

立法會
Legislative Council

LC Paper No. CB(2)2092/08-09

Ref. : CB2/PL/CA

**Report of the Panel on Constitutional Affairs
for submission to the Legislative Council**

PURPOSE

This report gives an account of the work of the Panel on Constitutional Affairs during the 2008-2009 Legislative Council (LegCo) session. It will be tabled at the Council meeting on 8 July 2009 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

THE PANEL

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000, 9 October 2002, 11 July 2007 and 2 July 2008 for the purpose of monitoring and examining Government policies and issues of public concern relating to implementation of the Joint Declaration and the Basic Law, relations between the Hong Kong Special Administrative Region (HKSAR) Government and the Central People's Government (CPG) and other Mainland authorities, electoral matters, district organizations, human rights, personal data protection and press freedom. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 38 members, with Hon TAM Yiu-chung and Ir Dr Raymond HO elected as Chairman and Deputy Chairman respectively. The membership of the Panel is in **Appendix II**.

MAJOR WORK

Constitutional development

4. After consideration of the "Report on the Public Consultation on Constitutional Development and on whether there is a need to amend the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2012" submitted by the Chief Executive (CE), the Standing Committee of the National People's Congress (NPCSC) made a decision on 29 December 2007 on issues relating to the methods for selecting CE and for forming LegCo in the year 2012 and on issues relating to universal suffrage (the NPCSC Decision). According to the Administration, its aim was to attain universal suffrage by three stages -

- (a) stage one from the present to 2012 - to further democratize the methods for selecting CE and for forming LegCo in 2012 (the two electoral methods);
- (b) stage two from 2012 to 2017 - to attain universal suffrage for CE in 2017 and how to further democratize the electoral method for LegCo in 2016; and
- (c) stage three from 2017 to 2020 - to attain universal suffrage for LegCo.

It was the Administration's original plan to consult the public within the first half of 2009 on the two electoral methods.

5. Some members were of the view that the Administration should also consult the public on the ultimate models for implementing universal suffrage for CE and LegCo during the forthcoming public consultation on the two electoral methods. They stressed that functional constituencies (FCs) should be abolished for the implementation of universal suffrage, and they would not support increasing LegCo seats in 2012 because in accordance with the 50:50 ratio between LegCo Members returned by FCs and geographical constituencies (GCs) as stipulated in the NPCSC Decision, it would invariably increase the number of FC seats.

6. The Administration explained that the target of the current term Government was to determine the two electoral methods in 2012, in order to lay a solid foundation for attaining universal suffrage for CE in 2017, and for LegCo in 2020 in accordance with the NPCSC Decision. However, the public was free to give views on the ultimate models for universal suffrage at any of the three stages of constitutional development. It was up to the current term Government and the current term LegCo to decide whether the size of LegCo should be expanded in 2012 and if so, how the electoral method could be further democratized within the framework laid down by the Basic Law and the NPCSC Decision.

7. During the CE's Question and Answer Session on 15 January 2009, CE announced that the public consultation on the two electoral methods would be deferred to the fourth quarter of 2009 so that the Government could focus on dealing with the economic and livelihood issues arising from the financial tsunami. At the Panel's request, the Administration briefed members on the working timetable for the public consultation and legislative process for the two electoral methods as follows -

- (a) the public consultation on the two electoral methods to commence in the fourth quarter of 2009 would last about three months;
- (b) the draft motions concerning amendments to the methods for the selection of CE and for the formation of LegCo in 2012 would be presented to LegCo for voting by no later than the fourth quarter of 2010;

- (c) upon CE's consent to the amendments endorsed by LegCo and reporting to NPCSC for approval/recording, , the Chief Executive Election (Amendment) Bill and the Legislative Council (Amendment) Bill would be introduced into LegCo in early 2011; and
- (d) the Electoral Affairs Commission (EAC) would make relevant subsidiary legislation in mid 2011.

8. Some members expressed concern that one year's time would not be sufficient for dealing with public consultation and the legislative process for the amendments to Annexes I and II to the Basic Law. They were worried that discussion on the electoral methods for implementing universal suffrage for CE in 2017 and for LegCo in 2020 would be precluded from the public consultation because of the compressed schedule. Some other members considered the timetable workable, provided that the Administration could put forward a package of proposals for the two electoral methods for 2012 in the fourth quarter of 2009. They urged the Administration to listen to the views received seriously and strive to forge consensus as far as possible.

