

立法會

Legislative Council

Ref : CB2/PL/CA

LC Paper No. CB(2)1509/09-10

(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting held on Friday, 11 December 2009, at 3:30 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 LAU Wong-fat, GBM, GBS, JP
- Hon Miriam LAU Kin-yea, GBS, JP
- Hon Emily LAU Wai-hing, JP
- Hon Abraham SHEK Lai-him, SBS, JP
- Hon LI Fung-ying, BBS, JP
- Hon Audrey EU Yuet-mee, SC, JP
- Hon WONG Kwok-hing, MH
- Hon LEE Wing-tat
- Hon Jeffrey LAM Kin-fung, SBS, JP
- Hon Alan LEONG Kah-kit, SC
- 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
- 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
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP

Members attending : Hon CHAN Hak-kan
Hon IP Wai-ming, MH

Members absent : Hon Timothy FOK Tsun-ting, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP

Public Officers attending : Item III

Miss Adeline WONG
Under Secretary for Constitutional and Mainland Affairs

Mr Arthur HO
Deputy Secretary for Constitutional and Mainland Affairs

Mr Hubert LAW
Principal Assistant Secretary for Constitutional and Mainland Affairs

Mr Raymond WONG
Chief Manager (Business Support Services)
Hospital Authority

Dr Rita HO
Principal Medical and Health Officer
Department of Health

Mrs Anna MAK
Assistant Director (Family and Child Welfare)
Social Welfare Department

Mrs Helen KWOK
Chief Social Work Officer (Strategic Planning)
Social Welfare Department

Mr Andrew YAM
Chief Occupational Safety Officer (Support Services)
Labour Department

Mr Charles HUI
Senior Labour Officer (Employment Services) (Operation)
Labour Department

Mr John HO
Chief Executive Officer (Administration)³
Home Affairs Department

Item IV

Miss Adeline WONG
Under Secretary for Constitutional and Mainland Affairs

Mr Arthur HO
Deputy Secretary for Constitutional and Mainland Affairs

Mr Hubert LAW
Principal Assistant Secretary for Constitutional and Mainland
Affairs

Ms Roxana CHENG
Senior Assistant Solicitor General
Department of Justice

Mr W H CHOW
Principal Assistant Secretary (Security)^D
Security Bureau

Mrs Y M TONG
Chief Curriculum Development Officer
(Chinese Language Education)
Education Bureau

Mrs Anissa WONG
Senior Education Officer (Education Commission)
Education Bureau

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

Item V

Mr Stephen LAM, GBS, JP
Secretary for Constitutional and Mainland Affairs

Mr Arthur HO
Deputy Secretary for Constitutional and Mainland Affairs

Mr Gary POON
Principal Assistant Secretary for Constitutional and Mainland
Affairs

**Attendance by
invitation** :

Item IV

The Civic Party

Miss Medeleine MOK
Policy Champion

Hong Kong Unison Limited

Ms Fermi WONG
Executive Director

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

**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

Miss Vivien POON
Council Secretary (2)2

Mrs Fonny TSANG
Legislative Assistant (2)3

Action

I. Information papers issued since the last meeting

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

Action

II. Items for discussion at the next meeting

[LC Paper Nos. CB(2)489/09-10(01) and (02)]

2. Members agreed to discuss at the next meeting on 18 January 2010 the following items proposed by the Secretary for Constitutional and Mainland Affairs (SCMA) -

- (a) promotion of equal opportunities on grounds of sexual orientation and gender identity; and
- (b) an outline of the topics in the third report of the Hong Kong Special Administrative Region (HKSAR) under the International Covenant on Economic, Social and Cultural Rights (ICESCR).

3. Ms Emily LAU suggested that deputations/members of the public be invited to attend a meeting of the Panel in February 2010 for discussion on ICESCR. Members agreed.

Clerk

III. Administrative Guidelines on Promotion of Racial Equality: Implementation Progress

Briefing by the Administration

4. Under Secretary for Constitutional and Mainland Affairs (USCMA) briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)476/09-10(01)] on the latest progress regarding implementation of the Administrative Guidelines on the Promotion of Racial Equality ("the Administrative Guidelines"). Members noted that draft checklists to cover medical and health, employment, community services - social welfare, and community services - public enquiry and declaration services had been prepared by relevant Bureaux, Departments and public authorities. Members also noted the updated background brief prepared by the Legislative Council (LegCo) Secretariat on the subject matter [LC Paper No. CB(2)476/09-10(02)].

Discussion

5. Ms Emily LAU enquired about the consequences of failure of relevant Bureaux and Departments to comply with the Administrative Guidelines. USCMA responded that relevant Bureaux and Departments had the obligation to comply with the Administrative Guidelines, although the Guidelines were not legally binding. Complaints about non-compliance could be dealt with by the existing complaint-handling mechanism of the Bureaux and Departments concerned. The Ombudsman could also investigate cases of non-compliance involving maladministration by Bureaux and Departments.

