

立法會
Legislative Council

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LC Paper No. CB(2)1052/09-10
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 16 November 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 WONG Yung-kan, SBS, JP
- Hon LAU Kong-wah, 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 Alan LEONG Kah-kit, SC
- Hon LEUNG Kwok-hung
- 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
- Hon Tanya CHAN
- Dr Hon Priscilla LEUNG Mei-fun
- Hon CHEUNG Kwok-che
- Hon WONG Kwok-kin, BBS
- Hon WONG Yuk-man

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

**Members
absent** : Hon LAU Wong-fat, GBM, GBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon Paul TSE Wai-chun

**Public Officers
attending** : Item IV

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

Mr Joshua LAW Chi-kong
Permanent Secretary for Constitutional and Mainland Affairs

Mr Gary POON Wai-wing
Principal Assistant Secretary for Constitutional and Mainland
Affairs

Item V

Miss Adeline WONG Ching-man
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 LAI Yuen-man
Senior Government Counsel
Department of Justice

Mrs TONG AU Yin-man
Chief Curriculum Development Officer
(Chinese Language Education)
Education Bureau

Mrs Anissa WONG LIU Siu-yung
Senior Education Officer (Education Commission)
Education Bureau

Miss Drew LAI Sai-ming
Senior Administrative Officer (Policy Support)
Labour Department

Miss Phidias TAM Kwok-ching
Assistant Secretary for Security

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

Action

I. Confirmation of minutes of meeting
[LC Paper No. CB(2)117/09-10]

The minutes of the meeting held on 15 October 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) letter dated 2 November 2009 from Mr Ronny TONG on the recent appointment of two Under Secretaries [LC Paper No. CB(2)273/09-10(01)];
- (b) Administration's response to Mr Ronny TONG's letter dated 9 November 2009 [LC Paper No. CB(2)273/09-10(02)];
- (c) letter dated 24 September 2009 from Hong Kong Women's Coalition on Equal Opportunities (HKWCEO) to the Administration expressing concern about the appointment process for the Chairperson of the Equal Opportunities Commission (EOC) [LC Paper No. CB(2)275/09-10(01)];

Action

- (d) Administration's response to HKWCEO dated 3 November 2009 [LC Paper No. CB(2)275/09-10(02)]; and
- (e) letter dated 19 October 2009 from Ms Emily LAU to the Panel Chairman suggesting that the Panel should invite the Chairperson of EOC and the Privacy Commissioner for Personal Data to brief the Panel of their work respectively [LC Paper No. CB(2)275/09-10(03)].

3. The Chairman informed members that the two items proposed by Ms Emily LAU in paragraph 2(e) above had been included as items 15 and 16 on the List of outstanding items for discussion. Ms Emily LAU suggested that the timing for discussing the two items could tie in with the publication of the respective annual reports of the two public bodies, if appropriate.

III. Items for discussion at the next meeting

[LC Paper Nos. CB(2)244/09-10(01) to (02) and CB(2)274/09-10(01)]

4. Members noted that the next meeting would be held on 11 December 2009 at 3:30 pm (immediately after the House Committee meeting). Members agreed that the item "Administrative Guidelines on promotion of racial equality : implementation progress" proposed by the Secretary for Constitutional and Mainland Affairs (SCMA) be discussed at the next meeting. Members also agreed that the Panel would receive views from the public on the Concluding Observations issued by the United Nations (UN) Committee on the Elimination of Racial Discrimination after consideration of the second report of the Hong Kong Special Administrative Region (HKSAR) under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) at the next meeting as proposed by Ms Emily LAU in her letter dated 11 November 2009 [LC Paper No. CB(2)274/09-10(01)]. The Chairman instructed the Clerk to post a notice on the website inviting views from the public.

5. Mr Ronny TONG said that he was not satisfied with the Administration's response to his letter on the recent appointment of two Under Secretaries with civil service background [LC Paper No. CB(2)273/09-10(02)]. At the Chairman's suggestion, members agreed that the Panel should discuss the related issues at the next meeting if there were not too many deputations submitting views on the Concluding Observations at that meeting.