9. Some members reiterated their views about the two electoral methods, namely, that any proposal other than the implementation of dual universal suffrage in 2012 would not be supported; the Administration should put forth an ultimate model for implementing universal suffrage when the two electoral methods were discussed; and any models for implementing universal suffrage would be voted down if FC seats were to be retained in any form. Some other members expressed concern that given the divergent views expressed, it would be extremely difficult to reach consensus on the two electoral methods and to make progress on constitutional development in 2012.

10. The Administration assured members that it was fully aware of the difficulties in reaching consensus on the two electoral methods for 2012. The Administration had been collating and summarizing views received from political parties and Members, and identifying common grounds with a view to forging consensus. The Administration hoped that it could eventually find a way to make progress on the two electoral methods for 2012, which would have positive impact on the implementation of universal suffrage for CE in 2017 and for LegCo in 2020.

2008 LegCo Election

11. The Panel was briefed on the major findings and recommendations in the Report on the 2008 LegCo Election submitted by EAC to CE in accordance with section 8 of the Electoral Affairs Commission Ordinance (Cap. 541). The Report contained a review of relevant electoral arrangements and improvement measures for future elections.

12. On the sending of election advertisements and related materials, some members expressed support for the recommendation made 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. They considered that the Registration and Electoral Office (REO) should provide candidates with the choice of receiving the address labels of electors for sending election advertisements on an individual or household basis, in order to reduce the consumption of address labels. The Administration explained that to respect and preserve the right of individual electors to access election advertisements, 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, and various channels had been used to solicit e-mail addresses from electors.

13. Some members considered that the procedures for counting votes for FCs were too cumbersome, resulting in long lead time taken for counting the votes. They urged a review of the counting arrangements with a view to speeding up the process. The Administration advised 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 arrangements had made the counting procedures for FC votes more complicated. Nonetheless, the election results of all FCs were announced earlier when compared with the 2004 LegCo Election. REO would take note of members' views in reviewing the relevant arrangements.

14. Some members expressed strong dissatisfaction that despite the fact that pan-democratic Members had met with the Chairman of EAC twice to voice out their concern, EAC had not heeded their views on tightening the regulation of exit polls to ensure fairness in an election. They also found it unacceptable that the EAC Report on the 2008 LegCo Election contained only a few short paragraphs on exit polls and did not put forth any concrete recommendations on improvement measures. These members reiterated their view that EAC should review the EAC guidelines so that use of exit poll results by a candidate or his political party to plan electioneering strategy before the close of poll would be prohibited. For instance, EAC could consider measures for restricting the conduct of exit polls to academic institutions only.

15. The Administration explained that the EAC guidelines had set out the rules for the conduct, publication and broadcast of exit poll results to avoid undue influence over electors, resulting in unfair interference with the election process. Media and organizations concerned were required to refrain from announcing the results of exit polls or making specific remarks or predictions on the performance of individual candidates until after the close of poll. The Administration maintained its position that the right of different organizations to conduct exit polls should be respected and it would be inappropriate to mandate that only certain types of institutions, such as academic institutions, could do so.

16. Some members expressed dissatisfaction that academic freedom was used as the pretext for not regulating the conduct of exit polls by political parties or candidates for electioneering purposes. They considered 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 which conducted exit polls for research purposes. It was further suggested that organizations conducting exit polls should be required to declare to REO their political affiliation.

17. The Administration responded 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. The Administration further said that the next general election to be held was the District Council (DC) Election in 2011 and the issue of regulating exit polls and other electoral arrangements would be considered prior to the election. The Administration also advised that for the purpose of better regulating exit poll, it was stipulated in the EAC Guidelines that 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, it would not be difficult for the public or the media to ascertain the background of organizations conducting exit polls.

18. The Panel also discussed issues relating to the way forward for the development of exit polls including the upgrading of professional self-discipline in the conduct of exit polls. Some members maintained that more stringent measures should be introduced to regulate the conduct of exit polls. Some other members considered that minimum restrictions should be imposed. The Panel noted that it was the view of the Director of Public Opinion Programme of the University of Hong Kong that exercising self-discipline would be more important and relevant stakeholders could work together to develop an exit poll system of international standard, including a code of practice for the conduct of exit polls, to safeguard freedom of expression, academic freedom, people's right to know and professional practice.

