

OFFICIAL RECORD OF PROCEEDINGS

Thursday, 30 June 2011

The Council continued to meet at Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE FRED LI WAH-MING, S.B.S., J.P.

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN KAM-LAM, S.B.S., J.P.

THE HONOURABLE MRS SOPHIE LEUNG LAU YAU-FUN, G.B.S., J.P.

THE HONOURABLE LEUNG YIU-CHUNG

DR THE HONOURABLE PHILIP WONG YU-HONG, G.B.S.

THE HONOURABLE LAU KONG-WAH, J.P.

THE HONOURABLE LAU WONG-FAT, G.B.M., G.B.S., J.P.

THE HONOURABLE MIRIAM LAU KIN-YEE, G.B.S., J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE TAM YIU-CHUNG, G.B.S., J.P.

THE HONOURABLE ABRAHAM SHEK LAI-HIM, S.B.S., J.P.

THE HONOURABLE LI FUNG-YING, S.B.S., J.P.

THE HONOURABLE TOMMY CHEUNG YU-YAN, S.B.S., J.P.

THE HONOURABLE FREDERICK FUNG KIN-KEE, S.B.S., J.P.

THE HONOURABLE AUDREY EU YUET-MEE, S.C., J.P.

THE HONOURABLE VINCENT FANG KANG, S.B.S., J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

THE HONOURABLE JEFFREY LAM KIN-FUNG, S.B.S., J.P.

THE HONOURABLE ANDREW LEUNG KWAN-YUEN, G.B.S., J.P.

THE HONOURABLE CHEUNG HOK-MING, G.B.S., J.P.

THE HONOURABLE WONG TING-KWONG, B.B.S., J.P.

THE HONOURABLE RONNY TONG KA-WAH, S.C.

THE HONOURABLE CHIM PUI-CHUNG

PROF THE HONOURABLE PATRICK LAU SAU-SHING, S.B.S., J.P.

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE STARRY LEE WAI-KING, J.P.

DR THE HONOURABLE LAM TAI-FAI, B.B.S., J.P.

THE HONOURABLE CHAN HAK-KAN

THE HONOURABLE PAUL CHAN MO-PO, M.H., J.P.

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE WONG SING-CHI

THE HONOURABLE WONG KWOK-KIN, B.B.S.

THE HONOURABLE IP WAI-MING, M.H.

THE HONOURABLE IP KWOK-HIM, G.B.S., J.P.

THE HONOURABLE MRS REGINA IP LAU SUK-YEE, G.B.S., J.P.

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN

DR THE HONOURABLE SAMSON TAM WAI-HO, J.P.

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBERS ABSENT:

IR DR THE HONOURABLE RAYMOND HO CHUNG-TAI, S.B.S., S.B.ST.J., J.P.

DR THE HONOURABLE DAVID LI KWOK-PO, G.B.M., G.B.S., J.P.

THE HONOURABLE WONG YUNG-KAN, S.B.S., J.P.

THE HONOURABLE TIMOTHY FOK TSUN-TING, G.B.S., J.P.

DR THE HONOURABLE JOSEPH LEE KOK-LONG, S.B.S., J.P.

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE ALAN LEONG KAH-KIT, S.C.

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE STEPHEN LAM SUI-LUNG, G.B.S., J.P.
SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

PROF THE HONOURABLE K C CHAN, S.B.S., J.P.
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

THE HONOURABLE GREGORY SO KAM-LEUNG, J.P.
SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

MISS ADELINE WONG CHING-MAN, J.P.
UNDER SECRETARY FOR CONSTITUTIONAL AND MAINLAND
AFFAIRS

CLERKS IN ATTENDANCE:

MISS ODELIA LEUNG HING-YEE, ASSISTANT SECRETARY GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

BILLS

Committee Stage

CHAIRMAN (in Cantonese): Good morning, Members. We now continue to examine the Committee stage amendments to the Communications Authority Bill. Does any Member wish to speak?

COMMUNICATIONS AUTHORITY BILL

MS CYD HO (in Cantonese): Chairman, with the prevalence of information and computer technology, coupled with fibre transmission of information and data, and the mushrooming of social networks on the Internet, the development of information technology has toppled the living of people in modern days over the past three decades, changing our way of living substantially and enabling us to transcend the limits of time and space in engaging in real-time exchange of information with different places on Earth. It is a product which has brought the most significant changes to the living of human beings, so to speak, since the invention of the steam engine.

Yet, technology and software are both neutral, and what matters most is the contents. Take the recent Jasmine Revolution that started in North Africa and the Middle East and the change of political power in Tunisia as examples. The Revolution in Egypt was taken forward through Twitter, and a key figure of this movement is a professional in the Internet information technology sector. This is why any tyrannical government is very afraid of it, for what they fear most is the public and the civil society making use of this powerful platform and weapon to hold debates and exchange information.

It may still be easy to deal with the parliamentary assembly as it holds debates on the physical premises of the parliament building, and even in times of a coup d'etat, all it takes is to send people to besiege the parliament building or carry out all kinds of political lobbying and when enough votes are secured, any barbarous act may probably take place. However, it is not that easy to deal with the civil society and the people. When they grasp the full picture of what is going on, and when they find out the barbarous act of the government after

mature discussions for a period of time, they can exchange information and form an alliance and by then, the force hence rallied is not that easy to

CHAIRMAN (in Cantonese): Ms HO, do you know that we are examining clause 4 and the relevant amendments to it?

MS CYD HO (in Cantonese): Yes, I know. I am speaking on the question of independence. Chairman, it is precisely because this platform is so powerful that many governments hope to keep it under control. Therefore, I will support the amendment proposed by Dr Margaret NG to add a provision on independence. Meanwhile, I also support Ms Emily LAU's amendment which proposes to add a provision on upholding the freedom of the press and freedom of expression.

In fact, as both Members stated very clearly yesterday, the members to be appointed should be upholding public interest in their actual operation in accordance with their functions. The Bill has also included a provision under the functions of the Communications Authority (CA) requiring the CA to act in a manner consistent with the provisions of the Hong Kong Bill of Rights Ordinance. But why do the two Members still have to state the obvious by including such words as "independent" and "freedom of expression" in the Bill? It is precisely because the Government has told too many lies recently, thus making it necessary to include what is originally unnecessary in the Bill.

Let us take a look at what Secretary Stephen LAM said yesterday when he explained the reasons why consultation was unnecessary on the abolition of the by-election mechanism. He went so far as to say that there had already been the element of consultation for the greater part of the year. He said that the question of Members resigning to initiate a *de facto* referendum had been discussed for many times in the Legislative Council and so, no further consultation would be necessary. How outrageous it is that these remarks were made by him. What we really need is some clear, explicit wording. But the performance of the Government and the decadence of the institutions have made it necessary for us not only to state it very clearly just once or to consider it acceptable because it is understood to exist in nature, but we must state it even more clearly once again and repeat it the legislation. This is actually a symbol of the decadence of the

institutions. People who understand the law will know that the drafting of laws should primarily be as simple as possible and that no repetition should be made as long as the provisions are written clearly, or else it may easily lead to more confusions. But why do we still have to do this? It is precisely because we have indeed totally lost confidence in the Government.

Chairman, other than the reason that great political powers are hidden in the information technology platform, colossal pecuniary interest is also involved in it. I believe in present-day society, each person now pays over \$100 to \$200 in monthly charges for communications technology services in one way or another. Whether it is telephone charges or domestic pay television or broadband Internet access charges, substantial commercial interests are involved. We are, at present, in the process of scrutinizing the Competition Bill, and we are concerned that if the work performance of the CA would be unsatisfactory and biased in future, the freedom of expression and economic development in Hong Kong would be adversely affected.

Moreover, the channels for making contact with the public are a source of information that many organizations would like to access. Both political organizations and business organizations very much hope to control these channels. On the business front, there was the case of the Octopus Holdings Limited reaping profits at the expense of the privacy of the public, and on the political front, recently there have been queries about the inclusion of iProA as a service provider of the Internet learning support programme for children from poor families, which has aroused great public concern. So, why must the CA act independently? Why do we have to take all the trouble to repeatedly profess its independence? Because from the angle of the Government's political position or consortiums in the commercial sector, there are strong reasons to influence the public's channels and right to receive information. The easiest way is to do so through licensing and regulation by deterring intermediaries or operators from properly playing their role in the transmission of information to the public. Therefore, the amendments proposed by the two Members are intended not only to set requirements for the operation and functions of the CA. They also provide a means to defend the right to receive information and the process of democratization in society as a whole.

However, I pessimistically think that the amendments certainly will not be passed. So, I would like to cite some overseas examples here to explain that

whether or not the CA can operate independently actually depends on the members appointed by the Government. The executive arm of the CA is comprised of civil servants, which means that civil servants are not required to answer questions from Members in the Legislative Council in their capacity as civil servants within the government structure, just as the arrangement made in other statutory bodies. As long as civil servants are serving statutory bodies, they can evade such accountability. As for the candidate for the office of Chairman of the CA, if we look at the candidate for chairmanship in corresponding organizations in the United Kingdom, we can see that a candidate, after accepting an appointment, is required to answer questions from Members of the Parliament (MPs), while the public can watch the live broadcast of this meeting of the Parliament to clearly find out about the personality and style of work of the candidate. If this candidate can command the trust of the community after being baptized by the questions of MPs, he will enjoy greater legitimacy in future work.