6. The Chairman suggested that in anticipation of the publication of the Consultation Document on Methods for Selecting the Chief Executive (CE) and for Forming the Legislative Council (LegCo) in 2012 (the Consultation Document) in November 2009, the Panel should schedule special meetings to discuss and to

Action

receive views from the public on the Consultation Document. Members agreed that subject to the release of the Consultation Document within the week -

- (a) a special meeting would be held on 26 November 2009 from 2:30 pm to 4:30 pm to discuss the Consultation Document;
- (b) another special meeting would be held on 5 December 2009 from 9:30 am to 1:00 pm and from 2:30 pm to 4:30 pm to receive views from the public; and
- (c) additional meetings would be scheduled in January 2010 for receiving views if necessary.

7. In respect of paragraph 6(b) above, the Chairman instructed the Clerk to post a notice on the website inviting views from members of the public.

IV. System of Declaration of Interests by the Chief Executive and Officials under the Political Appointment System

[LC Paper Nos. CB(2)244/09-10(03) to (04)]

Declaration and handling of interests

8. SCMA introduced the paper which set out the current system of declaration of interests by CE and politically appointed officials [LC Paper No. CB(2)244/09-10(03)]. He said that CE, as the President of the Executive Council (ExCo), had declared his interests in "The Register of Interests of Members of the Executive Council" (ExCo Member's Declaration), like other ExCo Members. The Register was available for public inspection on ExCo's website.

9. Members noted that the LegCo Secretariat had prepared a background brief on the subject [LC Paper No. CB(2) 244/09-10(04)]. Members further noted that Chapter 5 of the "Code for Officials under the Political Appointment System" (the Code) dealt specifically with prevention of conflict of interests with the following two paragraphs on actual or potential conflict of interest in particular -

"5.1 Politically appointed officials shall avoid putting themselves in a position where they might arouse any suspicion of dishonesty, unfairness or conflict of interest.

5.3 Politically appointed officials shall refrain from handling cases with actual or potential conflict of interest."

Action

10. Mr CHEUNG Man-kwong said that while CE had informed the Chief Secretary for Administration that his sister-in-law was an aggrieved investor of the Lehman Brothers minibonds (minibond incident), CE had failed to declare the potential conflict of interest with his in-law's light-bulb business when he announced the policy initiative to replace incandescent light bulbs with energy-saving bulbs (light bulb incident). Mr CHEUNG said that the Code, although applicable to Principal Officials (POs), should also serve as a reference for CE to base his need to declare any conflict of interest. In addition, CE should be alert to the need to declare any potential conflict of interest that a policy might entail notwithstanding the policy was aimed at protecting public interest. Given his position as head of the Government, the public would have a higher expectation of his strict adherence to the Code. While it was unreasonable to expect the system of declaration of interest to cover all relatives, CE should declare any potential conflict of interest he was aware of to ExCo for record in order to avoid arousing any suspicion of dishonesty or unfairness.

11. Mr LEE Wing-tat said that having regard to the minibond and light bulb incidents, there was a need to review the declaration system. While there was no evidence showing that CE had acted dishonestly in the two incidents, the reaction from the public had been outrage. Had CE been politically more sensitive, he should have declared the conflict of interest at one of the stages of the policy formulation process. Mr LEE suggested that the Administration should consider setting up a notification system under which CE, POs and ExCo Members would be required to notify their colleagues of any areas that might lead to actual or potential conflict of interest during the policy decision process.

12. SCMA said that there was not much difference between the Administration and members on the need to avoid conflict of interests. For POs, paragraphs 5.1 of the Code laid down the cardinal principle. Being the enforcer of the Code, CE had to set a good example himself. POs had declared interests according to the Code, and had also done so in the ExCo Member's Declaration in their capacity of ExCo Members. Such declarations were available for public inspection. Moreover, as ExCo Members, POs were required to declare their interests before the deliberation on individual issues at ExCo meetings, and they had done so on many occasions. The Administration had taken further measures to secure public trust and confidence in the integrity of the Government. For instance, the application of the Prevention of Bribery Ordinance (Cap. 201) had been extended to CE. The Administration would bear in mind the experience of past cases when enforcing paragraph 5.1 of the Code.

13. Ms Emily LAU enquired about the lessons learnt from the minibond and light bulb incidents. She also enquired how POs would follow the relevant principles which were not stipulated explicitly in the Code, such as any "potential" conflict of interest, and how they could be enforced.

