

Item V

Equal Opportunities Commission

Mr Raymond TANG Yee-bong  
Chairperson

Dr Ferrick CHU Chung-man  
Head, Policy & Research

Hong Kong Unison Ltd.

Miss Fermi WONG  
Campaign Director

Mr Alan DIN  
Project Officer

Hong Kong Minority Communities Association

Mr Rai Ekraj  
Chairman

Mr MAK Ip-sing  
Member, Yuen Long District Council

Hong Kong Human Rights Commission

Ms Annie LIN  
Community Organizer

Society for Community Organization

Miss SZE Lai-shan  
Community Organizer

New Immigrants' Mutual Aid Association

Ms CHAN Kwai-chun

Hong Kong Human Rights Monitor

Mr KWOK Hiu-chung  
Education Officer

Civic Party

Mr Dennis KWOK  
Vice Chairman, Constitution & Governance Branch

Ms Jennifer Eagleton  
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

Mrs Eleanor CHOW  
Senior Council Secretary (2)4

Mrs Fanny TSANG  
Legislative Assistant (2)3

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**I. Confirmation of minutes of meeting**  
[LC Paper No. CB(2)1806/08-09]

The minutes of the meeting held on 16 February 2009 were confirmed.

**II. Information papers issued since the last meeting**

2. Members noted that the following papers had been issued since the last meeting -

- (a) correspondence between Civil Human Rights Front and the Constitutional and Mainland Affairs Bureau regarding the arrangement for human rights forum [LC Paper Nos. CB(2)1716/08-09(01) and (02)]; and
- (b) referral from the Complaints Division of the Legislative Council (LegCo) Secretariat attaching the Administration's response on legislation against discrimination on grounds of sexual orientation [LC Paper No. CB(2)1855/08-09(01)].

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**III. Items for discussion at the next meeting**

[LC Paper Nos. CB(2)1808/08-09(01) and (02)]

3. Members agreed to discuss at the next meeting the following items proposed by the Secretary for Constitutional and Mainland Affairs (SCMA) -

- (a) Administrative guidelines on promotion of racial equality; and
- (b) Report of the Hong Kong Special Administrative Region (HKSAR) for the United Nations (UN) Human Rights Council Universal Periodic Review.

4. Noting that the last Council meeting would be held on 8 July 2009 and the Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man intended to hold a full-day meeting on 20 July 2009, members agreed that the next Panel meeting, originally scheduled for 20 July 2009, should be advanced to be held on 7 July 2009 at 4:30 pm (or immediately after the Chief Executive's Questions and Answer session scheduled for the same day, whichever was later).

5. Ms Emily LAU enquired whether the issue relating to discrimination against sexual orientation would be discussed at the next meeting. SCMA suggested that the Administration would revert to the Panel at the beginning of the next legislative session. Members agreed.

**IV. Proposal on separation of the posts of the Chairperson and the Chief Executive Officer of the Equal Opportunities Commission**

[LC Paper Nos. CB(2)1808/08-09(03) and (04)]

6. SCMA briefed members on the background and the options for separating the posts of the Chairperson and the Chief Executive Officer (CEO) of the Equal Opportunities Commission (EOC). He said that in Chapter 3 of Report No. 52 of the Director of Audit (the Audit Report), which was tabled at LegCo on 22 April 2009, Audit had recommended that the Administration should expedite action to take forward the proposal of separating the posts of the Chairperson and CEO of EOC. In response, the Administration proposed the following three possible options for members to give their views -

- (a) Option A - maintaining the status quo (i.e. a full-time executive Chairperson and not reinstating the post of CEO);
- (b) Option B - appointing a part-time non-executive Chairperson and a full-time CEO; and
- (c) Option C - appointing a full-time executive Chairperson and a full-time CEO.

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Assessments of the three options were detailed in the Administration's paper [LC Paper No. CB(2)1808/08-09(03)].

7. Mrs Regina IP said that the workload of many of the advisory and statutory bodies in the public sector, such as the Education Commission and the University Grants Committee, was very heavy because apart from performing their advisory role, these bodies were also responsible for formulating policies. She enquired about the criteria in determining whether the posts of the chairperson and CEO of these bodies should be separated and whether the chairperson should be appointed on a full-time or part-time basis. She also enquired about the arrangement for the Chairperson of the Housing Authority. In her view, whether EOC could remain its independence depended very much on the person to be appointed as Chairperson.