Action

6. Mr IP Kwok-him sought details about support measures other than interpretation services to meet the needs of ethnic minorities, such as those relating to health care and their integration into society. USCMA responded that the four support service centres for ethnic minorities provided language classes, integration programmes and counselling and referral services, etc. to facilitate their integration into the community. Chief Manager (Business Support Services) of the Hospital Authority (HA) and Principal Medical and Health Officer of the Department of Health (DH) supplemented respectively that vegetarian/Muslim dishes were available to cater to the dietary preferences of ethnic minority patients; and fact sheets on some 80 selected health topics such as childcare had been translated into ethnic minority languages.
7. Dr Margaret NG suggested the Administration to consider setting up a centralized telephone enquiry service system as a triage mechanism for handling enquiries from ethnic minorities; and stationing staff in Tuen Mun and/or other districts with a sizable ethnic minority population to provide readily accessible support services for ethnic minorities. Mr Paul TSE supported the suggestion, adding that the service should provide ethnic minority users with information about the full range of support services available to them in various ethnic minority languages, to be disseminated via telephone operators instead of pre-recorded messages.
8. Chief Manager (Business Support Services) of HA welcomed this suggestion. He advised that the most frequently subscribed services for ethnic minorities were interpretation services provided in Urdu, Nepali, Punjabi and Bahasa Indonesia. He further advised that the recurrent HA expenditure for interpretation and related support services for ethnic minorities was about \$1 million in the current financial year. USCMA supplemented that the support service centre in Kwun Tong had been providing a free centralized telephone interpretation service since October 2009. The service was available in seven ethnic minority languages/dialects seven days a week to facilitate access by ethnic minorities to public services.
9. Noting that the recurrent HA expenditure for interpretation and related support services amounted to \$1 million only, Dr Margaret NG reiterated her view that the Administration should undertake to make available sufficient additional funding for the smooth implementation of the support services for ethnic minorities. USCMA responded that relevant Bureaux and Departments would deploy internal resources to implement existing/new measures to promote racial equality and ensure equal access to public services in key areas concerned. Where necessary, they could also apply for additional funding in the annual resource allocation exercise. Dr NG criticized the Administration for not committing resources over and above the existing level of provision to relevant Bureaux and Departments to ensure effective implementation of measures to

Action

promote racial equality. She considered that following the enactment of the Race Discrimination Ordinance (RDO) (Cap. 602) which was a new and important piece of legislation on racial equality, the Administration should fulfil its obligation to allocate additional resources to support the proper implementation of the relevant measures. She requested USCMA to advise on the estimate of the amount of resources which should be set aside for the promotion of racial equality and related initiatives.

10. USCMA responded that the Government had earmarked a recurrent funding of \$16 million per year as the operating expenses of the support service centres for ethnic minorities, and an additional \$8 million as one-off setting up costs for the four support service centres. In addition, additional staff was deployed within the Constitutional and Mainland Affairs Bureau (CMAB) to oversee the implementation of the Administrative Guidelines. The Government had also provided extra resources to the Equal Opportunities Commission (EOC) for the implementation of RDO, including a special subvention of \$7 million for making preparatory arrangements and an additional \$5 million in the 2009-2010 financial year to recruit more staff and organising community activities. Chief Manager (Business Support Services) of HA supplemented that apart from the \$1 million expenditure for interpretation and related support services for ethnic minorities, \$300 000 was spent on upgrading the telephone system of HA clinics to incorporate a public announcement system to enhance the service for ethnic minorities. Assistant Director (Family and Child Welfare) of the Social Welfare Department (SWD) added that \$1 million had been set aside for the production of service leaflets in ethnic minority languages. Senior Labour Officer (Employment Services) (Operation) advised that the Labour Department (LD) had deployed additional manpower for translating job vacancy information for posting up at job centres and its website to facilitate ethnic minorities in their job search.

Admin

11. Notwithstanding the Administration's explanation, Dr Margaret NG requested that the Administration should provide a breakdown of the expenditures of relevant Bureaux and Departments for providing support services for ethnic minorities when the Administration briefed the Panel again on the progress of the Administrative Guidelines.

12. Mr Paul TSE suggested that the Administration should consider relaxing civil service recruitment policy so that ethnic minorities with proficiency in either English or Chinese could be recruited to assist in the provision of support services to ethnic minorities, following similar practice adopted in a number of overseas countries. USCMA responded that according to the Civil Service Bureau (CSB), civil service grades were normally required to specify language proficiency requirements (LPRs) in Chinese and English for recruitment purposes on operational grounds. Heads of Department/Heads of Grade might apply to CSB for exemption from the stipulated LPRs on a case-by-case basis if they encountered recruitment difficulties. She further advised that the Police had

Action

Admin

commenced its promotional efforts with a view to encouraging more ethnic minorities with suitable capabilities to apply for positions in the Police. Mr TSE requested the Administration to provide statistics on the numbers of such exemptions sought and granted.

13. Mr IP Kwok-him, Ms Emily LAU and Dr Margaret NG enquired respectively about -

- (a) a review of the operation of the four support service centres for ethnic minorities to ascertain the need for setting up additional centres;
- (b) the mechanism to assess interpretation services provided in public hospitals/clinics during April to September 2009; and
- (c) whether surveys to monitor the support services provided to ethnic minorities could be made public; details about contracting out arrangements/conditions for such services; and the possibility of setting out performance pledges for implementing such services to facilitate monitoring at various stages of implementation.

USCMA responded that the Administration would continue to monitor the operation and performance of the four support service centres and, in the light of the operational experience and the needs of ethnic minority communities, consider necessary adjustment to the services, including the need for additional centres. Chief Manager (Business Support Services) of HA added that there were around 710 cases in which interpretation services were provided in public hospitals/clinics during April to September 2009 and the feedback from users indicated that the overall quality of services were satisfactory. HA would continue to monitor users' feedback on the interpretation services. He explained that HA required its contractor to provide interpretation service for ethnic minorities in emergency and non-emergency cases within two hours and four hours respectively after the request was made. For scheduled service (such as medical appointment at the specialist and general outpatient clinics of HA and services of DH), patients could request the hospital/clinic/health centre concerned to arrange interpretation service in advance. Where necessary, backup interpretation assistance would be provided by interpreters from consulates/courts. For non-scheduled service (such as hospital admission during emergency), hospital staff would arrange for the provision of interpretation service where necessary or upon request of patients.