Action

14. SCMA said that, given their leading roles in the Government of the Hong Kong Special Administrative Region (HKSAR), CE and POs would adopt a stringent standard for themselves, and were required to observe the highest standards of personal conduct and integrity. The Code covered not only "actual" conflict of interest, but also "potential" conflict of interest (paragraph 5.3 of the Code). As to whether a certain interest would constitute any "potential" conflict of interest, much would depend on the circumstances of each case. It was the personal responsibility of a PO to exercise his or her judgment on whether or not any potential conflict of interest existed, and to report it to CE if the PO considered that there was any potential conflict of interest. To comply with paragraph 5.4 of the Code, POs should report to CE if they had the slightest idea that any private interest might give rise to potential conflict of interest. If a PO did not handle the matter properly, he or she would be the one to face the consequences.

15. SCMA further quoted the following two cases as examples -

- (a) Mr Antony LEUNG, the former Financial Secretary (FS), had purchased a car prior to his announcement of an increase in motor vehicles first registration tax on the Budget Day on 5 March 2003. CE had issued a formal criticism to Mr LEUNG; and
- (b) Mr Michael SUEN, former Secretary for Housing, Planning and Lands, had jointly purchased a race horse with some businessmen some years ago, and this was reported by the media. The Administration considered that the joint investment did not constitute a conflict of interest with Mr SUEN's duties relating to land and housing policy, and no one had questioned the integrity of Mr SUEN.

16. Mr Ronny TONG stressed that the public had a high expectation of CE. He enquired about the party responsible for monitoring the conduct of CE in respect of declaration of interest.

17. SCMA responded that according to Article 47 of the Basic Law (BL), CE must be a person of integrity, dedicated to his or her duties. BL 43 provided that CE should be accountable to the Central People's Government and HKSAR and BL 64 provided that the HKSAR Government was accountable to LegCo. The conduct of CE was therefore subject to the monitoring of LegCo, the media and the people of Hong Kong.

18. Dr LAM Tai-fai said that while there should be a declaration system to avoid transfer of benefits and to hold senior government officials accountable, the system should not be too stringent, such as expanding the scope of the system to cover all relatives. He was concerned that it would discourage people from

Action

pursuing a career in politics or joining the civil service. Dr LAM enquired about the declaration system in Hong Kong vis-à-vis other jurisdictions.

19. SCMA said that the declaration system for POs in Hong Kong had been drawn up with reference to the practices in other jurisdictions including the United Kingdom and the United States. POs were required to declare interests or investments of their spouse and children or any other persons or companies, if the investments and interests were actually acquired on the PO's account or in which the PO had a beneficial interest.

20. Ms Miriam LAU considered the light bulb incident unfortunate. She said that the existing system had set out clearly how conflict of interests should be handled. As for potential conflict of interest, the Administration might need to review the extent to which the declaration to be made should cover. For instance, whether relatives apart from immediate family members of CE and POs should be included.

21. SCMA said that, in addition to the declaration requirements for any actual or potential conflict of interest, POs had also declared to CE prior to the relevant discussion if they had any private interest in the matter to be discussed. His observations were that such interest normally involved POs themselves or their immediate family members. As regards the other relatives, it would be up to POs to exercise their judgment. In the past seven years, POs had adhered strictly to the principles set out in Chapter 5 of the Code because they were aware of the high expectation of the public. The Administration considered that the declaration system had been operating smoothly and effectively.

22. Mr WONG Yuk-man, however, pointed out that unlike Hong Kong, the leaders of United Kingdom and the United States were elected by universal suffrage and their conduct was monitored by the electorate. He expressed concern about the transparency of the declaration system and considered that the current system should be improved. Mr WONG further advised that while the declarations made by ExCo Members and POs were made available on ExCo's website, he could not find any information about the declarations made by Under Secretaries and Political Assistants. Upon enquiry, the League of Social Democrats (LSD) was advised by the Constitutional and Mainland Affairs Bureau (CMAB) that such information was kept by individual bureaux. LSD had approached CMAB; Security Bureau; Development Bureau; Commerce and Economic Development Bureau; Financial Services and the Treasury Bureau; and Environment Bureau (ENB) accordingly, but ENB was the only bureau which had returned their call and directed LSD to visit its office to access the requisite information. SCMA affirmed that declarations made by Under Secretaries and Political Assistants were available for public inspection in the respective bureau offices.