8. SCMA responded that the Housing Authority used to have a part-time chairperson working together with a full-time Director of Housing prior to 2002. After 2002, the policy secretary who was responsible for the housing portfolio had become the ex-official chairperson of the Housing Authority. The Home Affairs Bureau had presented the findings of its review of the corporate governance of the 15 non-departmental public bodies to the Panel on Home Affairs (the HA Panel) in January 2006. Bodies such as the Trade Development Council and the Tourism Board were governed by a management board which consisted of a part-time chairperson and a full-time CEO. When the review was considered by the HA Panel, some members expressed the view that it was inappropriate to compare the management structure of EOC with that of other public bodies of a trade or commercial nature. These members had stressed that given the unique nature and role of EOC in the protection of human rights, its independence was fundamental. SCMA said that whether the two posts should be separated would depend on which option would ensure independence and better governance of EOC.

9. Mr LEE Wing-tat said that there were merits and demerits to separate the posts of the chairperson and CEO. He expressed concern that the key personnel of non-departmental public bodies were mostly taken up by retired civil servants and their board members were usually pro-establishment. He pointed out that although civil servants were familiar with the operation of the Government, they were not as innovative as people from the private sector who would inject new ideas in running the public bodies concerned. He urged the Government to consider recruiting the Chairperson and CEO of EOC from the private sector and appointing Commission members who held views different from the Government. He also suggested that the appointment of personnel to non-departmental public bodies should be endorsed by LegCo.

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10. SCMA responded that the Sex Discrimination Ordinance provided that the authority for appointment of the Chairperson and Members of EOC rested with the Chief Executive (CE). As the term of the incumbent Chairperson would expire in January 2010, the recruitment exercise would be conducted starting from July 2009. The Administration had made clear to the Public Accounts Committee (PAC) which was scrutinizing the Audit Report that the Chairperson of EOC would be appointed through open recruitment. As for the appointment of EOC Members, the Commission consisted of a fairly balanced mix of expertise and representatives of different sectors of the community, including pan-democratic Members, in taking forward the work to promote equal opportunities and eliminate discrimination under the existing legal framework. As regards the composition of the board members of other public bodies, individual bureaux would take into account the characteristics of the public body concerned to identify suitable persons for appointments.

11. Mr Ronny TONG said that at the meeting of the HA Panel in January 2006 when the proposal on separation of the two posts were discussed, many members had expressed strong reservations about the proposal. He respected those views and preferred maintaining the status quo as the new task of implementing the Race Discrimination Ordinance (RDO) would not increase the workload of EOC to the extent that it would justify the separation of the two posts. He pointed out that the reinstatement of a full-time CEO post would make the post of the Chairperson ornamental in nature. He also enquired about the justifications for the separation proposals of Options B and C.

12. SCMA responded that having regard to the recommendation of the reports of the two internal reviews conducted by EOC in 2004 and the report of the Independent Panel of Inquiry on the Incidents Relating to EOC in 2005, the Administration's proposal to separate the posts of the Chairperson and CEO of EOC was presented to the HA Panel in January 2006. The proposal sought to address the concern about over-concentration of power in the Chairperson. It was believed that a non-executive Chairperson was more independent from CEO and would focus more on the core statutory and regulatory functions of EOC and oversee the work of CEO. This would facilitate EOC in strengthening its corporate governance. Some members of the HA Panel had then expressed reservations about the 2006 proposal which recommended, among others, the appointment of a part-time Chairperson. They were worried that the post of a part-time Chairperson would not be given the necessary executive authority, and hence his powers would be undermined, resulting in EOC becoming executive-led. Having regard to the reservations expressed by members of the HA Panel, the Administration had proposed in Option C the appointment of a full-time Chairperson and a full-time CEO. The Administration would consider members' views on the options. SCMA further said that EOC had put in a lot of effort to prepare for the implementation of RDO in the past six months, including the preparation of a Code of Practice on Employment. It was envisaged that the

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handling of complaint cases on racial discrimination and liaison with other relevant stakeholders would increase the workload of EOC which would be assessed after RDO came into full operation.

13. Mr LEUNG Kwok-hung said that it was the view of the League of Social Democrats that candidates to fill the vacancies of the Chairperson and CEO should be identified by the Administration and screened by LegCo. There should also be a revamp of the internal structure of EOC with a view to improving its governance.