However, this is not the case in Hong Kong. Our Chief Executive is not returned by election, and we are only forced to accept his exercise of powers to make appointments, for there is no way for us to elect all the members through election. But it is precisely because the powers of the Chief Executive do not have the mandate of the people that it is often the case that an appointee can prove whether or not he can truly work in public interest only after he is officially appointed. For instance, the Chairman of the Equal Opportunities Commission, LAM Woon-kwong, faced a lot of challenges when he was first appointed and it was only after a period of time that he could win the trust of the people through his own efforts. However, there are even more cases in which the appointees are basically puppets of the Government who may not understand that they are duty-bound to uphold public interest after taking up their office. It is exactly because a democratic system is lacking in Hong Kong that the entire society is often at the mercy of the Government.

For this reason, Chairman, I must reiterate here that when the public finds that the institution of the parliamentary assembly and the appointment procedure can hardly uphold public interest, they can only choose direct democracy and choose to join the rally on 1 July, taking actions to uphold their personal freedoms and rights. We in the Legislative Council can do the same. After the two amendments are negated, we will definitely follow this up in the relevant panels and demand that the Chairman of the CA comes to the Legislative Council

to give explanations on a regular basis and by then, the public will be able to see the true picture.

DR MARGARET NG (in Cantonese): Chairman, as this is a joint debate, I am not going to discuss my amendment, but the amendments proposed by the Secretary for Commerce and Economic Development and Ms Emily LAU respectively relating to the objects.

Chairman, insofar as these two amendments are concerned, I appeal to Members to support Ms Emily LAU's amendment, because she has clearly stated the objects of this CA. On the surface, both the amendment proposed by the Bureau and that by Ms Emily LAU are talking about the same thing, but there are some differences in wording and the position of amendment.

But then, what are the objects proposed by Ms Emily LAU? Members should look at the verbs more than the other wording. Ms Emily LAU said that the objects of the CA shall be to promote and uphold the freedom of expression and freedom of the press and then, to promote the long-term development and fair competition of the communications market, and lastly, to further the interests of consumers in the communications market.

Chairman, why are these objects useful? Because when the Court interprets the other provisions of this ordinance in future, it will certainly consider the objects. For this reason, the more clearly and more straightforward the objects are spelt out, the more helpful it will be to members of the public in understanding how exactly these provisions should be interpreted, and this also enables the Court to make an interpretation more clearly.

If the relevant provisions can clearly explain the objects of this ordinance, many cases of unnecessary litigation could then be avoided. The reason is that everyone would know how the Court would make a judgment. We must never say that in case there is any uncertainty, we can leave it to the Court to make a judgment.

Chairman, I am a lawyer and this is why I know how difficult it is, how much resource is required and how many risks are involved in filing a court case.

So, Chairman, a straightforward way of expression which is helpful to the people, helpful to the Bureau, and helpful to the Court in understanding more clearly the objects of this ordinance is absolutely better than an ambiguous way of expression.

However, the amendment proposed by the Secretary for Commerce and Economic Development places the objects under the functions of the CA and from this we know what it is all about. The amendment only says that the CA, in performing its functions, must have regard to or take into consideration a series of matters. What are the matters to be considered? They are: (a) the fostering of an environment that supports the development of the sector, (b) the encouragement of innovation and investment in the communications market, (c) the promotion of competition in the market; and as regards (d), it generally means that after fulfilling (a), (b) and (c) as mentioned above, it has to be consistent with, or its objective is to act in a manner consistent with the Hong Kong Bill of Rights Ordinance.

Chairman, such wordings as "must have regard to", "fostering", "encouragement" and "promotion" are all very loose. Of course, in order to state the objects in wording that is fairer, clearer and more emphatic, we must pay attention to the constitutional protection for human rights under the Hong Kong Bill of Rights Ordinance and Article 39 of the Basic Law, including the freedom of speech and freedom of information. These are rights conferred on us by the constitution.

The Court of Final Appeal has made clear judgments in many previous cases, from which we understand how the constitutional rights conferred on us by the Basic Law should be interpreted. The Court of Final Appeal has used the words "generous" and "purposeful", meaning that a broad angle should be taken to look at these rights and what objectives they are intended to achieve, rather than just saying that we are not going to have anything which is not written in the Basic Law. We should not adopt this angle.

The Court of Final Appeal has also explained why the words "generous" and "purposeful" are used. It said that the objective is to enable the public to enjoy "a full measure" of these rights. So, these three words or expressions — "generous", "purposeful" and "a full measure of their rights" — have clearly explained the objects of the Basic Law. Therefore, when dealing with the Hong

Kong Bill of Rights Ordinance, what are the standards that have to be met? Strictly speaking, the answer is very clear.

However, if the Secretary has written this provision in such a loose manner, Chairman, we will have to spend a lot of time explaining the relationship among these several subsections and clarifying the correct angle for interpretation. Why should things be made so complicated?

Deficient as I may be, Chairman, I am, after all, a practicing barrister and I have handled several cases relating to the Hong Kong Bill of Rights and judicial review. As barristers come across legal provisions in their daily work, we are conversant with the provisions in law and we will read the provisions very closely. Are you telling each and every member of the public to do what the barristers are doing?

So, Chairman, if the Bureau has the same objective and it eventually has to interpret all the rights conferred on the people by the Basic Law according to the instruction of the Court of Final Appeal, why does it not write them down expressly? Why does it not spell out the objects in an upright manner and in an unequivocal way to pre-empt litigations, so that everyone will know that the Government has great determination not to turn this CA into a tool of the Government? As Ms Cyd HO has said, any ambiguity in the provisions will indeed lead to never-ending disputes, Chairman.

Think about this: To a commercial organization, if a huge amount of money is involved As these organizations normally involve For instance, a television broadcasting company often involves substantial interests. Why would it not be keen to influence the decision of the CA, to lobby the CA and even to take advantage of some grey areas in going about things? When it cannot get what it wants, why would it not attempt to file a case in court? If it is financially powerful, why would it not hire many lawyers to even if the Court may not necessarily rule in its favour in the end, if members of the CA are intimidated by litigation, this can at least make them think twice in future.

Chairman, why should it be necessary to bring about these consequences? Why should it be necessary to turn Hong Kong into a place where clout, relationship and intimidation are the order of the day?

Therefore, Chairman, with regard to all provisions of this type, I think the more clearly and more straightforward they are, the better. Ms Emily LAU's amendment has another major merit in that it is short. Anyone who reads these several lines of her amendment will find it readily comprehensible. Her amendment is as straightforward as she is as a person. On these issues, we absolutely should not be ambiguous.

Chairman, I understand that procedurally, in the vote to be taken later on, the amendment proposed by the Bureau will be put to the vote first and disregarding whether it is passed or not, Ms Emily LAU can then move her amendment. It means that even if both amendments are passed, there will not be any problem at all. I, therefore, urge Members to support the Secretary's amendment and also Ms Emily LAU's amendment. Although this may not be the ideal way of lawmaking Since Ms Emily LAU's amendment only comes after the Secretary's, her amendment is at peril as it will be put to separate voting. Some people may vote according to their political position. Chairman, I really have to appeal to Members of this Council not to look at this issue from the political angle. Rather, they should look at it from the angle of the system and from the angle of which system is most beneficial to Hong Kong.

Chairman, even though I have made this appeal, the "path dependence" of the Democratic Party may not necessarily be successful. I, therefore, appeal to Members of this Council to vote in favour of both amendments, though I personally consider Ms Emily LAU's amendment better. But regrettably, the Government has never accepted this amendment. Thank you.

MR LAU KONG-WAH (in Cantonese): Chairman, as Chairman of the Bills Committee on Communications Authority Bill (the Bills Committee), I have followed the entire process of deliberations very closely. In the course of discussions, I found that Members had put forward many counter-proposals practically and rationally, and I also saw a certain extent of exchanges and discussions on the views of different political parties and groupings. In fact, we have seen that the Government has taken on board the specific proposals put forward by different political parties and groupings and incorporated them into the Communications Authority Bill. Two colleagues have proposed amendments to the Bill today. I think it is useful and constructive to exchange views with a pragmatic attitude.

Firstly, I will talk about my personal views on the amendment proposed by Dr Margaret NG. Obviously, Dr Margaret NG's view is that she would like the future CA to operate independently without interference from the Government, still less political interference. In fact, Members do not take exception to the spirit and the principle of this view. Similarly, many authorities or commissions have been established in society and with regard to this mode of operation which has been proven, we can see that, for instance, in the case of the Equal Opportunities Commission as mentioned by Ms Cyd HO earlier on, it is unnecessary to add the word "independent" to show its independent way of operation, for it is naturally governed by the relevant ordinance and the responsible officials and members are required to work independently. Another example is the Electoral Affairs Commission with which we are very familiar now. It is also required to operate independently but likewise, it is unnecessary to add the word "independent" to show its independence in operation.