19. On members' and deputations' concern about political parties using exit poll results to plan electioneering activities, the Administration stressed that under the existing electoral laws, expenses incurred by a candidate in procuring services, including survey and polling services, for electioneering purposes had to be included as part of the election expenses. Non-compliance would constitute a criminal offence. The Administration would continue to listen to the views concerning exit polls and consider the matter when the EAC Guidelines were updated prior to the next general election, along with other electoral arrangements.

Issues relating to racial discrimination

Implementation of the Race Discrimination Ordinance

20. Following the enactment of the Race Discrimination Ordinance (RDO) in July 2008, the Administration briefed the Panel on the draft Code of Practice on

Employment (the Code) to be issued by the Equal Opportunities Commission (EOC), the Race Discrimination (Formal Investigations) Rules and Race Discrimination (Investigation and Conciliation) Rules to be made by EOC as well as the Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation to be made by the Secretary for Constitutional and Mainland Affairs for the full implementation of RDO scheduled for around mid-2009.

21. When the Panel discussed the initial draft of the Code issued by EOC for public consultation, some members expressed disappointment that the draft Code had failed to deal adequately with discrimination issues relating to language. They also expressed the view that given its statutory role under RDO to work towards the elimination of discrimination and promote equality of opportunity and harmony between persons of different racial groups, EOC should have prepared a code of practice with practical guidance for eliminating discrimination and promoting equality of opportunity in a positive, user-friendly and non-abstract manner. Some members expressed concern that members of the public might not know how to determine what would be a justifiable requirement or condition under RDO. It would cause confusion and uncertainties to the community as to whether an act would constitute indirect discrimination under the Ordinance. Members also raised various queries on specific provisions of the draft Code.

22. The Administration and EOC explained that RDO did not include provisions on discrimination on the basis of language although language barrier might lead to indirect discrimination, nor did it impose a positive duty to cater to the language needs of ethnic minorities. The Code would be a compliance tool for the purpose of explaining the legal requirements under RDO to employers and employees. Its scope could not exceed that of the statutory provisions nor was it meant to address the inadequacies of RDO.

23. Some Members also expressed strong dissatisfaction that the initial draft of the Code had only been published in Chinese and English, and not in six other common languages of ethnic minorities. As a result, these ethnic minorities could not have a meaningful participation in the consultation process. In light of the strong view expressed by members, EOC had subsequently published translation of the draft Code into six common languages of ethnic minorities including Urdu, Nepali, Tagalog, Thai, Hindi and Indonesian for the public consultation exercise.

24. When the Panel was briefed on the revised draft of the Code, members noted that after taking into account the views received during the relevant public consultation exercise and comments made by the Panel, EOC had made substantial revisions to the first draft of the Code. Members stressed that adequate funding should be provided for the Commission to promote the Code.

Report of HKSAR under the International Convention on Elimination of All Forms of Racial Discrimination

25. When the Panel discussed with the Administration the second report of

HKSAR under the International Convention on Elimination of All Forms of Racial Discrimination (ICERD) which was submitted as part of the Report of the People's Republic of China to the United Nations (UN), some members expressed dissatisfaction that the report failed to reflect truly the problem of racial discrimination in Hong Kong. They considered that the Administration should have set out in the report the policies and measures to be introduced to eliminate all forms of racial discrimination as well as the implementation timetable. The Administration explained that the report had given a full account of the situation in Hong Kong, including the 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.

26. Some members enquired about the measures taken by the Hospital Authority (HA) to enhance its interpretation services for ethnic minorities in gaining access to medical services. The Administration informed the Panel that HA had implemented a telephone/booking service since mid-June 2008 to provide telephone and on-site interpretation service for four common ethnic minority languages, *viz.* Urdu, Nepali, Hindi and Punjabi, in all hospitals under HA 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. The four regional support service centres to be set up for ethnic minorities would also provide interpretation service to facilitate their access to public services and critical non-government services.

27. The Panel received further a briefing from the Administration on the implementation plan for the establishment of the four regional support services centres for ethnic minorities before mid 2009. Members noted that the interpretation service would be provided for seven common ethnic minority languages primarily through telephone and, subject to pre-booking and availability of resources, might also be provided on site. The Administration had 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. These centres would also provide support services which would facilitate the integration of ethnic minorities into society.