14. Mr WONG Yuk-man declared that he was a member of PAC. He said that from a macroscopic point of view, the corporate structure of all the non-departmental public bodies should be reviewed in a comprehensive manner as their problems emerged one after another. He had attended four PAC public hearings and was disappointed at the performance of the senior management of EOC. As an organization responsible for the promotion of human rights and equal opportunities, it was bizarre to find that EOC's internal operation was corrupted as reflected in its lack of control over the spending by senior officials. He considered that EOC had been operating in a mess in the past few years because the present arrangement did not provide sufficient safeguard to check against the power of the full-time executive Chairperson. Mr WONG expressed support for the proposal to separate the posts of the Chairperson and CEO and his preference for Option B. He said that as the major policy decisions would continue to be made by the Commission rather than the Chairperson, the Administration should ensure that there were different voices in the Commission to represent the interests of the different sectors of the community. He also expressed support for the open recruitment of the Chairperson and CEO of EOC and advocated a transparent appointment process for Commission members.

15. Dr Philip WONG, Chairman of PAC, clarified that Mr WONG Yuk-man's views did not represent those of PAC. He said that by convention, PAC members would not give their views on the Audit Report until PAC had presented its report to the Council. In addition, PAC was responsible for considering the reports of the Director of Audit on the accounts and the results of value for money audits of the Government and other organizations which were within the purview of public audit. Policy issues fell outside the purview of PAC and PAC respected the views of relevant Panels in that regard.

16. Ms Emily LAU expressed concern about the erratic situation about the previous appointments of the executive Chairperson whereby four persons had been appointed to the post in the past 10 years with two staying in the office for merely three months and one year respectively. In addition, a number of incidents had occurred during the period which had affected EOC's credibility. Ms LAU said that the existing appointment mechanism had failed to recruit a capable and independent person who had the vision to lead EOC to promote equal opportunities and eliminate discrimination. Some non-government organizations



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(NGOs) were not entirely satisfied with the work of EOC which had rarely instituted legal proceedings against the Government for non-compliance with anti-discrimination ordinances. She did not have the confidence that the Administration was committed to combating discrimination as the business community resented the making of anti-discrimination legislation. She enquired that if the two posts were to be separated, whether both would be pitched at a level equivalent to D8 and whether a nominating committee would be set up for making appointments to EOC.

17. Ms Cyd HO said that EOC had turned from a respectable organization upon its inception to a laughing stock in the community. The incumbent executive Chairperson was not committed to promoting equal opportunities as he was not prepared to publish a Code of Practice on Employment in the languages of the ethnic minorities. The Administration should review the appointment procedure to identify a capable Chairperson to help EOC regain its credibility. Ms HO stressed that it was important to recruit a Chairperson who had the vision and was committed to leading EOC in enforcing equal opportunities. In order to ensure that the post of the Chairperson would be taken up by a person with the right calibre, she supported that the candidate be interviewed by LegCo before an appointment was made. The appointed Chairperson should then review the administrative structure of EOC with a view to improving overall governance.

18. Echoing the views of Ms Cyd HO, Mr Albert HO added that apart from enforcing the existing anti-discrimination ordinances, the Chairperson should assess the effectiveness and deficiencies of the existing legislation and propose to the Administration legislative measures to cover other areas of discrimination. The Chairperson should strive to make Hong Kong a role model in the protection of equal opportunities. In this connection, the Chairperson should be experienced in dealing with human right issues and had made contribution in this regard. He/she should possess courage and perseverance to withstand pressure from the Government in particular on matters of principle. Mr HO remarked that whether the posts of the Chairperson and the CEO should be separated was not a primary issue. He advocated a transparent recruitment exercise under which the performance of the prospective candidate would be assessed by LegCo Members by way of an interview. He also called on EOC to enhance the transparency of its operation as he noted that its meetings were held in camera.

19. In response to members, SCMA made the following points -

- (a) if the pre-2000 arrangement with separation of the two posts were reinstated, the Chairperson would be pitched at a level equivalent to D8 and CEO would be pitched at a level equivalent to D3. Both vacancies would be advertised for open recruitment;
- (b) CE was empowered under the Sex Discrimination Ordinance to appoint the Chairperson and members of the EOC. The

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Administration had informed PAC during its hearing that CE would appoint a Chairperson who was experienced and capable of leading a medium-size organization and who was committed to combating discrimination and promoting equal opportunities. Upon appointment, the Chairperson would meet with LegCo Members to give an account of his/her work plan;

- (c) the Administration was committed to implement four anti-discrimination ordinances notwithstanding that some quarters in the business community might have some resistance when these ordinances were first introduced. Based on the direction to be led by the Chairperson and the Commission, CEO would implement measures to enforce the anti-discrimination legislation under EOC's purview and to ensure prudent use of public money in its operation;
- (d) It had been one of EOC's statutory functions to review and propose amendments to the existing anti-discrimination ordinances. EOC was tasked to safeguard equal opportunities in the community and had monitored the performance of the Government and other organizations in this aspect of work. EOC would, under appropriate circumstances, provide legal assistance to the aggrieved person or institute legal proceedings in its own name. The operation of EOC was transparent to a certain extent. Although its meetings were held in camera, the minutes of the Commission meetings were uploaded onto EOC's website for public access; and
- (e) in the light of the recommendations made in the Audit Report and subject to the recommendations of the PAC report, the Administration would recommend EOC to consider, in the coming six months, commissioning an external accountant to conduct compliance and management audit with a view to improving its governance.