On the question of interference from the Government, it is very difficult for us to define the factors, extent or intensity of interference. For example, in the course of deliberations, we all knew that most members of the CA would be non-official members but one of its members would be a government official responsible for executing the proposals made by the CA, which means that the official would discharge his executive duties. So, there will be one official in the entire organizational structure of the CA, and is this also counted as interference from the Government? Opinions differ on this point. But in the course of discussion, Members considered this arrangement necessary. In fact, the CA will comprise five to 10 non-official members only but for the purpose of enforcement, a large team of civil servants will often be required. Indeed, we have seen before that when civil servants were tasked to execute the work of the Government, they could always take a professional, fair and impartial attitude, and many Members in this Chamber have also highly commended civil servants. Therefore, from an executive angle, the exclusion of civil servants may nevertheless arouse suspicions in society.

Yesterday, Dr Margaret NG raised a very important point to which I very much agree. She pointed out that according to the original design proposed by the Government, there will only be five non-official members but two other members may be appointed by the Government or may even be civil servants. With a ratio of 5:2, it would be easy for the Government to exert a certain degree of influence, or the weight of its influence will be comparatively great. This is

why members agreed at the time that whether from the perspective of workload or influence from the Government as cautioned by Dr Margaret NG, it is imperative to absorb more non-official members. I, therefore, mentioned this point in my speech yesterday, hoping that even if a composition of five to 10 non-official members is allowed in future, we are still inclined to supporting the appointment of more non-official members. This will be more desirable, especially as it is in line with the principle of independent operation.

On the appointment of independent non-official members, I, being Chairman of the Bills Committee, have some expectations. As I pointed out earlier, whether or not the CA will be labelled as "independent" is not important. What is most important is that this group of members must have independent thinking, especially when facing the communications sector, telecommunications sector, and such issues as freedom of speech, freedom of the press, and so on. I expect the members appointed to have independent thinking. They should also be dedicated to their work and have integrity.

Why is integrity so important? As also mentioned by Ms Cyd HO or other Members earlier, the CA covers a wide scope of interest and for this reason, we have had many exchanges of views on the declaration of interests in the course of deliberations. We have attached great importance to this point, and I am all the more concerned about the problem of holding meetings by electronic means in future. The e-conferencing is certainly convenient to members, but if views are not exchanged in the same space but through electronic means, it may give rise to many problems concerning the confidentiality of meetings, and all kinds of irregularities may even emerge.

I believe e-conferencing is very popular in the commercial sector because members of the sector always have their hands full. But when it comes to public affairs, especially on issues involving substantial interests, any minor slip in the process can result in sensitive information being leaked to outsiders or even being grasped and manipulated by a third party. In that case, grave consequences can be resulted. I, therefore, already raised this point in the Bills Committee and the Government also accepted that standing orders should be made by the future CA, so that the declaration of interests can be regulated and even handled in depth and stringently, thereby demonstrating to the public that this is a fair, independent and impartial authority. These are my expectations. So, Chairman, in this respect,

I do not look at Dr Margaret NG's amendment from the political angle. Rather, I look at it from the pragmatic point of view. I think it is not necessary to have such a provision.

As regards Ms Emily LAU's amendment, she had stressed the freedom of expression right from the beginning and members did not oppose it. We all agreed to it. The freedom of expression and freedom of the press in Hong Kong are what we always hope to maintain and defend, and they are also loved by members of the public. Yet, two points come out of this. Ms Emily LAU mentioned yesterday that the word used by her was "objects" but the Government used the word "functions". In fact, the word used by members initially was "mission", and I wonder if Ms Emily LAU can recall that the word "mission" was used by us then. But be it "mission", "objects" or "functions" — of course, if we want to be fastidious about rhetoric, we can find out many different interpretations and definitions, but if we consider this issue from the angle of an ordinary person, be it "mission", "objects" or "functions", it actually still covers the work that we hope and require members to uphold and promote. Disregarding which word is used, they are still required to do so.

In this connection, while the three points proposed by Ms Emily LAU are short and succinct, I do not see any inadequacy in the amendment proposed by the Government which, I think, has a broader coverage. As Ms Emily LAU should also agree, there are actually some similarities between her amendment and that of the Government. For instance, with regard to point (b) proposed by Ms Emily LAU, which reads "to promote the long term development and fair competition of the communications market", the Government has actually provided a clearer description in point (a) of its amendment, which reads "the fostering of an environment that supports a vibrant communications sector to enhance Hong Kong's position as a communications hub in the region". Their wordings may be different but they are very close in meaning. Ms Emily LAU also put forward point (c) which is "to further the interests of consumers in the communications market", and the Government has incorporated it into point (c) of its amendment which is "the promotion of competition and adoption of best practices in the communications market for the benefit of the industry and consumers". So, they are rather close.

I noted that there are two differences between them. First, Ms Emily LAU proposed "to promote and uphold freedom of expression and freedom of the

press". We do not oppose this. But when this point was mentioned in the Bills Committee, I remember that I expressed my view at that time. I expressed my view out of my feelings about the political landscape prevalent in Hong Kong. I think we must protect the freedom of expression but at the same time, it is actually very important to protect the freedom of expression of other people. Both Ms Emily LAU and I may have had very deep feelings over a period of time in the past, because when we attend a public occasion or even when we are in this Chamber, we may sometimes be subject to personal attacks or arbitrary abuses. Certainly, we hope that these people can continue to enjoy their freedom of expression, but it is also very important for them to be responsible for their speech and to let other people express their views.

Therefore, the proposal made by the Government today of acting in a manner consistent with the provisions of the Hong Kong Bill of Rights Ordinance (HKBORO) (Cap. 383) is very important. The HKBORO is a piece of legislation with which all Members of this Council comply and which we often mention. Article 16 of the Hong Kong Bill of Rights actually provides that everyone shall have the right to hold opinions without interference and that everyone shall have the right to freedom of expression, and that it is necessary to respect the rights or reputations of others. Of course, I have simplified the essence or key points of the HKBORO, but I think the balance, coverage and inclusiveness in it are important. So, on this point, if the Government's amendment is adopted, it may be more comprehensive, and it does not reject or deny the view of upholding the freedom of expression and freedom of the press advocated by Ms Emily LAU or jointly advocated by Members in this Council.

Another point included in the Government's amendment but not in Ms Emily LAU's amendment is, I think, very important and that is, point (b) of the Government's amendment: "the encouragement of innovation and investment in the communications market". Ms Emily LAU and I have recently attended a forum organized by Dr Samson TAM where innovation and technology were discussed. During the forum, although we could see that Hong Kong was ranked second to none in terms of competitiveness by certain organizations in the world and the Chinese Academy of Social Sciences also ranked the competitiveness of Hong Kong the first among all Mainland cities, we Hong Kong people strongly feel that our competitiveness may probably be declining all the time and so, we were very concerned about it. Responses were enthusiastic during the forum where many professionals attended and the participants had

provided a lot of input on how Hong Kong should upgrade its competitiveness. It is not that easy to maintain competitiveness.

Therefore, it is very important to upgrade the competitiveness of Hong Kong through the development of communications technology and the telecommunications sector. Hong Kong has the soft power underpinned by freedom, rule of law, a clean society, and a professional team. This soft power should continue to be brought into play in Hong Kong. The amendment of the Government concerns innovation and investment, which are very important, particularly as Hong Kong is an international financial market. Apart from speculation, international capital and funds should actually be diverted to the innovation and technology sector or telecommunications sector. I think this will be of crucial to the future development of Hong Kong.

So, I have conducted my own analysis on the similarities and differences between the two amendments. I do not mean to exclude the amendment proposed by Ms Emily LAU, but the Government's amendment has exactly and fully shown that the Government has incorporated other views while giving regard to the long-term interest which is most important to Hong Kong. What do we wish to achieve in making all the fuss? Apart from maintaining what we presently have, we must also provide a long-term mission and direction for this group of members through a reorganization of legislation and the structure.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR RONNY TONG (in Cantonese): Chairman, this Bill today proposes to merge the Telecommunications Authority and the Broadcasting Authority into a unified regulator. Chairman, the purpose of this Bill is really not in any way controversial. Why? A couple of years ago the Legislative Council already reached a consensus that the regulatory authority should be simplified and unified by all means, rather than managing an increasing number of "mountain strongholds". Therefore, the discussion and deliberation on this Bill should have been completed expeditiously and the Bill itself should have been passed expeditiously. However, in their speeches made yesterday and today, many

colleagues were arguing things which, I believe, are incomprehensible to outsiders.

Chairman, if someone who is not a Hong Kong citizen comes to Hong Kong from an overseas country, especially from a democratic country, and if he sits in the public gallery upstairs observing our meetings yesterday and today, he will not understand what we Members are actually arguing. He will think that when we said that the CA has to be independent and free from interference from the Government, and since these proposals are basic human rights principles which apply universally, why will anyone raise objection? And, more strangely still, why should anyone propose an amendment? That these things do exist is understood even if it is not said to be so. Why should it be necessary to propose an amendment to write them down in the legislation?