14. In response to Ms Emily LAU's enquiry, Assistant Director (Family and Child Welfare) of SWD informed members that apart from arranging interpretation services for ethnic minorities through a non-government organization (NGO), SWD had produced service leaflets in six ethnic minority languages available in its service units/SWD website/four support service centres for ethnic minorities.

Action

Social welfare service units in districts such as Sham Shui Po, Eastern, Tuen Mun, Yuen Long, Kwai Tsing and Tsuen Wan organized community activities to enhance the social integration of ethnic minorities. In addition, the Partnership Fund for the Disadvantaged and the Community Investment and Inclusion Fund provided funding to encourage NGOs to organize such activities. Senior Labour Officer (Employment Services) (Operation) added that LD had translated its leaflets into six ethnic minority languages to facilitate the use of employment services by ethnic minority job seekers. All twelve Job Centres of the Department offered employment briefings tailor-made for ethnic minorities and special counters had been set up at these centres to provide ethnic minorities with employment assistance.

Admin

15. To facilitate monitoring by the Panel, Ms Emily LAU requested the Administration to provide regular reports to the Panel on the implementation of support services provided to ethnic minorities, including evaluation of the performance of service providers in meeting requests of ethnic minorities and the adequacy of the manpower and funding for these support services. USCMA undertook to consult relevant Bureaux and Departments and report to the Panel in the light of operational experience on a regular basis as appropriate.

IV. 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) to (06) and CB(2)489/09-10(03)]

Presentation of deputations' views

16. Miss Medeleine MOK, Policy Champion of the Civic Party, briefed members on the submission of the Civic Party [LC Paper No. CB(2)560/09-10(01)]. Miss MOK urged the Administration to take on board recommendations of the United Nations Committee on the Elimination of Racial Discrimination (the Committee) in its Concluding Observations on the second report of HKSAR under the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention) relating to the narrow scope of application of RDO to the Government; and rights of refugees/asylum-seekers and foreign domestic migrant workers.

17. Ms Fermi WONG, Executive Director of Hong Kong Unison Limited, briefed members on the submission of the Hong Kong Unison Limited [LC Paper No. CB(2)560/09-10(02)]. Ms WONG urged the Administration -

- (a) to make reference to similar provisions of the Sex Discrimination Ordinance (Cap. 480), Disability Discrimination Ordinance (Cap. 487) and Family Status Discrimination Ordinance (Cap. 527)

Action

and expand the scope of application to the Government under RDO accordingly.;

- (b) to re-draft the Administrative Guidelines in order to promote racial equality and ensure compliance by relevant Bureaux/Departments effectively; and
- (c) to implement measures to strengthen the teaching and learning of Chinese for non-Chinese speaking (NCS) students.

She also expressed disappointment that SCMA did not accede to the request of Hong Kong Unison Limited for a meeting to discuss the Concluding Observations.

18. Mr LAW Yuk-kai, Director of the Hong Kong Human Rights Monitor (HKHRM), highlighted the salient points in the submission of HKHRM [LC Paper No. CB(2)613/09-10(01)]. Mr LAW urged the Administration to evaluate relevant policies and reform legislation in accordance with international human rights standards to promote racial equality and eliminate racial discrimination in line with the recommendations made in the Concluding Observations.

Issues raised by members

Inadequacies of RDO and the Administrative Guidelines

19. Mr LEUNG Kwok-hung criticized that the definition of race discrimination in RDO was too narrow and out-dated compared to the definition and standards adopted in the European Union Directive to combat race discrimination. He also queried the effectiveness of the Administrative Guidelines which were not legally binding nor accompanied by implementation targets for monitoring purposes. In the absence of a human rights commission and a budget provision to support initiatives to promote racial equality, he questioned the Administration's commitment in eradicating racial discrimination.

20. USCMA responded that the relevant provisions in the Basic Law and the Hong Kong Bill of Rights Ordinance (BORO) (Cap. 383) prohibited the Government and public authorities from engaging in practices that would entail any form of discrimination including race discrimination. As requested at the last Panel meeting on 16 November 2009, the Administration would advise in writing on the scope of application to the Government under RDO vis-à-vis the Basic Law and BORO. USCMA assured members that there was an extensive framework to address complaints against any racially discriminatory act of the Government, including LegCo, EOC, The Ombudsman, and existing complaint handling mechanism of government departments. Any racially discriminatory act of the Government is also subject to the supervisory jurisdiction of the Judiciary. As regards members/deputations' views on the scope of application of RDO to

Action

government functions, USCMA explained that RDO applied equally to the Government as well as the private sector in areas specified in the Ordinance. She added that compared to other anti-discrimination ordinances, issues concerning racial discrimination were more complex and could potentially be more susceptible to abuse. As evidence of the Administration's commitment towards the promotion of racial equality, the Administration was also putting in place a set of Administrative Guidelines to provide guidance for concerned bureaux, departments and public authorities to promote racial equality and ensure equal access to public services in key areas concerned.