20. Mrs Sophie LEUNG said that the Administration should conduct a comprehensive review of the governing structure of non-departmental public bodies, as there were inconsistent practices, e.g. some chairpersons received remuneration while some did not. She expressed support for Option B.

21. Mr IP Kwok-him said that the three options had their pros and cons and it would be useful if the Administration could provide an analysis of the present problems to facilitate members' deliberations. At this stage, he was inclined to support separation of the two posts. Before deciding whether to support Option B or C, he would need more information on the delineation of duties between the Chairperson and CEO, as well as the number of chairpersons working on part-time and full-time basis in other non-departmental public bodies.

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22. Mr Frederick FUNG declared that he was a Commission member. He said that EOC should monitor the work of the Government and other organizations to ensure that they had complied with the existing anti-discrimination ordinances. In addition, EOC should identify equal opportunity problems and conduct research on issues relevant to discrimination and make recommendations to the Government. He shared the views of Mr Albert HO that the Chairperson should initiate legislative proposals to cover other areas of discrimination for the consideration of the Administration. He considered that the power of the incumbent Chairperson too extensive as he was overseeing the work of the Commission rather than the other way round. If necessary, the existing legislation should be amended to empower the Commission to oversee the Chairperson. Making reference to the anti-discrimination authorities in the United Kingdom and New Zealand where the CEO concerned implemented anti-discrimination policies as directed by the chairperson, Mr FUNG expressed support for separation of the two posts and said that the Chairperson should at least be a part-time remunerated post.

23. Ms Miriam LAU said that separating the posts of the chairperson and CEO appeared to be the norm for corporate governance in public bodies. She, however, did not consider that separating the two posts would solve all the problems. Ms LAU stressed that the duties of the chairperson and CEO should be clearly delineated to ensure proper check and balance. Pointing out that the operation of EOC had been more transparent during its inception, Ms LAU said that EOC could enhance its transparency by, for example, arranging a press briefing after each closed door meeting. She further said that in order to regain public confidence and credibility of EOC, the Chairperson so appointed should be a widely acceptable figure in the community. She expressed support for Option B.

24. Some members including Mrs Regina IP, Mr LEE Wing-tat, Ms Emily LAU, Mr Albert HO and Ms Miriam LAU took the view that whether EOC could remain its independence and improve its governance would very much hinge on the appointment process for its Chairperson, CEO and Commission members, as well as the calibre of the persons appointed to lead EOC. They urged the Administration to enhance the transparency and neutrality of the appointment process.

25. SCMA responded that the Administration was open to members' views on these three options. It was mindful of the need to ensure that any changes to the corporate structure would not undermine the independence of EOC and should avoid any such public perception. He noted that the majority of members had indicated support for the separation of the posts of the Chairperson and CEO. It was the intention of the Administration to recruit a Chairperson who was committed and had the necessary executive ability to lead the Commission. There would be an open recruitment exercise to ensure transparency. Following the separation of the two posts, only one post would be pitched at the rank

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equivalent to D8. As the term of office of the incumbent executive Chairperson would expire in January 2010, the vacancy would be advertised during the summer of 2009. By then, the Administration would take a final view on whether the Chairperson should work on a full-time basis or otherwise.

26. Some members including Ms Emily LAU, Mr Frederick FUNG, Ms Cyd HO and Mr CHEUNG Kwok-che pointed out that the Administration would need to determine whether the Chairperson should work on a full-time or part-time basis before the open recruitment exercise commenced. They enquired when the Administration would revert to the Panel on the decision.

27. SCMA responded that the Administration would consult EOC on the options before deciding the way forward. The Chairman requested the Administration to advise the Panel of its decision in due course.