Action

Admin

23. Mrs Regina IP expressed concern that there was a lack of transparency of the declaration systems of other public bodies. She advised that her office was unable to obtain any information from the Hong Kong Monetary Authority and the Securities and Futures Commission about their declaration systems. Mrs IP considered that with their power and resources, there would be a higher risk for members of these two bodies to procure advantages for others than any other public bodies. At her request, SCMA undertook to relay her concern to FS.

24. Ms Emily LAU said that CE had lashed out at the media about fabricating stories against him. She sought views from SCMA about CE's strong reaction. Mr Ronny TONG pointed out that the media had not fabricated stories because CE had indeed not declared interest to ExCo in the light bulb incident.

25. SCMA said that Hong Kong was a free and open society. If the media had commented on the conduct of a person, the person concerned should have the right to respond to such comments. CE had merely pointed out that some media reports had departed from facts. In fact, various political groups had indicated that they did not see any procurement of advantages for others in the two incidents. SCMA added that CE had already made clear his stance to the public on 16 October 2009 that, when making any decision, his sole objective was to pursue public interests and that there was no question of any conflict of interest in the light bulb incident.

Arrangement for stepping down from office

26. Mrs Regina IP said that while it was not necessary to fuss about the minibond and light bulb incidents, there was no smoke without fire. She, however, expressed concern that the sanitization period of one year for a PO to commence any employment after stepping down from office was too short as compared with that of senior government officials, which was five years. She pointed out that the more senior the position, the higher the risk of procurement of advantages for others. As a PO had more chances than any civil servants to pave way for a next career before stepping down from office, the sanitation period should be lengthened. Mrs IP further commented that paragraph 5.17 of the Code was impractical, as Hong Kong did not have professional lobbyists or a law to regulate them.

27. Ms Emily LAU concurred with Mrs Regina IP that the sanitation period was too short and should be reviewed.

28. SCMA explained that the post-office employment control arrangement for POs was drawn up in 2002. It took into account the considerations that, unlike civil servants, POs did not enjoy any security of tenure or any gratuity/retirement benefits. They might, therefore, need to seek employment after stepping down from office. The Administration had to strike a balance between prevention of

Action

conflict of interest and provision of employment opportunities after a PO stepping down from office. As regards procurement of advantages for others, POs were subject to the monitoring of LegCo, the media, the public, and they were required to abide by the laws of Hong Kong. The post-office employment control arrangement had been in place for seven years and was effective.

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

[LC Paper Nos. CB(2)244/09-10(05) and (06), 289/09-10(01), 296/09-10(01) and (02)]

29. Under Secretary for Constitutional and Mainland Affairs (USCMA) briefed members of the outcome of the hearing by the UN Committee on the Elimination of Racial Discrimination (the Committee) on the second report of HKSAR under ICERD and the Administration's initial views on the recommendations made in the Concluding Observations of the Committee (the Concluding Observations) as set out in the Administration's paper [LC Paper No. CB(2)244/09-10(05)].

30. Members noted the following papers on the subject under discussion -

- (a) background brief prepared by the LegCo Secretariat [LC Paper No. CB(2)244/09-10(06)]; and
- (b) Administration's response to the concern raised by Mr CHEUNG Man-kwong on the provision of more support to non-Chinese speaking students [LC Paper No. CB(2)289/09-10(01)].

31. Members also noted the following papers which were tabled at the meeting -

- (a) submission from the Hong Kong Human Rights Monitor [LC Paper No. CB(2)296/09-10(01)]; and
- (b) submission from the Hong Kong Unison [LC Paper No. CB(2)296/09-10(02)].

32. Ms Emily LAU expressed dissatisfaction that the request of non-government organizations (NGOs), which had observed the UN hearing in Geneva, to meet with CMAB to discuss the Concluding Observations had been turned down on the ground that the issue would be discussed at the Human Rights Forum. The issue, however, had not been discussed at the Human Rights Forum. Ms LAU also enquired why the Concluding Observations were not made available in Chinese.