21. Dr Margaret NG expressed dissatisfaction with the response of USCMA as it was merely a recap of the Administration's position at the time of the scrutiny of the Race Discrimination Bill. She pointed out that the Administration had already repeated the same to the Committee during its consideration of the second report of HKSAR under the Convention and yet the Committee still recommended the HKSAR Government to extend the scope of the application of RDO to all Government functions and powers.

22. Members noted that at members' request at the last Panel meeting on 16 November 2009, the LegCo Secretariat had prepared a paper on "Previous discussions by the Bills Committee on Race Discrimination Bill on the scope of application to the Government under RDO" [LC Paper No. CB(2)529/09-10(01)]. Referring to paragraph 2(a) and (d) of the paper, Ms Emily LAU expressed dissatisfaction with the Administration's reluctance to expand the scope to cover additional government functions in the light of the Concluding Observations. She was also dissatisfied that in response to the Committee's recommendation that the HKSAR Government should adopt a race equality plan to ensure effective implementation of RDO, the Administration took the view that it had no obligation to do so as the Convention contained no express provision for State Parties to adopt such a plan.

23. USCMA reiterated that RDO prohibited race discrimination in both the public and private sectors in all the specified areas in the Ordinance, i.e. education, employment, and the provision of goods, facilities and services, etc., and the Government was prohibited from engaging in discriminatory practices by virtue of relevant provisions of BORO.

24. Mr LEUNG Kwok-hung, however, expressed strong dissatisfaction at the Administration's response. He pointed out that in the absence of legislation to bind the Government beyond the limited scope of RDO, taking legal action against the Government under BORO would not only be expensive and time-consuming, but also ineffective. USCMA assured members that RDO would not narrow the scope of application of BORO to the Government, nor would it absolve the Government and public authorities from its obligations under BORO. Senior Assistant Solicitor General of the Department of Justice supplemented that

Action

according to section 7 of BORO, the Ordinance bound the Government and all public authorities. Article 22 of the Hong Kong Bill of Rights also prohibited discrimination in any form and guaranteed to all persons equal and effective protection against discrimination on any ground including race. Mr LEUNG remained unconvinced of the Administration's response. He considered that RDO with its narrow scope of application had the effect of restricting the inherent responsibilities of the Government with respect to eradicating racial discrimination under BORO.

25. Ms Cyd HO criticized the Administration for being selective in fulfilling its international obligations under the respective conventions and for its failure to enact appropriate legislation to prescribe the responsibilities of the Government in promoting racial equality. USCMA explained that under the Convention, State Parties undertook to pursue appropriate means, including legislation and administrative measures, to achieve the rights recognized in the Convention. Responding to Ms HO on the Administration's interpretation of its obligations, Director of HKHRM advised that according to the Convention, the HKSAR Government should implement measures including legislation to combat all forms of discrimination. He echoed the view of Mr LEUNG Kwok-hung that it would be expensive and ineffective for a member of the general public to take legal action against the Government for its discriminatory acts/practices, given the difficulties in gathering evidence to substantiate the action.

26. Mr Paul TSE sought clarification from the Administration on whether Article 39 of the Basic Law required the enactment of local legislation to implement provisions of the International Covenant on Civil and Political Rights (ICCPR). Deputy Secretary for Constitutional and Mainland Affairs (DSCMA) responded that provisions of ICCPR had been implemented in Hong Kong through BORO which prohibited the Government from engaging in acts/practices that would entail discrimination. In response to Mr TSE's enquiry on possible extension of the scope of application of RDO to cover additional government functions, DSCMA explained that RDO prohibited race discrimination by government Bureaux and Departments in specified areas such as education, employment and the provision of goods, facilities and services, etc. which already covered the majority of the Government's functions. The enactment of RDO had already raised the public awareness of racial equality. Future extension of the scope of application of RDO to cover additional government functions would be reviewed in the light of the implementation experience of RDO.

Chinese teaching for NCS students

27. Referring to the request of the Hong Kong Unison Limited for the development of a policy on Chinese teaching for NCS students and the motion on "Strengthening and continuously supporting the teaching and learning of Chinese for NCS students", moved by Dr Margaret NG as amended by

Action

Mr CHEUNG Man-kwong and Ms Starry LEE, which was passed at the Council meeting on 18 November 2009, Ms Emily LAU enquired about the measures and resources available to assist NCS students in learning Chinese.

28. Senior Education Officer (Education Commission) of the Education Bureau (EDB) responded that it was the policy of EDB to facilitate early integration of NCS students into the local education system by continuous support for the teaching and learning of Chinese for these students. The number of designated schools, which were provided with focused support and a recurrent special grant to support the NCS students, had increased from 15 in the 2006-2007 school year to a total of 26 in the 2009-2010 school year. The after-school support services for NCS students had been reinforced through the establishment of more Chinese Language Learning Support Centres, the number of venues of the Centres had increased from the initial five to 10 in the 2009-2010 school year. Chief Curriculum Development Officer (Chinese Language Education) of EDB supplemented that the "*Supplementary Guide to the Chinese Language Curriculum for NCS Students*" ("the Guide") was distributed to schools in December 2008, followed by a briefing session for teachers on the contents of the Guide.