*(Post-meeting note: The Administration has subsequently advised that after taking into account the comments received, it considers that at this stage, the current position in respect of the Chairperson should be maintained, while the pre-2000 arrangement would be reinstated by creating a post at a level equivalent to D3 to oversee the administrative and operational matters and to strengthen the governance of EOC. The position could be given the title of Chief Operations Officer to reflect the role of the post. The Administration's letter was issued to members vide LC Paper No. CB(2)2136/08-09 on 7 July 2009.)*

**V. Report of the Hong Kong Special Administrative Region (Part two of the People's Republic of China Report) submitted to the United Nations under the International Convention on the Elimination of All Forms of Racial Discrimination**

[LC Paper Nos. CB(2)1808/08-09(05) and (06), CB(2)1860/08-09(01) and (02) and CB(2)1905/08-09(01) - (05)]

28. Members noted that China's 10<sup>th</sup> to 13<sup>th</sup> combined report under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), of which the HKSAR Report formed a part, was submitted to UN in June 2008. The UN hearing was tentatively scheduled for August 2009. When the Panel discussed the HKSAR Report at its meeting on 15 December 2008, members agreed to further discuss the subject and receive views from the public at a later meeting.

29. Under Secretary for Constitutional and Mainland Affairs (USCMA) briefed members on the Administration's paper [LC Paper No. CB(2)1808/08-09(05)] which set out the major developments in relation to the efforts of the Administration on the promotion of racial harmony and racial equality, including the provision of support services for ethnic minorities since the enactment of RDO the year before.

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30. Members noted the following papers on the subject under discussion -
- (a) background brief prepared by the LegCo Secretariat [LC Paper No. CB(2)1808/08-09(06)]; and
  - (b) submission from Growing Together [LC Paper No. CB(2)1905/08-09(05)].

Presentation of deputations' views

31. Mr Raymond TANG Yee-bong presented the views of EOC as detailed in the submission [LC Paper No. CB(2)1860/08-09(01)]. EOC expressed particular concern on two aspects, namely policy of eliminating racial discrimination under Article 2 of ICERD and guarantee of rights of ethnic minorities to education under Article 5 of ICERD.

32. Miss Fermi WONG presented the views of Hong Kong Unison Limited (HKUL) as detailed in the submission [LC Paper No. CB(2)1905/08-09(01)]. She expressed discontent that the HKSAR Report was telling half truths as it failed to reflect faithfully the problems faced by ethnic minorities in Hong Kong. HKUL was concerned that unequal opportunities were still found in a variety of areas including education, employment, training, provision of public services and social services, etc. She also expressed concern that the Government had refused to draw up a Race Equality Scheme and only undertaken to compile a set of administrative guidelines on promotion of racial equality for key government bureaux and departments, which had no binding effect.

33. Mr Rai Ekraj presented the views of Hong Kong Minority Communities Association (HKMCA) as detailed in the submission [LC Paper No. CB(2)1905/08-09(02)]. He expressed concern that all the key positions in the Executive, the Legislature and the Judiciary were held by Chinese. As the education support provided to non-Chinese speaking (NCS) ethnic minorities were insufficient, the majority of them failed in public examinations and could not take up senior positions in the community.

34. Mr MAK Ip-sing, member of Yuen Long District Council and Chairman of Democratic Alliance, presented his views as detailed in the submission [LC Paper No. CB(2)1905/08-09(03)]. He said that ethnic minorities were being discriminated against under the present policy. He urged the Administration to ensure that ethnic minorities would have equal opportunities in terms of receiving education and seeking employment.

*(The Deputy Chairman took the chair as the Chairman left the meeting at this juncture for other important commitment.)*

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35. Ms Annie LIN of Hong Kong Human Rights Commission (HKHRC) expressed concern about the discriminatory treatment experienced by ethnic minorities who were detained by law enforcement agencies (LEAs), and the absence of a legal regime to deal with applications from asylum seekers because the Government had not ratified the UN Convention relating to the Status of Refugees (the Refugee Convention). Views of HKHRC were detailed in the joint-submission [LC Paper No. CB(2)1860/08-09(02)]. Ms LIN added that as the Government had not made a declaration under Article 14 of ICERD, direct communication could not be established between the UN Committee on the Elimination of Racial Discrimination and individuals or groups of individuals claiming to be victims of a violation of ICERD in Hong Kong.

36. Miss SZE Lai-shan presented the views of Society for Community Organization (SOGO) as detailed in the submissions [LC Paper Nos. CB(2)1860/08-09(02) and CB(2)1905/08-09(04)]. SOGO was particularly concerned about discrimination against new arrivals from the Mainland, who were excluded from the scope of RDO and had no avenue to seek redress.

37. Ms CHAN Kwai-chun of New Immigrants' Mutual Aid Association (NIMAA) gave an account of how new arrivals from the Mainland were discriminated against in work and schools because of their identity, behaviour, appearance and language accent. She urged the Administration to establish a mechanism to enable new arrivals to lodge complaints against discrimination. Views of NIMAA were detailed in the submissions [LC Paper Nos. CB(2)1860/08-09(02) and CB(2)1905/08-09(04)].