In his speech yesterday, the Secretary did not use this idiomatic expression, but what he meant was that it is unnecessary to "state the obvious", as this thing has always existed. I believe a foreigner who is observing this meeting in the public gallery upstairs will think: Why do Members have to state the obvious? Is it that they do not believe in this system? Even though they really want to state the obvious, why does the Government oppose it? Also, some Members are opposing it, too, although they said loud and clear that they support these things and that these things are very good — Chairman, this is the same as in the case of universal suffrage as they are saying that they certainly want universal suffrage, that this is a good thing and that they support it, just that they will oppose it at the vote — Chairman, even though I am sitting here in this Chamber, I still do not quite understand it, or perhaps I am not intelligent enough, coupled with the fact that it is something past 9 am, which is not yet time for our brains to work.

However, I often think that Members have refrained from saying something. What is it? Chairman, what lies behind this is actually the political tug-of-war in Hong Kong. When you combine two regulatory authorities into a unified regulator, its powers will be increased, not to mention the fact that it will be governing a very important platform for the flow of information. Like the Spiderman has said — Chairman, I wonder if you have watched "Spiderman" — He said, "With great powers comes great responsibility." When this CA has such great powers, it can influence some views in the community or even the political culture. Under such circumstances, some people are concerned about

whether this CA can operate with independence and a clear mission and whether it will genuinely work for Hong Kong as advocated by many Members in such very special political landscape of Hong Kong. There will be these doubts.

But Chairman, why will there be such doubts? This will not happen in other countries, especially democratic countries. This is all because of our Chief Executive. Our Chief Executive is different from other chief executives elsewhere in that his prime concern is always political considerations whether in his speech, behaviour and administration. Not only has he premised everything on political considerations, he has also stated unequivocally that he treats people differently according to their affinity with the Government. All the policies are oriented towards political interests. They are all premised on political interests — Chairman, this is similar to the so-called replacement mechanism that we have been discussing heatedly, which is entirely oriented towards political interests to the complete neglect of basic human rights. No thoughts have been given to its justification from a legal or constitutional point of view. The sole purpose is to win in taking this step politically.

Chairman, over the years, the performance of the Government that we have seen is that firstly, it has politicized just everything. On the one hand, it tells people not to politicize issues but on the other, it politicizes all the issues raised by us every day. Secondly, it upholds the system of affinity differentiation. Chairman, this is where the problem lies. All public bodies or regulatory authorities actually have an appointment system. An appointment system is not a problem in a democratic country. But with such an imbalanced system politically and when the Chief Executive has clearly said that he goes by the rule of affinity differentiation, the integrity and creditability of this appointment system will be open to question. This is also borne out by facts. Let us look at all those people appointed by the SAR Government. Can you justifiably tell how many public bodies and advisory bodies there are where affinity differentiation does not prevail? Chairman, there is none. It is still useless to formulate the so-called "six-six Rules" or whatever rule. The "six-six Rules" are meant to impose restrictions on people holding dissenting views. If you hold different opinions, you have to comply with the "six-six Rules", while compliance is not required by those who hold the same views. This is why there are "kings of public service" in Hong Kong.

Under such a system, how can you expect the ordinary citizens or our colleagues to trust this very structure which seems to be high-sounding and very fair on the surface? How can we trust it? Many colleagues actually have not said this in plain terms. All they have said is: Do we have to "state the obvious"? Well, in making this remark, they hope that there can be express provisions to stop the Government from going too far under the banner of affinity differentiation. If this is written explicitly in the provisions and when there is a problem, it will be taken to the Court and the Court will say that it is all written in black and white that there must be independence without interference. Why do we have to do this? This is the reason. Why do colleagues oppose it? The Government has opposed it for the same reason. In fact, had the Government not opposed it, it probably would have been unnecessary for us to propose these amendments because if the Government does not oppose it, it means that the Government agrees that these principles do exist and it would have been unnecessary for us to argue. Had it been unnecessary for us to argue, it would have been unnecessary to propose an amendment. Had it been unnecessary to propose an amendment, Chairman, it would have been unnecessary for me to talk such gibberish here. But the problem is that the Government is opposed to it, and some Members are also opposed to it, or the pro-establishment camp is opposed to it. The stronger they oppose it, the more strongly people who have misgivings about this system believe that there is substantive proof of their doubts. Why would there be anyone opposing this basic, universal principle. Why should anyone wear a strict face and talk about it in a most high-sounding manner, exactly like a saint, but say in the end, "I actually oppose it."? Why should things that go against justice be disguised as things that uphold justice? Such a position and performance are proof that Members' concerns are founded and that these amendments should be passed.

However — I am sorry for being cynical; I mean I take a negative, skeptical attitude — these amendments certainly will not be passed. Chairman, even if they will not be passed, being a Member who speaks for the voters under a representative system, I think I am duty-bound to come forth to reveal the underlying meaning of all these contentions. The underlying meaning is that we are faced with a totally imbalanced political system. So long as this imbalance in the system remains unresolved, this appointment system will be open to question, unless the Government introduces a Bill tomorrow to put in place an entirely fair and independent appointment system and even submits it to the Legislative Council for Members to ask questions on it, just as other democratic

countries will do, and for Members to determine whether or not the system is truly devoid of political considerations.

Had there been such a system in place, I think neither Dr Margaret NG nor Ms Emily LAU would have proposed their amendments, and it would have been unnecessary for us to spend time discussing this issue here. Frankly, I think these amendments are meaningless because first, basically there should not be anyone arguing against them and second, they are not going to be passed, so why do we have to discuss them here?

Chairman, after much grumbling, I think when Hong Kong people see this debate today, they must try to understand that Members seek to state the obvious rather than stirring up unnecessary debates. They do so for a reason. In fact, this shows that they have lost confidence in this unfair system and in the Government. It is for this reason that there are this debate and these speeches made by Members today. Certainly, when colleagues from the pro-establishment camp come forth and pose themselves as persons of high morals in explaining why they oppose the amendments, their real political face is laid bare. From this angle, this debate today has still served a purpose. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MS EMILY LAU (in Cantonese): Chairman, Mr Ronny TONG said that these amendments are meaningless. What he said may be meaningful, as he said that the amendments are not going to be passed anyway. But if something becomes meaningless when it will not be passed, the time that we spend on meetings will be greatly shortened. The two motion debates to be held later are not going to be passed either.

We certainly must state the obvious, but this is not the sole purpose. Members have put forward a lot of views and even Mr LAU Kong-wah expressed his support, just that he considered that compared with my amendment, the amendment proposed by the Administration seems to have covered all the aspects and included more comprehensive contents. However, my amendment is about the objects, whereas the Secretary's is about functions, just as I said last night. Members may have forgotten this as a result of not having taken enough rest.

They are actually different in level and so, they are not the same. As Dr Margaret NG said earlier, my amendment is very active, and I am a very straight person.

Mr LAU Kong-wah said that my purpose is to uphold the freedom of expression. But this is everyone's freedom, and I do not mean that only our freedom should be defended whereas you do not have this freedom. This is not true, so please do not distort my meaning. Chairman, as to the question of whether or not they are completely the same, perhaps we can talk about it. Regarding the Secretary's amendment, he said clearly yesterday that consideration would be given. He did not say that these must be upheld and promoted, as Mr LAU Kong-wah said earlier. The words used in his amendment are "must have regard to". The Secretary used an even softer tone yesterday as he only said that consideration would be given in future. Both the Secretary's amendment and that proposed by me mentioned competition, but what I said is fair competition and on this point, we have had long arguments. Moreover, both amendments mention consumers, but the Secretary's amendment focuses on bringing benefits to consumers whereas mine is at a different level as it is about the interests of consumers. Even an illiterate can understand this. So, the point is that with regard to the amendment proposed by the Secretary, we can accept it and its contents are not too bad, but it seems to be not quite adequate.

Chairman, three amendments have been proposed and as you said clearly earlier, it is possible for all the three amendments to be passed. The point is that if all the three amendments are passed, I think Mr LAU Kong-wah and his party will not oppose it in principle. This is actually no big deal, as Members already stated their position explicitly at the meetings, just that he considered it unnecessary to expressly provide for this in the legislation. We all agree that it is an independent body, but he argued that no such express provision is made for other organizations. Then, I must ask: Why do we have the Independent Police Complaints Council (IPCC)? This is actually expressly stipulated. There is no disadvantage to expressly write it down. So, since Members all agree on this point and when there is a precedent, Secretary, I mean since there is the precedent of the IPCC, why can we not expressly write it down? If the Government refuses even to make an express provision, the public would certainly ask for the reasons but on the contrary, there should not be any problem if this can be stipulated expressly. If the Secretary adamantly puts up resistance and refuses to write it down expressly, the people will think that there must be something

wrong. So, Members must clearly find out what the problem is, and this debate does carry a significant meaning.