29. In response to Ms Emily LAU's enquiry on the effectiveness of the various measures implemented by EDB to facilitate integration of NCS students into the local education system, Chief Curriculum Development Officer (Chinese Language Education) of EDB advised that as the Guide had only been issued for less than a year, it would take more time for the Guide and relevant resources to take root and create a sustainable impact on schools and students. Meanwhile, EDB had started to visit schools with larger NCS intakes for collecting information on the effectiveness of the school curriculum and various support. Responding to Ms Cyd HO's enquiry about the effectiveness of the Guide, Executive Director of Hong Kong Unison Limited considered that the Guide sought to provide general guidelines for teachers of NCS students but failed to equip teachers with teaching and assessment tools. She hoped that EDB could (a) organize outreach tutorial services for NCS students learning Chinese; (b) formulate a Chinese language benchmark test designed for NCS students for schools to use as an assessment tool of the Chinese proficiency of NCS students; and (c) enhance the support for non-designated schools to support the learning of Chinese by NCS students.

30. Senior Education Officer (Education Commission) of EDB responded that both designated and non-designated schools could benefit from a number of support measures, for instance, the dissemination of Supplementary Guide, the development of various learning and teaching materials, the teacher-training programmes for teaching Chinese to NCS students, etc. Besides, the provision of focused support is not confined to designated schools. By the 2008-2009 school year, a total of 20 non-designated schools had received support services similar to

Action

those rendered to the designated schools under various school-based support services offered or commissioned by EDB. Chief Curriculum Development Officer (Chinese Language Education) of EDB supplemented that the Guide served to provide guidelines and not specific teaching packages. The first batch of teaching and learning materials on Chinese language covering both primary and secondary levels, had already been distributed to schools in September 2009 and the second batch would be dispatched around June 2010. In addition, courseware on Chinese characters writing and traditional Chinese virtues, suiting the needs of NCS students at various proficiency levels had been dispatched to schools. EDB had also commissioned to a tertiary institution a study on Chinese Language standards of NCS students. Based on the findings, EDB would proceed to develop assessment tools for schools. Regarding the Chinese language benchmark test for NCS students, the assessment tools to be available at the end of 2010 should be able to serve part of the purposes. That said, EDB would continue to evaluate the needs of the NCS students for a separate Chinese proficiency benchmark test.

Admin

31. Ms Emily LAU stressed that it was necessary to assess the effectiveness of the various support measures taken by EDB for NCS students. USCMA said that, as explained to the Panel in the previous agenda item, the Administration would consult EDB and other relevant bureaux/departments and report to the Panel on the progress of implementation of the various support measures for ethnic minorities in the light of operational experience as appropriate. Ms Cyd HO said that the Panel on Education could further follow up on the support measures for the education of NCS students.

The Administration's follow-up on the Concluding Observations

32. Ms Emily LAU shared the disappointment of Hong Kong Unison Limited that SCMA was unable to accede to their request for a meeting to discuss the Concluding Observations. She asked when such meetings could be scheduled so that concerned organizations could discuss the Concluding Observations with the Administration. USCMA informed members that the Concluding Observations would be discussed at the Ethnic Minorities Forum in mid-December 2009, and the Committee on the Promotion of Racial Harmony and the Human Rights Forum in February 2010.

33. Referring to paragraphs 27, 29, 30 and 31 of the Concluding Observations of the Committee [Annex to LC Paper No. CB(2)244/09-10(05)], Dr Margaret NG asked about the timeframe and procedure for the Administration to respond to the Committee's recommendations on (a) inclusion of indirect discrimination with regard to language, immigration status and nationality, among the prohibited grounds of discrimination in RDO; (b) adoption of a law on refugees; (c) repealing the "two-weeks rule" and the live-in requirement for domestic migrant workers; and (d) adoption of a policy on Chinese teaching for NCS students.

Action

34. USCMA responded that, in accordance with paragraph 40 of the Concluding Observations, the HKSAR Government would provide information on its follow up to the recommendations in paragraph 30 of the Concluding Observations relating to domestic migrant workers by 25 August 2010; and address all other relevant issues raised in the Concluding Observations in the HKSAR report to be submitted as part of China's next periodic report by 28 January 2013. In line with the established practice, the Administration would publish an outline of topics to be included in the next report of HKSAR under the Convention for public consultation but the exact timetable would be determined nearer the time.

V. Appointment of Under Secretaries under the Political Appointment System

[LC Paper Nos. CB(2)273/09-10(01) to (02)]

Briefing by the Administration

35. SCMA introduced the Administration's paper on "Appointment of Under Secretaries under the Political Appointment System (PAS)" [LC Paper No. CB(2)476/09-10(03)].

Further development of the Political Appointment System

36. Referring to paragraph 4(c) of the background brief prepared by the LegCo Secretariat on "Appointment of Under Secretaries under PAS" [LC Paper No. CB(2)476/09-10(04)] (Background Brief), Ms Audrey EU sought elaboration on how the creation of the Under Secretary and Political Assistant positions could provide a more comprehensive career path for political talents to pursue. She further enquired whether any of the serving politically appointed officials had indicated interest in standing for elections such as the LegCo election.

37. SCMA responded that the further development of PAS by creating two more tiers of political positions would present a more comprehensive career path for those who wish to pursue a political career. Apart from standing for the District Council (DC) and LegCo elections, political aspirants could also join the Government as political appointees at different levels to acquire political experience. Exposure of this kind would be beneficial to the individuals concerned should they be interested in seeking election to DCs or LegCo in future. He added that it would be for individual appointees to decide whether they would be interested in standing for elections after the expiry of the term of their political appointments.