38. Mr KWOK Hiu-chung presented the views of Hong Kong Human Rights Monitor (HRM) as summarized below -

- (a) exclusion of new arrivals from the Mainland from the scope of the legislation, the various exemptions provided for in RDO and failure to include provisions on discrimination on the basis of language although language barrier might lead to indirect discrimination had undermined the effectiveness of RDO in promoting racial harmony and equality in Hong Kong;
- (b) although RDO covered the Government, it did not cover all government functions and powers. In addition, the administrative guidelines on promotion of racial equality were compiled for key government bureaux and departments only and had no binding effect. The Administration should provide information on the resources allocated and timetable for implementing measures to enforce RDO;
- (c) the policies related to the employment of foreign domestic helpers (FDHs), such as the imposition of the Employees Retraining Levy and their exclusion from the proposed statutory minimum wage (SMW) legislation, were discriminatory;

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- (d) ethnic minorities had been subjected to racial discrimination and harassment by officers of LEAs. The complaints against police officers should be investigated by a body independent of the Police Force. The Administration should also step up training and introduce measures to prevent abuse of power by LEAs;
- (e) ethnic minorities were not given equal opportunities in employment including promotion in the civil service as many of them could not meet the Chinese proficiency requirement; and
- (f) the quality of interpretation services provided to ethnic minorities by the four regional support service centres had been called into question and the Administration should formulate a long-term policy to address the problem.

39. Ms Jennifer Eagleton of Civic Party elaborated on a police investigation involving a FDH to illustrate that the provision of interpretation services to new NCS immigrants in making statements in police stations was inadequate. She said that language was the key to foster better cultural understanding and urged the Administration to introduce measures to enhance interpretation services provided for ethnic minorities and help new immigrants learn the Chinese language.

Response of the Administration

40. USCMA made a general response to the issues raised by the deputations as follows -

- (a) the Administration was formulating administrative guidelines on promotion of racial equality for bureaux and departments concerned and relevant public authorities to follow in their formulation and implementation of relevant policies and measures. The Administration would prepare a paper for the Panel's discussion at the next meeting;
- (b) the appointments to the civil service were based on open and fair competition. The recruitment policy of the Administration was to appoint the most suitable person. As the Government provided various services to the community, the policy objective was to maintain a bilingual civil service. All civil service grades were required to meet Chinese and English language proficiency requirements that were commensurate with the job requirements. The Administration had reservations about the suggestion of allocating a specific percentage of civil service posts to ethnic minorities as it might constitute racial discrimination and subject to legal challenge;

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- (c) on the proposed SMW legislation, the Labour and Welfare Bureau had consulted the relevant stakeholders and were finalizing the proposal. It would consider a number of factors in deciding whether FDHs should be excluded from the SMW legislation, including the difficulty in ascertaining the actual hours worked by live-in FDHs in order to determine the hourly wages due, the higher disposal income from provision of other in-kind benefits for live-in FDHs, the socio-economic impacts on Hong Kong if the existing policy governing the employment of FDHs were to be changed, etc.

41. On the education support provided to ethnic minorities, Principal Assistant Secretary for Education (Education Commission and Planning Division) (PAS/E) said that the Education Bureau (EDB) had put in place a series of measures related to the learning and teaching of the Chinese language for NCS students as follows -

- (a) after consultation with relevant stakeholders, the Supplementary Guide to the Chinese Language Curriculum for NCS Students (the Guide) was developed and issued. The Guide included four curriculum modes to meet the diverse needs and aspirations of NCS students at different stages of development as well as the needs of schools for flexible adoption;
- (b) with the issue of the Guide, learning materials covering both the primary and secondary levels were distributed to schools and NCS students. Schools were also provided with reference materials including self-learning packages. The assessment tools was expected to be completed in 2010;
- (c) 22 designated schools had been provided with a recurrent grant to develop teaching materials for NCS students and share with other schools admitting NCS students; and
- (d) having regard to NCS students' concern over the examination fee level of the General Certificate of Secondary Education (GCSE) (Chinese) Examination, an alternative Chinese Language qualification, EDB was actively exploring means to alleviate the financial burden of NCS students in taking GCSE (Chinese) including the feasibility of lowering the fee.