Mr LAU Kong-wah remarked earlier that we should not consider it interference. He even questioned in return how we can define the extent and depth of interference. This can really be a field of in-depth study. But to me, interference is interference, and this is just like what some people say about democracy. Chairman, I was supposed to visit a primary school in Tsz Wan Shan this morning but I am not going now, and I hope that students of this primary school will know after watching the television that I do not mean to fool them. Let me tell those primary students that with regard to democracy or interference that we are talking about now, it is actually like pregnancy because it is impossible to be half pregnant. It can only be either pregnant or not pregnant; it can only be either having democracy or not having democracy, and it can only be either having interference or not having interference, and this does not involve depth or extent. It is not the case that a certain extent of interference is not considered interference, but it is considered interference when it reaches another extent. No such distinction can be made. This is like the incident of Jeremy GODFREY that we are very concerned about. Although the Democratic Alliance for the Betterment and Progress of Hong Kong does not support that an inquiry be conducted, the debate on 13 July may still take six to seven days, but there is no other alternative because it will be a very meaningful debate, and it is necessary for us to spend some time on it.

As I said yesterday, since government officials will be involved, or its membership will comprise civil servants, the public already do not feel at ease about this. Even if the other nine members are very independent, the fact is that one member will be a civil servant. Even if they are very independent, it will, after all, be civil servants who are responsible for enforcement. Some people said that civil servants take an impartial and fair attitude in their work, but the problem is that the leader of the civil servants does not appear to be taking this attitude. This is why Mr Ronny TONG has reminded us time and again that the Chief Executive declared right after he was elected that he would treat people differently according to their affinity with the Government. The Secretary has learnt a lesson this time around as he has not talked about affinity differentiation since he took up his office. But the people can understand the undertones of some remarks and know that it is all a matter of affinity differentiation.

We have received a lot of complaints from the public in the districts about civil servants taking the approach of affinity differentiation in their work. Although some civil servants are impartial and command our respect, since their leader is not quite so, nor is the way through which he was returned, how can we be convinced that it is going to be independent? Therefore, even if the wording in Dr Margaret NG's amendment is included, will it mean that we can rest assured that there is not going to be interference? Certainly not. But at least there will be an express provision made to stipulate that it has to be done this way and in line with this objective. Once a problem arises, it will have to be taken to court for a judgment. Chairman, now that everything has to be settled in court because there is just no other solution, unless we turn the clock back to the times when disputes were solved by a duel in which whoever was faster in drawing his gun won.

Therefore, in a civilized metropolis, since a consensus has been reached, it should be provided for expressly in writing. What is most laughable is that a unanimous agreement has already been reached and social harmony can be achieved by stipulating it in an express provision and yet, the Administration is unwilling to do so. Although it is agreed that this can be done, this cannot be clearly stipulated in an express provision. In fact, even if it is expressly written down, it may not necessarily be implemented right away. If the Administration refuses even to clearly stipulate it in a provision, will people like us who are already worrying not feel even more worried and outraged?

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Chairman, the Government opposes the amendments proposed respectively by Dr Margaret NG and Ms Emily LAU.

The amendment by Dr Margaret NG is neither necessary nor appropriate. First of all, the relationship between the CA and the Government has been stated

clearly in the Bill. Clause 3(3) stipulates that the CA is not a servant or an agent of the Government, nor does it enjoy any status, immunity or privilege of the Government. As mentioned by the Bills Committee Chairman Mr LAU Kong-wah just now, the provisions in the respective ordinances governing various, other independently operating statutory bodies in Hong Kong, such as the Independent Police Complaints Council, West Kowloon Cultural District Authority, Financial Reporting Council, Electoral Affairs Commission, Equal Opportunities Commission and the Urban Renewal Authority, have all used wordings similar to that of the Bill to reflect their relationship with the Government. In other words, there is no stipulation that they are independent or free of government interference. However, the absence of such wordings does not necessarily mean that these statutory bodies are incapable of making any independent decision or subject to government interference in their daily operation. The amendment is, therefore, unnecessary. We have also made reference to the arrangements of overseas communications regulators. Although there are no such wordings in the relevant legislation, it does not affect the independent operation of these bodies.

Secondly, the CA is empowered to act under the law and the Bill stipulates that the statutory functions of regulating the telecommunications and broadcasting sectors belong to the CA, not any other parties or bodies. This is very clear. Moreover, clauses 14 and 15 of the Bill have clearly spelt out the relationship between the CA and its executive arm. In other words, the Director-General of Communications (DG Com) must effectively support the CA in carrying out or implementing the CA's decisions. The Office of the Communications Authority (OFCA) must support and assist the DG Com in the performance of his statutory functions.

These provisions have clearly defined the roles of both the OFCA and the DG Com. They have also addressed the concern that the Administration may interfere with the CA's operation through the OFCA. In terms of financial support, the CA relies on the OFCA Trading Fund; while in terms of implementation, the CA relies on the OFCA to enforce its decision. The addition of Dr Margaret NG's amendment is inappropriate because it will make people doubt the CA's administrative support arrangement.

All in all, Dr Margaret NG's amendment is unnecessary and inappropriate. Since it will make people doubtful about CA's operation, I hereby sincerely urge Members to oppose Dr Margaret NG's amendment.

As for the proposed addition of new clause 3A by Ms Emily LAU, it is similarly unnecessary and inappropriate. The amendment proposed by Ms Emily LAU seeks to add the objects of the CA to the legislation, namely: promoting and upholding the freedom of speech and freedom of press; enhancing the long-term development and fair competition of the communications market; and protecting the consumers' right in the communications market. The relevant issues have been discussed in detail by the Bills Committee and the Administration has subsequently accepted the Committee's views by proposing amendments and adding to the legislation areas that CA should have regard to in performing its duties. These areas include: to foster an environment that supports a vibrant communications sector to enhance Hong Kong's position as a communications hub in the region; to encourage innovation and investment in the communications market; to promote competition and the adoption of best practices in the communications market for the benefit of the industry and consumers; and to act in a manner consistent with the provisions of the Hong Kong Bill of Rights Ordinance.

The amendment proposed by the Government has covered the areas that Ms Emily LAU is concerned about. In order to cope with CA's operational needs, the Government's amendment is even more comprehensive and has even given the CA flexibility to take care of other areas and cope with developments in the future. However, Ms Emily LAU's amendment lacks flexibility. In other words, the principal ordinance will have to be amended if the CA in future wants to introduce any new goals or directions to suit the actual market developments. This will seriously hinder the CA's ability to respond quickly to the development of the communications market and ultimately affect the CA's timely expansion of its business.

We understand that Ms Emily LAU attaches importance to the freedom of speech and freedom of press, hoping that the CA could uphold the principle of freedom of speech and freedom of press in performing its functions. The Administration totally agrees to this point and has, therefore, proposed an amendment in response to Ms Emily LAU's appeal. The amendment stipulates

that the CA should act in a manner consistent with the provisions of the Hong Kong Bill of Rights Ordinance (HKBORO) including those on the freedom of expression, with a view to upholding the core values of Hong Kong.

This arrangement has responded to the views of many members of the Bills Committee. Besides protecting the freedom of speech, we are also concerned about maintaining public order and social morality. Although the provisions of the HKBORO have clearly indicated the concerns mentioned above, Ms Emily LAU's amendment has not given consideration to those areas.

All in all, the Government has proposed an amendment to address Ms Emily LAU's concern, and the amendment has been endorsed by the Bills Committee. On the contrary, Ms Emily LAU's amendment has only repeated the Government's amendment on the one hand, and it is incomprehensive and inflexible on the other. It hardly reflects the Bills Committee members' concerns. Therefore, I sincerely urge all Members to pass the Government's amendment and oppose Ms Emily LAU's amendment. Thank you, Chairman.

DR MARGARET NG (in Cantonese): Chairman, I would like to briefly respond to the reasons cited by the Secretary earlier on for opposing my amendment. In fact, what he said is absolutely a repetition of the reasons already stated during the Second Reading debate. The Secretary said that these amendments are unnecessary. But obviously, the fact that we have to specifically hold a debate on them, it means that they are necessary indeed.

When he said that my amendment is unnecessary, the Secretary made a remark which is very significant. He said that even if this expression is not included, it does not mean that independent operation is impossible. I hope that this remark made by him will turn out to be true in future. If it is considered unnecessary to clearly stipulate this point but if he thinks that this will really be the case in future or the CA will truly be independent in future, then why does the Secretary not allow us to add this to the legal provisions? Why is he unwilling to put the minds of Hong Kong people better at ease?

Second, the Secretary said that this approach is inappropriate because there is no such provision in the legislation of other organizations, adding that clause 3

of the Bill has already made clear provisions. But other statutory bodies are given charge of a lot of other responsibilities and in some relevant legal provisions it is even clearly stated that interference by the Chief Executive is allowed. So, it is inadequate to purely rely on clause 3 of the Bill. The Secretary said that it is his wish that the CA will operate independently. We will put this on record, but I cannot agree to his comment that clause 3 is adequate. The Secretary went on to say that the approach of clause 3 is adopted by all the other organizations and that it is inappropriate to include an additional provision on independence. This, I beg to differ.

Third, clauses 14 and 15. These two clauses mention how the DG Com will execute the powers of the CA. The Secretary said that the provisions are clear and have explicitly defined the relationship between the CA and the Office of the Communications Authority (OFCA). In fact, clauses 14 and 15 are written in a most ambiguous way. They do not provide that the CA is responsible for making decisions while the OFCA is responsible for implementing the decisions. Rather, they say that the OFCA should fully provide support after the CA has made a decision. In view of these provisions of which the contents are so ambiguous, should we not clearly stipulate that the CA is independent without being subject to interference?