Action

38. Ms Emily LAU, however, said that the remuneration of an Under Secretary was three to four times that of a LegCo Member. In her view, such discrepancy was a disincentive for politically appointed officials to give up their appointment and seek election to LegCo. SCMA responded that the Administration recognised that, in order to encourage individuals who wanted to serve Hong Kong to seek election to LegCo, it was important to ensure that the remuneration for LegCo Members be set at a reasonable level. In this regard, he noted that the remuneration for LegCo Members would be reviewed through the established mechanism before the 2012 LegCo election.

39. Mr LEUNG Kwok-hung opined that PAS had been a failure from the start and the Administration should not have further expanded it by creating two additional layers of political positions. SCMA responded that PAS was implemented in July 2002 to enhance the accountability of Principal Officials (POs) for their respective policy portfolios and to maintain a politically neutral civil service. PAS allowed the Chief Executive (CE) to form his own governing team with individuals who shared his vision and mission, and who were prepared to promote the policy and political agenda of the Government under his leadership. POs were also appointed as Members of the Executive Council and would help CE deliver his election pledges. This replaced the system that existed prior to July 2002 under which the PO positions were filled mainly by career civil servants who were appointed according to the established civil service system. Under PAS, the term of appointment of POs would not exceed that of CE who nominated them for appointment and, similarly, the term of appointment of Under Secretaries and Political Assistants would not exceed that of CE who appointed them. Such arrangements were akin to those in other democratic jurisdictions.

40. Mr LEUNG Kwok-hung disagreed with SCMA's remark that PAS was akin to the practices in other democratic jurisdictions. He pointed out that in the United Kingdom (UK), all cabinet ministers were elected Members of Parliament belonging to the ruling party, while in the United States (US), the appointment of cabinet secretaries had to be endorsed by the US Senate.

41. SCMA said that, in certain aspects, the political system of Hong Kong was similar to that of a presidential system (such as that in the United States (US)) in which the head of the executive government and members of the legislature were returned by different elections avenues. He added that as it was prescribed in the Basic Law that all POs were nominated by CE and appointed by the Central People's Government, it would not be in conformity with the Basic Law to adopt the US system of requiring nominees for cabinet secretaries to be "endorsed" by the legislature before their appointment.

Action

42. Ir Dr Raymond HO said that one of the prime objectives put forth by the Administration for the introduction of the Accountability System was to facilitate the maintenance of the political neutrality of the civil service through a clearer delineation of work between political appointees and civil servants. It was envisaged that with the introduction of the Accountability System, the political work of explaining and garnering public support for Government policies would be taken up by the political appointees while civil servants would focus on the implementation of the policies. However, he observed that since the Accountability System was introduced in July 2002, the Government officials who attended meetings of LegCo committees to explain and defend the Government's policy decisions were, in most cases, senior civil servants rather than POs or Under Secretaries. This was at odds with the objective of introducing the Accountability System and further expanding PAS.

43. SCMA said that when the Administration put forward the proposal to create two additional layers of political positions, namely Under Secretaries and Political Assistants, the Administration had already indicated that the Secretary or the Under Secretary would normally attend regular meetings of the relevant LegCo Panels. They would take up key discussion items which were more political in nature. For instance, he or USCMA attended the regular meetings of the Panel to explain the Bureau's policies. In respect of the overall attendance of political appointees at meetings of LegCo and its committees, he noted that, according to the statistics published recently by SynergyNet, during the 2007-2008 legislative session, POs and civil servants had spoken a total of 3 400 times and 1 900 times respectively at LegCo and Panel meetings; whereas during the 2008-2009 legislative session, POs and Under Secretaries had spoken a total of 4 100 times and civil servants 1 080 times. He added that, according to the statistics compiled by SynergyNet, the overall attendance rate of the political appointees at LegCo and Panel meetings in the 2007-2008 legislative session was about 66.7%, which had risen to some 80% in the 2008-2009 legislative session.

44. Ir Dr Raymond HO said that if a policy matter was technical in nature and neither the Director of Bureau nor the Under Secretary concerned had relevant expertise, the work of explaining and defending the policy matter in LegCo might have to fall on senior civil servants of the bureau. He was of the view that in recruiting political appointees, the Administration should ensure that at least either the Director of Bureau or the Under Secretary of a bureau had expertise in the relevant policy areas. SCMA noted Ir Dr HO's view, and stressed that the Administration would try as far as possible to recruit candidates with relevant expertise to take up the political positions. Ir Dr HO further said that since the introduction of the Accountability System, there had been problems in the integration between the politically appointed officials and senior civil servants. He asked whether any steps had been taken to improve the situation. SCMA responded that according to his observation, there had been continuous improvement in the integration between the political appointees and civil servants.

Action

45. Dr Priscilla LEUNG said that while the performance of some Under Secretaries had been subject to much public criticism, the concept of the Accountability System in itself was worthy of support. In face of the rapidly changing society, the generalist-trained Administrative Officers (AOs) might not be able to have a full grasp of the relevant technical issues in charting policies. Political appointees who were specialists in the relevant policy areas and the generalist-trained AOs would complement each other well. She stressed that the Administration should look beyond the civil service for recruits to the political team and other sources should be tapped as well. In order that PAS could fulfil its objective of fostering political talents for Hong Kong, the Administration should enhance the transparency of the recruitment of political appointees and draw from a wider pool of talents.