42. On some deputations' concerns about discriminatory treatment of ethnic minorities by officers of LEAs, Principal Assistant Secretary for Security responded as follows -

- (a) to enhance police officers' awareness of the protection of the rights ethnic minorities, the basic training programme of the Police



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included topics such as protection of human rights and racial equality. To address the language barrier faced by ethnic minorities held in police custody, interpretation services would be provided in accordance with the internal guidelines. Some standard forms and notices were also available in common ethnic minority languages;

- (b) a NCS concern group was established in the Police Force in April 2006 to enhance communication between the authorities and ethnic minority communities. The Police also maintained liaison with local ethnic minority groups through visits and personal contacts by Police Community Relations Officers in Districts with a high concentration of ethnic minority population. The Police would continue with such efforts; and
- (c) Hong Kong adopted a liberal visa regime under which citizens of over 170 countries could visit Hong Kong without a visa. In the light of the unique situation of Hong Kong including its small size and dense population, the Government had a firm policy of not granting asylum. Although the Refugee Convention and its protocol did not apply to Hong Kong, Hong Kong would not expel or extradite a person to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture upon return.

43. On issues relating to training and employment services for ethnic minorities, Deputy Executive Director (Training Services) of Employees Retraining Board responded as follows -

- (a) the Employees Retraining Board (ERB) started to provide training and employment services to ethnic minorities in 2007-2008. About 2 000 training places had been allocated to ethnic minorities in 2008-2009 and 2009-2010 respectively. Training providers were given the flexibility to hire training assistants who were ethnic minorities. ERB would follow up on the job placement of ethnic minority trainees after completion of training;
- (b) the promotional leaflet for courses offered to ethnic minorities was published in six common ethnic minority languages. Visits were paid to temples, community centres and schools to promote ERB courses to ethnic minorities; and
- (c) to ensure that the courses to be provided would meet the needs of ethnic minorities, a survey on the training requirements of ethnic minorities would be conducted in 2009-2010.

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44. On some deputations' concerns about discrimination against new arrivals from the Mainland, USCMA responded as follows -

- (a) a series of services were provided to new arrivals to help them adapt to the life of Hong Kong. The Home Affairs Department (HAD) coordinated the provision of these services. A Service Handbook for New Arrivals which contained updated information on the range of public services available to the newly-arrived migrants was published annually. HAD also collaborated with and allocated resources to non-governmental organizations (NGOs) to organize integration programmes for new arrivals;
- (b) new arrivals could access Labour Department's comprehensive employment services through its 12 job centres. The job centres conducted regular employment briefings tailor-made for the needs of new arrivals to facilitate their better understanding of the local job market. ERB also offered training courses to new arrivals who met the eligibility requirements;
- (c) EDB provided school placement service for students newly arrived in Hong Kong. These students might attend a six-month full-time Initiation Programme that helped them integrate into the community and education system before their admission to the public sector schools. EDB also provided subsidies for NGOs to run a 60-hour Induction Programme which covered personal development, social adaptation as well as basic learning skills for these students;
- (d) a wide range of publicly-funded welfare services were provided to help Mainland-Hong Kong families handle problems arising from geographical separation and to facilitate the early integration of their family members into the local community after they arrived in Hong Kong. Relevant services included those provided by the 61 Integrated Family Service Centres and the 135 Integrated Children and Youth Service Centres; and
- (e) new arrivals which failed to meet the seven-year residence requirement but had grave difficulties in meeting imminent housing needs could apply to the Social Welfare Department (SWD) for compassionate rehousing. SWD would recommend eligible cases to the Housing Department for consideration to waive the residence requirement on flat allocation.

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Issues raised by members

*The HKSAR Report*

45. Ms Emily LAU expressed regret that China as a Member State was obligated to submit its report on a regular basis, but the HKSAR Report, which should be submitted to UN in 2003, was deferred until 2008 because China had not made any report since the UN hearing in 2001. She also considered the content of the HKSAR Report inadequate.

46. Mr Ronny TONG expressed dissatisfaction that the HKSAR Report failed to reflect faithfully the problem of racial discrimination in Hong Kong, as it was telling half truths. He considered that the Administration should include in the HKSAR Reports a chapter on areas of improvement, how the objectives would be achieved, what policies would be introduced and the timetable to implement measures to eliminate all forms of racial discrimination.

47. USCMA responded that the HKSAR Report had given a full account of the situation in Hong Kong, including background information on the legal and constitutional framework, and major developments in relation to the efforts of the Administration on the promotion of racial harmony and racial equality. If Members States and UN had any queries about the HKSAR Report during the hearing, the Administration would provide them with the requisite information.