Lastly, the Secretary said that the incorporation of this amendment will arouse doubts among the public. But I think only the administration will have doubts about such a clear and simple matter. I do not think any member of the public will find it hard to understand the phrase "without interference from the Government". Is it that when it is written that the CA operates without interference from the Government, it means that other statutory bodies will operate with interference from the Government? I think this is just a unique view of the Government. I, therefore, do not accept the reasons cited by the Secretary to oppose my amendment earlier on.

Chairman, I would also like to respond to Mr LAU Kong-wah's remarks just now. Mr LAU Kong-wah said that insofar as "independent" and "without interference from the Government" is concerned, we do not hold different views in terms of the spirit — our views are not different insofar as the spirit is concerned — but he considered it unnecessary to add these words. Chairman, I have been a lawyer for many years and I have also scrutinized many Bills in the Legislative Council. Many things are, in fact, covered in common law

principles and as long as common law principles are truly manifested, basically it is unnecessary to clearly write down many things. However, judging from the actual situation in Hong Kong and the actual position of the Government, great importance is actually accorded to stipulations made in express provisions and there is also an increasing reliance on these provisions. For this reason, writing down these words clearly to avoid disputes is something worth doing. If I proposed a lengthy amendment, Members might think that it would only make things even more ambiguous, but this concise, clear and straightforward amendment proposed by me now can help the public understand the nature of the CA.

Mr LAU Kong-wah has raised a question in relation to my proposal to include the words "without interference from the Government" in the provision as he considered it difficult to define "interference". The reason is that under clause 8, the CA will consist of one government official, and will the inclusion of this government official breach this provision on "without interference from the Government"? Chairman, this is all very clear. I have not raised any queries on the inclusion of this government official as provided for in clause 8, nor have I proposed any amendment to it. The point is that when there is a government official, does it mean that there must be interference from him? This is absolutely not the case. It is precisely because the CA will consist of a government official who will have a role to play that it is necessary for us to state clearly that he must not cross the line in playing his role and that the Government must not effect any interference through this official.

Chairman, I do not understand why Members and officials cannot see where the line is drawn. When public officers reflect the views of the Government and make considerations from the angle of public coffers or other aspects, or when they give advice in the CA or any other organization, when does it constitute interference and when does it not constitute interference? In fact, to people with moral integrity, this line cannot be clearer. Anything which can cause misunderstanding and make people feel being pressurized should not be done. If he thinks that the line is vague, then I think it is all the more important for a line to be drawn, so that all government officials will clearly know that in conveying the Government's position, views and public coffers considerations, their way of work and manner of expression absolutely must not cross the line.

As such, what is considered to be "crossing the line" and what is not considered to be "crossing the line"? If he understands that he cannot cross the line, he will gradually develop a culture for others to understand it, especially what the Government will do when his view is not accepted. So, this is exactly what should be stipulated clearly in express provisions, so that we can develop an ethical culture. The moral boundaries of officials and Members have become more and more blurred nowadays and so, we must indeed clearly draw this line afresh today.

Mr Ronny TONG mentioned earlier why we have to state the obvious and made a lot of explanation. I very much respect and am grateful for his detailed explanation. In fact, the more we have this cultural background, the more necessary checks and balances have to be put in place. This is what we can do with our powers and functions and that is, we can enhance the clarity of the stipulations in legal provisions.

I am keenly aware that the chances of the amendment being passed are slim, but I respect Honourable colleagues. Even though I know that some Members are possibly not going to support me, I still cannot presume that they do not listen to reasons. Had I presumed that they would not listen to reasons, I would have simply said nothing. Human beings are rational animals, and we should not do anything that is entirely useless. But I will not presume that other Members do not listen to reasons. Meanwhile, we are also duty-bound to explain to the public why some principles have to be clearly spelt out in this legislation. So Chairman, disregarding whether the chance is high or low for the amendment to be passed, so long as it is meaningful, we must do what we are duty-bound to do.

To conclude, Chairman, I wish to make an appeal to Members. Since the Government does not hold different views from ours in terms of spirit and policy, and this can be helpful to Hong Kong people, to the CA and to the Court, why do we not clearly write this down in the provision? Such a simple, short amendment can already serve the purpose, and this is also warranted under the current circumstances. So, Chairman, I call on Members to support my amendment.

CHAIRMAN (in Cantonese): I now put the question to you and that is

(Mr LAU Kong-wah raised his hand in indication)

MR LAU KONG-WAH (in Cantonese): Chairman, I wish to give a brief response.

CHAIRMAN (in Cantonese): You have to understand that after you have given a response, I will have to allow Dr NG to give hers.

MR LAU KONG-WAH (in Cantonese): Yes, I do. Since she mentioned some of my views earlier, I would like to do a little bit of explaining. I will be brief, Chairman.

Dr Margaret NG mentioned that while she did not oppose the inclusion of government officials in the CA, she was concerned about interference from the Government. Following this logic, she should oppose the inclusion of government officials in the CA as well, or else the government officials will be caught in a dilemma. Should the officials say anything or should they not say anything then? Should they vote or should they not vote? There is going to be a problem.

Ms Emily LAU mentioned that everyone has the freedom of expression, including other people — I heard she make this point — But the HKBORO has indeed expressly put down "respect of the rights of others". This is different. It would be better if both points can be stated more clearly and this would also be consistent with Article 19 of the International Covenant on Civil and Political Rights.

MS EMILY LAU (in Cantonese): Chairman, I think the Secretary has really set a bad example for students in saying that my amendment and that proposed by Dr Margaret NG were unnecessary and inappropriate. Well, we have been listening to the debate and Members entirely agree that the proposals can complement each other. So, it is fine for Mr LAU Kong-wah to say that my amendment is

inadequate whereas the Secretary's is adequate. Members can support the Secretary's amendment and they can at the same time support my amendment and that proposed by Dr Margaret NG and if so, there is not going to be any problem.

Chairman, this is not what the Secretary has done, as he only put forward his own amendment but belittled the amendments proposed by other people, saying that their amendments are inappropriate without clearly explaining why they are considered inappropriate. What is inappropriate about upholding the independence of the CA? What is inappropriate about demanding that provisions be expressed drafted on protecting the rights and interests of Hong Kong people?

Chairman, the Secretary entirely has not responded to Members' speeches in the debate. He just kept on making repetitions and read out from the script of his speech yesterday all over again. Chairman, it seems you have to consider holding some training sessions for them, as they simply do not know how to debate. Even though sometimes sophistry may be advanced, some people will still argue for it, but he entirely refrained from reasoning. He neither listened to what other people said nor gave a response. I think We all feel very dejected.

As for Mr LAU Kong-wah, disregarding whether one likes to listen to him or not, he has still spoken after all. I hope the Administration will speak, too. But with regard to his criticism of my amendment for lacking flexibility in not writing down expressly that line suggested by him about promoting technological development, I must say that my amendment does not include everything. This is why I said that we are complementing each other. Even though I have not stipulated it in express terms, Chairman, does it mean that it cannot be done when it is not expressly written? Does he get the picture?

So, do not "frame" my amendment. If I have to write down everything, there can be 10 items or 20 items — if I have to write down the objects — But I have written down the most important ones. He suggested the promotion of technological development, but who would possibly oppose it? So, if he supports my amendment and Dr Margaret NG's amendment, then the three amendments can be passed altogether, and I think this will be better for the Bill.

However, I still have to say that under the existing structure, disregarding what is written in black and white, can it be implemented in future? We all have great misgivings about this. But we consider that in view of the current trend, convergence is inevitable, and a new structure should be established to work according to these principles and this, we agree.

Nevertheless, I still put many things into it in the hope that the Administration can give effect to them. I hope that the queries raised by us during the debate yesterday and this debate today will not be substantiated very soon when the Government made some appointments and caused catcalls among the community as people realized that it is all a matter of affinity differentiation. If that happens, how can it defend the rights and interests of Hong Kong people?

CHAIRMAN (in Cantonese): Secretary, do you wish to speak again?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Chairman, the Government's position has been reiterated time and again in this two-day debate. If Members cannot hear it, I have to reiterate it.

If Members cannot hear it, Chairman, I have to explain it again. Sorry, I have to take up Honourable Members' time. However, the Government's position has been fully explained in my speeches.

Thank you, Chairman.

DR MARGARET NG (in Cantonese): Chairman, I would like to talk about the point just made by Mr LAU Kong-wah to supplement his views because it is interesting and if we have time, this issue is worthy of debate or discussion.

With regard to the position of Mr LAU Kong-wah, what he has just said is simple. He said that since I do not oppose the inclusion of a government official in the membership of the CA while expressing concern about interference from the Government, does it not mean that I am contradictory? He considers this contradictory. Why? Because his assumption is that when there is a government official, there will be interference, that giving advice means exerting

pressure, and that it is most normal for government officials to exert pressure. So, since I accept that there will be a government official exerting pressure, why do I demand that there must not be interference from the Government?