46. SCMA assured members that candidates from different backgrounds would be considered for appointment to the political positions. Apart from civil servants, individuals with political party background and other backgrounds would also be considered. He believed that further expansion of PAS would help to build up a pool of political talents to facilitate the political development of Hong Kong. He added that that in the long run, AOs would be more specialised in policy work on various policy areas, as in the case of UK, Malaysia and Singapore.

Appointment process of politically appointed officials and their work

47. Mr Ronny TONG said that when the Administration proposed the creation of the two new political positions of Under Secretaries and Political Assistants, it had stressed that the additional political appointments would provide more opportunities for aspirants from diverse backgrounds to gain experience and knowledge in government operations. Noting that the two recently appointed Under Secretaries to CMAB and the Security Bureau were serving or retired civil servants before appointment, he queried why talents outside the Government were not found to fill the vacancies. He further asked whether any open recruitment had been conducted for the two Under Secretary posts in question. He considered it incumbent upon the Administration to enhance the transparency of the appointment process of political appointees, as they were highly paid positions funded by public money.

48. SCMA said that the current political team of POs, Under Secretaries and Political Assistants comprised persons from different backgrounds. While a number of the serving POs had civil service background, only two of the serving 18 Under Secretaries and Political Assistants were former civil servants, with the rest coming from such diverse backgrounds as academic, media, business and professional backgrounds. On the appointment process of political appointees, he explained that, as in the case of other countries, it was not suitable to make political appointments through open recruitment. Nevertheless, the

Action

Administration would consider nominations and referrals received from different sources as well as self-nominations. He stressed that in line with established practice, the appointment of politically appointed officials was made under the principle of meritocracy.

49. Mr Ronny TONG said that the Administration should make public any vacancies in the political positions so as to enable interested parties to make nominations/referrals or self-nominations for such positions. He enquired whether such step had been taken by the Administration for the two recently appointed Under Secretary positions.

50. SCMA responded that, after the Report on Further Development of PAS was issued in October 2007, the Administration had indicated clearly that it welcomed nominations/referrals and self-nominations from different sectors of the community for the political positions. As regards the outstanding positions, the Administration's consistent position was that such positions would be filled as and when there were suitable candidates. If necessary, this could be done in phases. Currently, two Under Secretary and four Political Assistant positions had yet to be filled and any individuals interested in making nominations or self-nominations for these positions could write to CMAB or the CE's Office.

51. Mr LEUNG Kwok-hung said that one of the reasons put forth by the Administration for the creation of the Under Secretary and Political Assistant positions was that it could help foster political talents. In his view, the appointment of a retired civil servant as the Under Secretary for Security was hardly in line with such objective. He sought justifications for the recent appointment of two civil servants as USCMA and the Under Secretary for Security.

52. SCMA reiterated that all appointments to the political positions were made under the principle of meritocracy having regard to the requirements of the positions concerned. In respect of the latest Under Secretary appointments, given that the work of CMAB and that of the Security Bureau involved a lot of complex policy issues with Basic Law and legal implications, candidates with civil service background would have a competitive edge. The two newly appointed Under Secretaries were seasoned civil servants with extensive experience. Mr LAI Tung-kwok, who assumed the position of Under Secretary for Security, had worked in the Immigration Department for many years, while Miss Adeline WONG, USCMA, had handled the issue of constitutional development while working in the Chief Secretary for Administration's Office. As Deputy Director of Home Affairs, she had experience in matters relating to DCs and local elections. He stressed that their experience was relevant to and appropriate for the appointments in question.

Action

53. Mr WONG Yuk-man said that the controversy surrounding their nationality and remuneration when the first batch of Under Secretaries and Political Assistants were appointed in May 2008 was evidence that PAS had not been well thought through before implementation. With the low level of public recognition for the serving Under Secretaries and Political Assistants, he wondered how they could carry out effectively their duties of maintaining political liaison with the public and relevant stakeholders and securing their support for Government initiatives. He enquired whether there were concrete measures to ensure that they could perform their political roles effectively. He also criticised the Administration for showing favouritism and appointed only members of pro-establishment groups to these political positions.

54. SCMA responded that in making appointments to his governing team, CE had considered appropriate candidates with different political affiliations. The appointment of Mr Anthony CHEUNG Bing-leung and Ms Anna WU Hung-yuk to the Executive Council were cases in point. As regards the level of public recognition for Under Secretaries and Political Assistants, he pointed out that it was subject to many factors and it was only natural that they were not as well recognised by the public as POs. He assured members that in the remaining term of office of CE, all the political appointees, including POs, Under Secretaries and Political Assistants, would make their best endeavour to attend meetings of LegCo and its committees to explain Government policies as well as to take part in public forums organised by different sectors to listen to public opinion.

55. Ms Emily LAU opined that the performance of some Under Secretaries had not been satisfactory. She criticised that the Accountability System had not been successful in fulfilling its objectives of strengthening the formulation and implementation of Government policies and enhancing the communication between the Executive Authority and the Legislature. In her view, the Accountability System was a waste of public money and should be abolished, and the resources should be channelled for the development of political parties instead.

56. SCMA said that he shared the view on the need to enhance the development of political parties in Hong Kong. To this end, the Administration had implemented a series of measures in the past few years to facilitate the development of political parties. For example, in the Consultation Document on "Methods for Selecting CE and for Forming LegCo in 2012" released in November 2009, the Administration had proposed to increase the number of seats in LegCo from 60 to 70, so as to enhance the opportunity for people with different political backgrounds to participate in politics.