Action

33. USCMA responded that the Human Rights Forum had not discussed the issue at its last meeting because the Administration intended to discuss the issue with the Panel first. Relevant papers, however, had been passed to the Human Rights Forum which would hold a meeting in early 2010 to discuss the issue. USCMA further said that when the Committee first issued the Concluding Observations on 28 August 2009, only the English version was available. The Administration had already summarized the concerns and recommendations made by the Committee in both Chinese and English in a press release issued on the day when the Concluding Observations were publicized. In this connection, members noted that the Administration had provided the LegCo Secretariat with a copy of the simplified Chinese version, around noon on the date of the meeting, which had just been made publicly available on the website of the Office of the UN Higher Commissioner for Human Rights.

(Post-meeting note: The simplified and traditional Chinese versions of the Concluding Observations were issued to members vide LC Paper Nos. CB(2)297/09-10 and CB(2)637/09-10 on 17 November and 30 December 2009 respectively.)

New arrivals from the Mainland

34. Mr WONG Yuk-man said that the Administration should make a specific response to the concerns and recommendations made in the Concluding Observations. He said that LSD was particularly concerned about discrimination against new arrivals from the Mainland and regretted that new arrivals had been excluded from the scope of the Race Discrimination Ordinance (Cap. 602) (RDO). Following media reports which had projected a negative image of new arrivals and the Administration's failure to rectify the misconception, discrimination against new arrivals persisted in Hong Kong and the Administration should have done more to address the problem. He enquired about the avenue for new arrivals to seek redress.

35. USCMA responded that the protection under RDO applied to new arrivals and all other persons in Hong Kong. New arrivals had not been excluded from the scope of RDO. The definition of "race" in RDO was consistent with that in Article 1 of ICERD which did not include the resident status or length of residence of a person. Most of the new arrivals were of the same ethnic origin as the local Chinese in HKSAR. As the Administration appreciated the difficulties faced by some new arrivals to adapt to the life-style of a new environment, the Home Affairs Department, as the co-ordinator, had liaised with various government departments to provide different support services for new arrivals. If new arrivals had encountered difficulty in gaining access to public services, they could lodge complaints under the established mechanisms.

Action

Support for non-Chinese speaking (NCS) students

36. Mr WONG Yuk-man enquired about the education support provided to NCS students who were ethnic minorities.

37. Chief Curriculum Development Officer (Chinese Language Education) and Senior Education Officer (Education Commission) (SEO) of the Education Bureau (EDB) said that to facilitate the early integration of NCS students into the local education system, EDB provided a series of support measures to help NCS students. This included, among others -

- (a) the release of Supplementary Guide to the Chinese Language Curriculum for NCS Students which recommended different curriculum modes for reference of teachers and schools. The Guide catered for the diverse needs and aspirations of NCS students as second language learners at different stages of development;
- (b) adapted school learning materials, covering primary and secondary levels, were distributed to schools since September 2009. Sufficient learning materials were distributed to schools with NCS students; and
- (c) a series of teaching reference materials were also available for teachers and NCS students learning the Chinese language, such as courseware on Chinese characters and learning software on traditional virtues.

38. Mr CHEUNG Man-kwong expressed concern about the provision of support services to facilitate NCS students in non-designated schools to catch up their learning of Chinese language after school. According to USCMA's letter dated 13 November 2009, the Administration would invite NGOs operating the four support service centres for ethnic minorities to submit proposals on how to provide after-school tuition to NCS students. Mr CHEUNG suggested that NGOs should be requested to cover two modes of operation in their proposals, i.e. conducting classes in certain non-designated schools after school and conducting classes in their respective support service centres. The Administration should implement these two modes of operation and assess their effectiveness after a trial period. Mr CHEUNG urged EDB to render assistance to CMAB in taking forward these proposals.

39. USCMA responded that the Administration was pursuing the matter in that direction. In inviting the service proposals, the Administration would request NGOs to consider including in their proposals the two modes of operation. The two modes of operation, if adopted by individual NGOs, would operate in parallel under a trial period and the Administration would review their effectiveness before deciding the way forward.