28. Some members expressed concern that the Government had not provided sufficient support to ethnic minorities to ensure equal opportunities in terms of education. They considered that the support for non-Chinese speaking (NCS) students to learn Chinese in schools inadequate, and the opportunity for NCS students to gain admission to secondary schools and universities was limited by their lack of proficiency in the Chinese language. The Administration informed the Panel that it had stepped up efforts in implementing special measures to provide NCS students with appropriate education support such as helping schools develop school-based Chinese language curricula and providing special grant to designated schools to arrange programmes to support the learning of Chinese by NCS students.

29. Before the relevant UN's hearing scheduled for August 2009, the Panel also received views from deputations on the HKSAR's second report submitted under ICERD.

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

30. The UN Human Rights Council (UNHRC) initiated a Universal Periodic Review (UPR) of all member states under which States Parties were required to submit to UN a report describing, inter alia, the framework for the promotion of and protection of human rights, implementation of international human rights obligations, identification of achievements, challenges and constraints. The Panel discussed with the Administration and deputations the report published by the HKSAR Government which was part of the CPG's Report submitted to UN under the UPR mechanism.

31. Some members expressed strong dissatisfaction with the HKSAR Report which they considered had only given a superficial account of human rights policies and directions and did not cover deterioration of human rights protection in Hong Kong. They considered 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. Another member, however, expressed the view that 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 opportunities, freedom of the press and speech, etc.

32. The Administration 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 legislations and their progress (such as the enactment of RDO), as well as several areas of public concern (such as constitutional development and the political appointment system) and some issues previously raised by UN treaty bodies. The Administration was more than willing to give supplementary information if required.

Second report on the Hong Kong Special Administrative Region under the Convention on the Rights of the Child

33. The Panel discussed with the Administration the outline of topics in the second report of HKSAR under the Convention on the Rights of the Child (CRC). Some members considered that the Administration should provide adequate avenues for children to express their views freely in all matters affecting them and to give due weight to these views in developing policies and programmes. The Administration advised the Panel that in recognition of children's right of participation, the Administration collected systematically their views on issues relating to their rights through various channels, including the Children's Council project, organized by non-governmental organizations representing children and sponsored by the Government and the Children's Rights Forum attended by children representative groups such as the Child Ambassadors and representatives of the Government at which views were exchanged on topical issues such as drug abuse.

34. In its concluding observations issued after consideration of the first report of HKSAR under CRC, the UN Committee on the Rights of the Child recommended that an independent mechanism should be introduced to monitor the implementation of policy in relation to the rights of the child. Some members urged the Administration to set up a Commission on Children to monitor children's rights and implementation of CRC on the grounds that there was a lack of co-ordination among bureaux and departments for the effective protection of children's rights, and the Family Council which was set up in December 2007 would not be able to accord priority to the interests of children.

35. The Administration, however, explained that policies that could effectively protect families would also help protect the rights of the child. The Family Council was an advisory body chaired by the Chief Secretary for Administration (CS) tasked to examine from the family perspective, departments' policies and programmes designed for different age and gender sectors including children. The Council served as a platform for deliberation of child-related issues which straddled various policy areas including education, health, security, welfare, etc. The Policy Committee chaired by CS provided a high-level mechanism to co-ordinate policies for the respective children's rights among various bureaux and departments. The Administration considered that the existing arrangements were operating satisfactorily, and enabled it to respond flexibly to concerns and views expressed by different sectors of the community on child-related issues and to address the needs of children.

36. When the Panel received views from depositions on the outline of topics in the second report of HKSAR under CRC at its meeting on 18 May 2009, many depositions also expressed support for the establishment of a Commission on Children. In the light of the Administration's position, the Panel passed a motion condemning the Government for its refusal to set up a Commission on Children and requesting it to set up the Commission immediately.

Prisoners' voting right

37. Following the High Court ruling in December 2008 on three applications for judicial review relating to prisoners' voting right in LegCo elections that the provisions disqualifying any prisoner across the board from registration as an elector and from voting in LegCo elections contravene the right to vote guaranteed under Article 26 of the Basic Law and Article 21 of the Hong Kong Bill of Rights, the Administration briefed the Panel in January 2009 on possible policy options for relaxing the relevant disqualification provisions under the Legislative Council Ordinance (Cap. 542) (LCO). On 16 February 2009, the Administration further briefed the Panel on the Consultation Document on Prisoners' Voting Right issued for public consultation and three policy options on the relaxation of the ban on prisoners' voting right.