Chairman, when a government official is included in the membership, does it necessarily mean that he will certainly exert pressure? It really depends on how he handles his work, whether he respects the CA, and whether he understands where the line is drawn. I have no idea why in recent years people have the feeling that this line has become more and more blurred. In the past, we could always tell the integrity of a government official or public officer, and there should not be any doubts about when they were giving their opinions and when they had crossed the line, exerting pressure. Today, Members think that when we do not oppose the inclusion of government officials in the membership, it means that we accept a certain measure of interference from them. This is exactly why we all the more should clearly stipulate in a provision that there must not be interference from the Government. If Members do not know where the line is drawn, they really must take some tutorial sessions.

Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Dr Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Dr Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Dr Margaret NG has claimed a division. The division bell will ring for three minutes.

(While the division bell was ringing, Mr LAU Kong-wah stood up)

MR LAU KONG-WAH (in Cantonese): As it is very early in the morning, Chairman, can you tell us once again what we are supposed to be voting on now?

CHAIRMAN (in Cantonese): Members now vote on the amendment proposed by Dr Margaret NG to clause 4. Dr Margaret NG's amendment proposes to add subclause (1A) to the clause.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Margaret NG voted for the amendment.

Mrs Sophie LEUNG, Dr Philip WONG, Ms Miriam LAU, Mr Tommy CHEUNG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Prof Patrick LAU, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou voted against the amendment.

Ms LI Fung-ying, Mr Paul CHAN, Mr Paul TSE and Dr Samson TAM abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Ms Emily LAU, Mr Andrew CHENG, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai and Ms Cyd HO voted for the amendment.

Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mr WONG Kwok-kin voted against the amendment.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 19 were present, one was in favour of the amendment, 14 against it and four abstained; while among the Members returned by geographical constituencies through direct elections, 19 were present, 10 were in favour of the amendment and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): As Dr Margaret NG's amendment has been negatived, she may not move her amendment to the long title.

CHAIRMAN (in Cantonese): Secretary for Commerce and Economic Development, you may now move your amendment.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Chairman, I move that clause 4 be amended by adding subclause (4).

Proposed amendment

Clause 4 (see Annex III)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Commerce and Economic Development be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

CLERK (in Cantonese): Clause 4 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 4 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CHAIRMAN (in Cantonese): Ms Emily LAU, you may now move your motion.

MS EMILY LAU (in Cantonese): Chairman, I move the Second Reading of new clause 3A.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 3A be read the Second time.

CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Ms Emily LAU rose to claim a division.

CHAIRMAN (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for three minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Margaret NG voted for the motion.

Mrs Sophie LEUNG, Dr Philip WONG, Ms Miriam LAU, Mr Tommy CHEUNG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Prof Patrick LAU, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou voted against the motion.

Ms LI Fung-ying, Mr Paul TSE and Dr Samson TAM abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Ms Emily LAU, Mr Andrew CHENG, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai and Ms Cyd HO voted for the motion.

Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mr WONG Kwok-kin voted against the motion.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 19 were present, one was in favour of the motion, 15 against it and three abstained; while among the Members returned by geographical constituencies through direct elections, 19 were present, 10 were in favour of the motion and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

CLERK (in Cantonese): New clause 12A

Register of interests

New clause 19A

Payment out from trading fund.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Chairman, I move the Second Reading of the new clauses read out just now, as set out in the paper circularized to Members.

In response to the views of the Bills Committee on Communications Authority Bill (the Bills Committee), clause 12A mandates the registration of interest by CA members and members of its committees at the beginning of each calendar year after appointment and at an appropriate time. The CA is required to maintain a register relating to any disclosure of interest for inspection by the public. The provision seeks to establish a two-tier interest disclosure regime in order to enhance the transparency of its operation.

Clause 19A confirms that any sums payable by the CA as a result of anything properly done by the CA in connection with the performance of its functions are to be paid out of the Office of the Communications Authority Trading Fund. The clause is added in response to the views of members of the Bills Committee so as to address their concern about who would meet the costs of the CA arising out of litigation or other commitments.

The Bills Committee supports the proposed new clauses mentioned. I implore members to support and pass the relevant amendments.

Thank you, Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 12A and 19A be read the Second time.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MS EMILY LAU (in Cantonese): Chairman, I support the amendments moved by the Secretary. I am also very pleased that the Secretary has listened to Members' suggestions and proposed the amendments.

Chairman, you certainly know that there is no democracy in Hong Kong, and Hong Kong people yearn for democracy. Conflicts of interests would definitely pinch the nerves of Hong Kong people. Hence, whenever incidents involving conflicts of interests occur, there would be extensive media coverage, and Hong Kong people would listen very carefully. They would say, "How outrageous? There are conflicts of interests. You have done what you are not supposed to."

During the debate in these past two days, we have discussed the wide range of matters under the management of the CA and the extensive interests under its charge. A colleague told me that communications was a piece of "fat pork", and how it would be divided in the future was still uncertain, for it might tilt to several major property developers and their supporters. Chairman, a declaration system, even if established, can still not help allay the misgivings.

Nevertheless, as it is what ought to be done, we certainly need to do so. Chairman, both you and I know that the Legislative Council has a declaration system. While many studies and investigations are frequently conducted by the Legislative Council Secretariat, Members of the Legislative Council also take the system seriously. I hope the CA will also take it very seriously in the future.

Like the declaration system of the Legislative Council, the proposed system should be divided into two tiers. First, a member has to register his interest after being appointed and register his interest again should there be any changes. If anything happens, he must disclose his interest immediately. The secretariat of the CA I do not know whether a secretariat will be set up, for this will depend on the future arrangement. Chairman, if a member of the CA has conflict of interest in respect of a matter under discussion, the documents or information relating to that matter might be withheld from him. Hence, I hope that they will gain a clear understanding of the relevant standing orders.

Chairman, unlike the secretariat of the CA (if any), the Legislative Council Secretariat does not have the so-called "confidential" documents, for all its papers are circularized to Members. At most, the papers would sometimes be stamped to show that they are "restricted" documents, meaning that they cannot be circulated indiscriminately, though the documents contain neither commercial secret nor sensitive information. Nevertheless, this could happen from time to

time. Chairman, I hope that the secretariat of the CA can enforce it vigourously in future to prevent the occurrence of conflicts of interests by all means.

As mentioned in our debate yesterday, the CA has a lot of responsibilities but only a few staff members. So, does the CA have enough manpower to cope with its work? Some people say that they have referred to overseas experience and found that the organizations in many places employ full-time staff. Chairman, the merits of employing full-time staff are "full-time" means working all day long. To me, a full-time employee means an employee who has only one source of income. Hence, I am a full-time Member.

Chairman, both you and I know that the people who pays salaries are bosses. My salary comes from the taxpayers I hope the people concerned can think clearly in the future because a full-time job will give rise to less conflict of interest.

I also appreciate the need to employ people well-versed in this industry. I have no objection to the views expressed by Dr Samson TAM yesterday, who expressed the need to employ people who are young, innovative and knowledgeable. His views are not bad, but the point is how to employ such people and prevent them from doing something beneficial to people of another gang for potential benefit, thereby jeopardizing public interest. Chairman, this is a major test of everyone.

That is why we propose that a mechanism be established for strict enforcement. In this connection, the Administration has eventually proposed the establishment of public search. Chairman, this is very important, because the meetings of the CA are closed meetings. In response to our proposal yesterday on making reference to the practice of the Broadcasting Authority to open up some of the meetings to the public, the Administration has promised to give it consideration. Nevertheless, as most of the meetings are closed meetings, the declaration of interest and relevant matters should, contrary to the current practice of the Executive Council, be disclosed on its webpage.

Chairman, you used to be a Member of the Executive Council. In fact, the public can hardly look up the meetings held by the Executive Council because they cannot log on the relevant webpage. On the contrary, the webpage of the Legislative Council is vastly different, as most of its records of proceedings are

uploaded onto its webpage. However, members of the public are required to make advance bookings before they can observe certain meetings or inspect certain documents of the Executive Council. This practice is not open, fair and impartial.

I hope that the Secretary can give a response later. Given that there is a provision allowing public inspection, should the Administration not allow the greatest degree of transparency for the registered information or information to be disclosed Chairman, the information to be disclosed will be made known to members of the public, too. Similarly, although disclosure is made by relevant members at closed meetings, their disclosure is not known to the public. Is there any way to make the relevant information known to the public? The greater the transparency, the stronger the accountability, and the greater confidence the public will have in the system.

Actually, people should have doubts in their minds after listening to our debates here in the past two days. Should the Administration keep all sorts of information secret without disclosing it, the register for declaration of interests will only give the public the impression that it serves no real purpose at all.

Lastly, I have to appeal to all members of the CA to examine the requirement of the register and act accordingly after the register is established. If a certain requirement is found to be unfair, they may raise it for discussion. On the contrary, they have to abide by the rules after they have been made. I hope that the register can operate properly in the future.

DR MARGARET NG (in Cantonese): Chairman, I would like to respond briefly to the remarks made by Ms Emily LAU just now. She said that money had to be paid before some qualified persons could be found to work because whoever pays would be the boss.