Action

40. Mr Abraham SHEK expressed support for Mr CHEUNG's proposal. He said that the education support for NCS students should be improved as it would help them integrate into the community. He enquired whether USCMA would handle the issue herself.

41. USCMA said that the Administration would consider introducing new measures to help NCS students integrate into the local education system and the community, taking into account the comments made by members and the Concluding Observations. She would report progress to the Panel.

42. Ms Emily LAU said that the Administration should assess effectiveness of the programmes offered to NCS students by objective indicators such as the number of NCS students admitted to secondary schools and universities. SEO responded that since the new support measures for NCS students had mainly been launched since the 2006-2007 school year, the Administration required longitudinal data collected over a period of time before meaningful analysis could be made. Ms Cyd HO, however, considered that the Administration should not take too much time to analyse the data because many NCS students, especially girls, left school after Secondary 3 and the Administration should have conducted interviews to find out why these students left school early.

43. Mr Abraham SHEK recalled that EDB had provided papers on the support measures for NCS students and their effectiveness to the Panel on Education. The Chairman instructed the Clerk to circulate the relevant papers to members after the meeting.

(Post-meeting note: The relevant papers were issued vide LC Paper No. CB(2)327/09-10 on 19 November 2009.)

Race Discrimination Ordinance

44. Ms Emily LAU expressed dissatisfaction with paragraph 11 of the Administration's paper, saying that if BL and the Hong Kong Bill of Rights Ordinance (Cap. 383) (BORO) were adequate to prohibit all government functions and powers from practising racially discriminatory acts, it would not be necessary to introduce RDO in the first place.

45. USCMA and Senior Government Counsel responded that RDO did not cover all government activities. However, the Government was prohibited from practising racially discriminatory acts in the exercise of its functions under BL and BORO. There were a range of avenues for members of the public to seek redress against discriminatory acts of the Government. For example, there was an extensive network of organizations including LegCo, Equal Opportunities Commission (EOC) and the Ombudsman, which dealt with complaints against

Action

government departments. Any racially discriminatory act of the Government was also subject to the court's supervisory jurisdiction. In the past, judicial reviews had been lodged against the Government under section 22 of BORO for charging pregnant women from the Mainland a higher hospitalisation fee and prohibiting new arrivals who had resided in Hong Kong for less than seven years from being eligible for the Comprehensive Social Security Allowance, etc.

46. USCMA added that, with the enactment of RDO, the public had an additional avenue for redress by making complaints to EOC, which was entrusted with the functions and powers to work towards the elimination of discrimination and promote equality of opportunity and harmony between persons of different racial groups generally, among others. In relation to racial discrimination, it had the power to handle complaints, conduct formal investigation, obtain information and conduct conciliation.

47. Deputy Secretary for Constitutional and Mainland Affairs supplemented that when the Bills Committee on Race Discrimination Bill (the Bills Committee) scrutinized the Bill, some members had advocated expanding the scope of the Bill to cover all government functions. Having regard to the local situation and the fact that the Bill represented a major step forward, the Administration did not consider it appropriate to expand the scope of the Bill. To address Members' concern, the Administration had committed to draw up a set of administrative guidelines on promotion of racial equality for relevant bureaux and departments and public authorities to follow in formulating and implementing their policies and measures.

48. Mr Ronny TONG said that Hong Kong had to make local laws to implement international conventions according to BL 39. He recalled that many Members were not entirely satisfied with the Bill. They were faced with the dilemma of either enacting the Bill as amended or vetoing the Bill. Having regard to the aspiration of NGOs and the public, Members chose to support enactment of the Bill with a view to improving its contents in future. Dr Priscilla LEUNG concurred with Mr TONG.

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49. To facilitate the Panel's further discussion of the issue, the Administration was requested to advise in more detail on the scope of application to the Government under RDO vis-à-vis BL/BORO and the legal adviser to the Panel to provide information on previous discussions by the Bills Committee on the issue.

(Post-meeting note: The paper prepared by the Legal Service Division was issued to members vide LC Paper No. CB(2)529/09-10 on 10 December 2009. The Administration's response was issued to members vide LC Paper No. CB(2)773/09-10 on 18 January 2010.)

Action

50. The meeting ended at 4:40 pm.

Council Business Division 2
Legislative Council Secretariat
5 March 2010