38. Some members were of the view that the restrictions on prisoners' voting right should be removed in entirety, including the disqualification of persons convicted of election-related or bribery offences under section 31(1)(c) and section 53(5)(c) of LCO because the right to vote was provided in Articles 25, 26 and 39 of the Basic Law, and there was no reason to impose additional penalty by depriving prisoners, who were already serving sentences of imprisonment for their unlawful acts, of the right to vote.

39. Some other members took the view that reasonable restrictions on prisoners' voting right could be imposed provided that the Administration was able to give ample justifications. A view was also expressed that persons convicted of election-related or bribery offences should be disqualified from voting within three years after such conviction so as to protect the integrity of the electoral system. The Administration, however, must ensure that the justifications for imposing any restriction should not be abstract and could stand the test of judicial review, if any.

40. On 20 April 2009, the Administration briefed the Panel on the results of the public consultation and the relevant legislative proposal. The Panel noted that upon the Administration's application, the Court granted a temporary 10-month suspension order in relation to its declaration relating to prisoners' voting right up to 31 October 2009. The Panel also noted that Administration aimed at completing the relevant legislative process by the end of October 2009.

41. A majority of members expressed support for the Administration's decision of relaxing the existing restrictions on prisoners' voting right given that the right to vote was a basic human right which should be protected as a matter of principle. They also stressed the importance of ensuring access to candidates' information by prisoners in order for them to make an informed decision in an election. Members further raised various issues relating to the practical voting arrangements for prisoners.

42. The Administration consulted the Panel in May 2009 on the practical arrangements to facilitate the registration of prisoners as electors, and the voting by prisoners and persons held in custody including remanded and detained persons who were registered electors in public elections. Some members expressed concern that the mixing of ballot papers cast by prisoners and persons held in custody with those cast by other electors before counting of vote would delay the whole process. They also asked how timely access to election-related materials could be ensured for prisoners and persons held in custody.

43. The Administration advised the Panel that the polling hours for polling stations inside penal institutions would be limited to from 9:00am to 4:00pm so that the sorting process could start as soon as possible before the ballot papers being transferred to the respective main counting stations. To ensure that electors who were serving prison sentences could receive the poll cards and introductory leaflets as early as possible, REO would send such materials to their addresses in the penal institutions of the Correctional Services Department (CSD) as far as practicable. As for persons

held in custody who were registered electors, the poll cards and candidates' introductory leaflet would be sent to their registered address or correspondence address (if any). Additional copies of the candidates' introductory leaflets would also be made available at CSD and other law enforcement agencies for such persons' reference. The Administration assured members that CSD staff could make enquiries with prisoners newly entered into penal institutions whether they were registered electors and about their constituencies.

Separation of the posts of Chairperson and the Chief Executive Officer of EOC

44. In Chapter 3 of Report No. 52 of the Director of Audit, which was tabled at LegCo on 22 April 2009, Audit has recommended that the Secretary for Constitutional and Mainland Affairs should expedite action to take forward the proposal of separation of the posts of the Chairperson and the Chief Executive Officer (CEO) of EOC which was both recommended in the report of the Independent Panel of Inquiry on the Incidents Relating to EOC as well as the reports of the two internal reviews conducted by EOC. The Administration consulted the Panel on three possible options for taking forward the issue, namely, keeping the status quo by not reinstating the post of CEO, appointing a part-time non-executive Chairperson and a full-time CEO, or appointing a full-time CEO in addition to the existing full-time executive Chairperson.

45. While members held divergent views on the three options, a majority of members expressed support for the separation of the posts of the Chairman and CEO of EOC. Some members took the view that whether the two posts should be separated was not a primary issue. 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. The Administration assured the Panel that it would be mindful of the need to ensure that any changes to the structure should not undermine the EOC's independence and would avoid any such public perception. The Chairperson and CEO would be appointed by way of open recruitment to enhance transparency of the process.