57. Ms Audrey EU noted from paragraph 6(b) of the Background Brief that the work of Under Secretaries included attending public forums and other functions to explain and defend Government policies and to answer questions from LegCo Members, stakeholders and the public. She had earlier on attended a forum

Action

organised by the academia on review of the Accountability System. It was attended by a Principal Assistant Secretary of CMAB but neither SCMA nor USCMA was present. She enquired about the considerations taken into account by the politically appointed officials in deciding whether to attend a public forum, and whether the organiser of the forum was one of the considerations. She queried whether invitations from pro-establishment organisations would be accorded more favourable consideration by the Administration.

58. SCMA responded that the Administration would consider carefully every invitation to a public forum, irrespective of the nature of the host organisation. In deciding the attendance of politically appointed officials at a public forum, the Administration would take into account the availability of the officials concerned, and the necessity for the relevant PO and/or Under Secretary to attend the forum to explain Government proposals, and respond to views from different stakeholders and the public. He stressed that the Administration would consider invitations to public forums positively. As regards the forum referred to by Ms EU, he recalled that as it was held just a few days before the Consultation Document on "Methods for Selecting CE and for Forming LegCo in 2012" was due to be released, he and USCMA were then busy preparing for the release of the Consultation Document and were not able to attend it.

59. Mr Ronny TONG said that while SCMA had stressed that one of the main responsibilities of Under Secretaries was to maintain close liaison with LegCo Members with a view to improving the relationship between the Executive Authority and the Legislature, according to his personal experience, the Under Secretaries had not taken much initiative in liaising with him. He wondered whether it was reflection that the Under Secretaries had not discharged their duty or they had been instructed not to liaise with Members of the pro-democratic camp.

60. SCMA responded that the Directors of Bureau and Under Secretaries had been maintaining liaison with Members belonging to different political parties and groups to seek their support for Government proposals. As a matter of fact, many key Government proposals were passed by LegCo with the support of pan-democratic Members. He undertook to relay Mr TONG's view to the politically appointed officials and encourage them to strengthen their liaison with LegCo Members.

61. Ms Cyd HO said that while individual Under Secretaries had been able to adapt themselves to their new position fairly quickly, some were not able to discharge their duties satisfactorily even after having taken up the work for more than one year. She opined that Under Secretaries should be required to serve a probation period on first appointment and confirmation of their appointment should be subject to a positive review of their performance during the probation period.

Action

62. Mr Ronny TONG asked which bureau was responsible for monitoring the performance of the Under Secretaries and whether any assessment would be conducted on their performance. SCMA responded that the Directors of Bureau would be responsible for supervising and assessing the work of their respective Under Secretaries and the Political Assistants. He further said that in mid-2010, an assessment would be conducted on the performance of the Under Secretaries and Political Assistants by the Directors of Bureau concerned. In response to Mr TONG's enquiry as to whether the results of the assessment would be made public, SCMA said that on the basis of the assessment, a decision would be made on whether any adjustment would be made to the salaries of individual Under Secretaries and Political Assistants. Any adjustments made to their salaries would be made public.

Post-office employment control of politically appointed officials

63. Ms Cyd HO considered it unfair that while the current control period governing post-service employment of directorate civil servants was two to three years, the control period of politically appointed officials was only one year. She opined that since politically appointed officials had greater influence on policy formulation than directorate civil servants and hence their post-office work would have greater potential for conflict of interest with their former Government duties, the control over post-office work for politically appointed officials should be strengthened and be no less stringent than that for directorate civil servants. In the report of the Committee on Review of Post-service Outside Work for Directorate Civil Servants released in July 2009, it was recommended that the control period of directorate civil servants at the D8 level be extended from three to five years. In her view, POs should at least be subject to the same control period as directorate civil servants at the D8 level. She urged the Administration to carry out a separate review on the matter.

64. SCMA responded that the Code for Officials under PAS provided that within one year after stepping down from office, POs should seek the advice of the Advisory Committee on Post-office Employment for Former CEs and Politically Appointed Officials before commencing any employment. He pointed out that it was not unreasonable to impose different post-service/office work control for directorate civil servants and politically appointed officials, because the latter did not enjoy any security of tenure or any gratuity/retirement benefits. They might, therefore, need to seek employment after stepping down from office. He stressed that the current control regime for post-service outside work of POs was effective, and had been drawn up with reference to the control regime in the US and UK.

Action

65. Ms Cyd HO considered it inappropriate to compare the control regime for post-service work of POs with that in other democratic jurisdictions. She said that in countries such as US and UK, if a cabinet minister had taken up post-service work which constituted conflict of interest with his former ministerial duties, the Prime Minister or the President who appointed the minister and their political parties would have to bear political responsibility. However, in the case of Hong Kong, no one would be held accountable for the post-service work taken up by a former politically appointed official which had conflict of interest with his former Government duties. CE, who was not elected through universal suffrage and did not belong to any political party, did not have to bear any political responsibility. She considered that the existing control regime had placed too much emphasis on the right of individual politically appointed officials and had not given due regard to public interest.

66. SCMA reiterated that, given the reasons he cited (paragraph 64 above), it was not unreasonable for directorate civil servants and politically appointed officials to be subject to different control period for post-service employment. However, the Administration would closely monitor the working of the control regime for post-service outside work of politically appointed officials. He stressed that, in addition to the control regime on the Government's part, former politically appointed officials were also subject to monitoring by the public and LegCo for any post-service employment taken up by them.

67. There being no other business, the meeting ended at 6:36 pm.