*Protection to ethnic minorities*

48. Referring to the strong views of HKMCA that ethnic minorities had been excluded from the political structure of Hong Kong and hence could not participate in the formulation of policies, Ms Emily LAU said that education was the key to lift ethnic minorities out of poverty. The education support provided to ethnic minority children, however, was inadequate. According to HKUL, out of 533 primary and secondary schools admitting ethnic minority children, only 22 were designated schools with a grant provided to support the learning of Chinese by NCS students. She expressed concern that ethnic minority children were hindered from gaining admission to secondary schools or universities because of the failure to attain academic qualifications in the Chinese language.

49. USCMA said that EDB had been deploying more resources in various aspects to facilitate early integration of NCS students into the local education system and the wider community. As mentioned earlier, EDB was exploring the feasibility of lowering the examination fee for GCSE (Chinese) so that ethnic minority children would not be hindered from attaining an alternative Chinese language qualification because of a lack of means.

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50. Ms Cyd HO noted that many ethnic minority children left schools after Secondary Three and only seven ethnic minority children were admitted to universities in 2007. She enquired whether the Administration would consider providing more university places for ethnic minorities.

51. PAS/E responded that the Administration had provided a paper separately to the Panel on Education reporting the situation of admission of NCS students with alternative Chinese qualification(s) to Secondary Six and institutions under the Joint University Programmes Admission System (JUPAS). She pointed out that for university admission setting a quota for NCS students would have the effect of disfavours the local students who were equally situated but were not members of the preferred ethnic groups. This might constitute racial discrimination.

52. Mr Albert HO expressed concern that the opportunity for NCS students to gain admission to secondary schools and universities was hindered by their proficiency in the Chinese language.

53. USCMA and PAS/E responded that the University Grants Committee-funded institutions had, starting from 2008, provided further flexibility for acceptance of alternative Chinese language qualification(s) for application under JUPAS. For admission to Secondary Six, the Admission Procedure was rationalized to tie in the different dates of release of results of HKCEE and GCSE(Chinese), the latter being an overseas examination. Public-sector schools were invited to accept alternative Chinese language qualifications(s) under Secondary Six admission and to make conditional offers to eligible applicants under specified circumstances pending the release of the relevant examination results.

54. Mr Albert HO queried about the basis for requiring ethnic minorities meeting the Chinese proficiency requirement in order to secure employment in the civil service. He pointed out that the Chief Executive of the Hospital Authority and the Law Draftsman were both monolingual. He requested the Administration to provide a paper explaining why civil servants were required to be bilingual and why exemptions were granted to certain civil service posts. USCMA undertook to follow up on the request.

Admin

*Protection to new arrivals from the Mainland*

55. Dr Priscilla LEUNG said that she had all along disagreed with the exclusion of new arrivals from the Mainland from the scope of RDO given that discrimination against these new arrivals did exist which was regarded by the Administration as social discrimination. She expressed concern that there was a lack of avenue for new arrivals who were victims of discrimination to seek redress.

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56. Echoing the views of Dr Priscilla LEUNG, Ms Audrey EU enquired whether the Administration intended to introduce new legislation to combat discrimination against new arrivals and whether there was a mechanism to handle complaints regarding discriminatory treatment experienced by new arrivals from the Mainland.

57. USCMA responded that the definition of race in RDO was consistent with that of UN and discrimination against new arrivals was outside the scope of the legislation according to such definition. The Administration had no intention of introducing a separate piece of legislation to deal with discrimination against new arrivals at this stage. The problem of social discrimination had to be tackled by educating the public about human rights and equal opportunities. As mentioned earlier, HAD as a co-ordinator would provide assistance to new arrivals and EOC would work towards eliminating discrimination. Mr LEUNG Kwok-hung criticized the Administration for its refusal to legislate to combat discrimination against new arrivals from the Mainland.

58. Ms Margaret NG expressed dissatisfaction that while the Administration had claimed that the problem of discrimination against new arrivals from the Mainland which was a form of social discrimination should be tackled by public education, the Administration had not formulated any policy to address social discrimination. She pointed out that the services provided by HAD sought to help new arrivals integrate into the community and did not deal with the problem of discrimination. Ms Cyd HO said that as the mission of EOC was to eliminate discrimination, it should consider putting in place a mechanism to deal with complaints against discrimination of new arrivals from the Mainland and collecting statistics on the number of complaints received which could reveal seriousness of the problem. Ms Audrey EU requested the Administration to provide a written response explaining the mechanism in handling complaints from new arrivals on discriminatory treatment in work and in schools, and how the Administration would tackle such form of discrimination. USCMA undertook to ascertain from HAD and revert to the Panel accordingly.

Admin

59. The meeting ended at 5:30 pm.