Role of Hong Kong deputies to the National People's Congress and Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference

46. Following media reports that the HKSAR Government had reached a "10-point agreement" with the Liaison Office of CPG in HKSAR (the Liaison Office) on the role of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference (CPPCC members), the Panel requested the Administration to explain the position of the HKSAR Government on the role of Hong Kong deputies to the National People's Congress (NPC deputies) and CPPCC members. The Administration assured the Panel that no consensus or agreement had

been reached with the Liaison Office on the role of CPPCC members in HKSAR. The HKSAR Government would continue to deal with matters relating to NPC deputies and CPPCC members in accordance with the Basic Law and the principle of "One Country, Two Systems".

47. Notwithstanding the Administration's clarification, some members expressed concern that formalizing the participation of NPC deputies and CPPCC members in local affairs would undermine the autonomy of Hong Kong and the principle of "One Country, Two Systems". Referring to an article written by Mr CAO Erbao, Head of Research of the Liaison Office, and published in Study Times, a newspaper of the Party School of the Chinese Communist Party, in January 2008 on the "Two governing teams" in Hong Kong, they further queried whether the Central authorities sought to intervene in the internal affairs of Hong Kong.

48. Some other members who were either NPC deputies or CPPCC members took the view that the work of NPC deputies and CPPCC members was constructive, and they should not be seen as intervening in the internal affairs of Hong Kong. These members pointed out that they had been approached by members of the public for assistance in resolving cross-border issues. They enquired whether the HKSAR Government could provide assistance in this regard.

49. The Administration explained that the HKSAR Government was actively enhancing regional co-operation with the Guangdong Province and other Mainland regions. As NPC deputies and CPPCC members had extensive understanding of national issues, their views on Mainland affairs relevant to Hong Kong would be helpful to the work of the HKSAR Government in this regard. The HKSAR Government had put in place in the past few years various arrangements to forge closer ties with them. While the Administration appreciated the practical difficulties faced by NPC deputies in discharging their duties, the election of the NPC deputies and appointment of CPPCC members were matters for the Mainland authorities, and the HKSAR Government had not made any arrangement to provide them with accommodation for work or organizing activities.

Financial provision for the Office of the Privacy Commissioner for Personal Data

50. Following a spate of personal data leakage cases involving government bureaux/departments and HA, the Panel was concerned whether the Office of the Privacy Commissioner for Personal Data (PCPD) had been given adequate resources for handling its heavy caseload. The Panel held a discussion with the Administration and the Privacy Commissioner on the financial provision for the enforcement work of PCPD.

51. Some members criticized the Administration for not providing adequate resources to PCPD for discharging its statutory functions for the protection of personal data privacy. They were of the view that more resources should be provided to PCPD to strengthen the enforcement work of the Personal Data (Privacy)

Ordinance (Cap. 486), given the importance of personal data protection and the public's expectations for PCPD to enforce the Ordinance more vigorously. These members suggested that a mechanism should be put in place for allocating supplementary provision to PCPD for handling unexpected incidents involving personal data privacy. Some members also stressed that it was pivotal for PCPD to strengthen its work on the preventive front by stepping up promotion and public education on protection of personal data.

52. The Administration assured the Panel that the Administration would strive to provide the resources required by PCPD in the effective enforcement of the Ordinance. 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 further explained 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 and consideration could be given to allocating additional funding to PCPD from the operating expenditure envelope of CMAB upon receipt of such requests from PCPD.

PANEL MEETINGS

53. From October 2008 to June 2009, the Panel held a total of 10 meetings.

Legislative Council

Panel on Constitutional Affairs

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to implementation of the Joint Declaration and the Basic Law, relations between the Hong Kong Special Administrative Region Government and the Central People's Government and other Mainland authorities, electoral matters, district organizations, human rights, personal data protection and press freedom.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

Panel on Constitutional Affairs

Membership list

Chairman	Hon TAM Yiu-chung, GBS, JP
Deputy Chairman	Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Members	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 WONG Yung-kan, SBS, JP Hon LAU Kong-wah, JP Hon LAU Wong-fat, GBM, GBS, JP Hon Miriam LAU Kin-yee, 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, GBS, JP Hon WONG Ting-kwong, BBS, JP 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 Hon Mrs Regina IP LAU Suk-yee, GBS, JP Dr Hon PAN Pey-chyou Dr Hon Samson TAM Wai-ho, JP

(Total : 38 members)

Clerk Miss Flora TAI

Legal Advisers Mr Arthur CHEUNG
Ms Clara TAM

Date 2 July 2009