Chairman, I wish to emphasize that I have been working in the legal profession for many years and done a lot of voluntary work, including performing certain duties at the organizations concerned. There is no way to employ certain people even if someone is willing to pay. If the Government tells someone that it is going to spend a substantial sum of money to employ him on condition that he must obey all its orders, he will not accept the job on the contrary.

Chairman, it is precisely due to this kind of mindset that so many people drag their feet under the existing system or political framework. As the saying goes, "there must be someone brave enough when there is a handsome reward". The Government believes that someone will take its orders so long as it is willing to pay. However, it has been proven that it is not going to work.

Chairman, I have no intention to rekindle the debate just now. It has been proven that people who are truly capable and willing to do something for the Government will do so voluntarily. Such a person will also insist on providing assistance on a voluntary basis. However, the Government must guarantee that the relevant organizations have independence and autonomy.

In my opinion, Chairman, such issues as declaration of interest or the need or otherwise of making such declarations will be resolved easily if men of moral integrity are identified to work for the Government.

With more and more emphasis put by the Government on pecuniary issues, there will only be more disputes, giving rise to doubts as to whether or not the so-called "interests" are truly interests, whether conflicts of interests will arise, or whether the so-called "interests" should be regarded as direct or indirect interests.

When the Government acts in this direction, the high standard originally set as a result of the requirement on personal repute will, on the contrary, make everyone gets to the bottom of the matter to examine ways to use the provisions to restrict the definition of "conflict of interest". Hence, as in the case of criminal defence, everyone will require the other party to prove beyond reasonable doubt that another party is really in breach of the provision concerning conflict of interest.

Chairman, I do not mean to object to the amendments proposed by the Secretary. Although I understand the origin of these amendments, I think that the Government has taken a wrong path in thinking that regularization can be achieved by means of money and provisions and, in doing so, suitable persons can be found to serve it.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR RONNY TONG (in Cantonese): Chairman, I absolutely agree with Dr Margaret NG's comments just now.

I think that the more capable a person is, the less the Government can afford his salary. Although I do not wish to insult Hong Kong people, frankly, the Government can only afford the salaries of people with limited abilities.

If the Government has a clear sense of mission that accords with the aspirations of capable people, they will work for the Government without caring about the cost and return. I think this is the most salient quality of Hong Kong people.

MR LEUNG KWOK-HUNG (in Cantonese): This year marks the 90th anniversary of the establishment of the Communist Party of China (CPC). Back then, 12 people attended the 1st National Congress of the Communist Party of China. Chairman MAO attended the Congress but not CHEN Du-xiu. CHEN Du-xiu accepted an invitation to serve as a member of the education board of the provincial government in Guangzhou, so he did not attend the Congress

CHAIRMAN (in Cantonese): Mr LEUNG, our debate is beginning to deviate from the subject again. *(Laughter)*

MR LEUNG KWOK-HUNG (in Cantonese): It is not. Just now, he talked about principles, did he not? If someone has the desire to make some contribution to society, so long as he thinks that the Government's beliefs are similar to his, or he thinks that the organization concerned has credibility, he will join it. This is also how the Chinese People's Political Consultative Conference (CPPCC) in our national system came into being.

We all know that under one-party dictatorship, other political parties, including the Kuomintang, would convene the CPPCC to resolve national issues. Therefore, this is why it is said that "when the Dao was lost, its attributes

appeared". If there is not any ideal in society or society has become increasingly complicated and too many institutions are established, this will certainly keep virtuous people constantly on the run. However, if the standards are lowered, acts tantamount to bribery are committed and appeals are made to capable people to join because they will receive benefits, I think such practices will deviate from the correct and righteous path.

Therefore, I have great dislike for the aristocracy under a political system. The aristocracy and knights are this kind of people, and I could only hear them say so.

I think our system should how should I put it? If political leaders know in what direction society should develop, the relevant problems can be solved readily.

CHAIRMAN (in Cantonese): In history, the rule of law became important because propriety and the rites were beginning to be eroded.

DR MARGARET NG (in Cantonese): Chairman, perhaps we can debate what is meant by "legalism" and "propriety" in the future.

My view is that the "legalism" being discussed is actually different from the "law" in the rule of law. The principles of the rule of law do not accord with the traditional Chinese thinking of legalism but with the ideas of "propriety" under Confucianism.

Chairman, I cannot help but add a word at this stage. I hope we can have the opportunity to debate the relevant issues thoroughly in the future.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, I now call upon the Secretary to speak again.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Chairman, I would like to briefly respond to Ms Emily LAU's speech just now and thank her for her support for the two new clauses.

I hope Ms LAU can read the clauses carefully to which she indicated support earlier. The relevant clauses have clearly stipulated that the details of interests recorded in the register will be disclosed to the public. In particular, it is clearly stipulated in clauses 12A(2), 12A(3) and 12A(4) that the register is available for inspection by the public.

Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clauses 12A and 19A be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): New clauses 12A and 19A.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Chairman, I move that new clauses 12A and 19A be added to the Bill.

Proposed additions

New Clause 12A (see Annex III)

New Clause 19A (see Annex III)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 12A and 19A be added to the Bill.

CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Schedule.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): I move the amendment to Schedule, as set out in the paper circularized to Members.

The amendment purely seeks to make two technical amendments to the Chinese text of the Schedule. I urge Members to support and pass the amendment. Thank you, Chairman.

Proposed amendment

Schedule (see Annex III)

CHAIRMAN (in Cantonese): Does any member wish to speak?

(No member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Commerce and Economic Development be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

CLERK (in Cantonese): Schedule as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That Schedule as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

COMMUNICATIONS AUTHORITY BILL

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, the

Communications Authority Bill

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Communications Authority Bill be read the Third time and do pass.

Does any Member wish to speak?

DR MARGARET NG (in Cantonese): We support the Third Reading of the Bill. But our support is based on the undertakings reiterated by the Administration during the debate of the Bill.

The first undertaking is that the Communications Authority (CA) will be independent in its operation and free from interference of the Government. The

Government said that it agreed to the spirit and principle of this point, despite its reluctance to spell it out in provisions.

The second undertaking is to uphold the freedom of speech and protect freedom of information. This is the mission and principle which should be complied with by the CA in future. Although the text is different, the Administration has repeatedly emphasized that it is the objective.

Thirdly, the Administration has undertaken we had proposed that a comprehensive policy review be conducted before setting up a unified regulator. The Government then said that it would start to formulate a comprehensive policy soon after the Bill is passed.

President, the Civic Party supports the Bill on the basis of these three undertakings because we believe any violation of these commitments by the Government will lead to great harms to the public by the future CA. Should that happen in future, I hope all Hong Kong citizens will review today's debate.

President, if I have any misunderstanding of the three undertakings by the Government, I hope the Secretary can make a clarification immediately so that we will vote against the motion. Thank you.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR LEUNG KWOK-HUNG (in Cantonese): President, after listening to Dr Margaret NG's speech, I have come to an opposite conclusion and I will not support the Government.

I can cite numerous examples. Take The Link Real Estate Investment Trust (REIT) as an example. When the motion on The Link REIT was put to the vote, the former Chief Executive Officer of the Hong Kong Housing Society mentioned the "3-3-3" system, which meant that tenants would not be asked to leave within three years and their leases would be renewed three years later. But these commitments were not honoured. Then we had to deal with the securities and futures law. When the framework was passed in the Legislative Council, we were told by the Government that the framework was a prerequisite, or else

we would lag behind the international trends and Hong Kong would be doomed. Then regardless of all else, Joseph YAM proposed the "twin-peak approach" and the system of subjecting one industry to two regulatory authorities, which resulted in the Lehman Brothers Minibonds Incident in 2008. The Legislative Council is still conducting an investigation into it.

The Government is really too unreliable and the Civic Party is too stupid. The Government said that its objective was the same as theirs, but it could not write it down. Barristers, how ridiculous! Would you deal with a contract on behalf of your clients if it has not yet been written clearly? I think the most appropriate action for them is to abstain. This Council has faced difficulties because we are deprived of the lawmaking power. A private Member's Bill will most probably be rejected by you, President. I have made several failed attempts. As a result, this is tantamount to *de facto* preventing Members who are holding different views from submitting a private Member's Bill. This has in fact affected every Member. Even Members in the so-called loyalist camp were frustrated.

The Government said in a high-handed manner that they would be appointed as officials. But later they found that they were not appointed as officials but messengers, or officers responsible for clerical work. The Government has adopted a wrong approach. In fact, it has lost in the lawsuit against me. I had quoted an example in Sri Lanka. The Supreme Court of Sri Lanka ruled that it was inappropriate for the Sri Lanka President to allow a minister to appoint members of a bureau.

Today, the Government has played the same old trick — I am not sure whether this is intended by Secretary Gregory SO, who might not know that he would read out the draft by himself — and the Legislative Council once again thinks that as its stance is the same as that of the Government, it should trust the Government even though it is only a verbal undertaking, which will not be spelt out in black and white. Buddy, if you were a woman, you should not trust a man who said, "Trust me, I love you. But I will not marry you." Will you trust this man? Therefore, I think the Civic Party should abstain from voting. Of course, I will not impose anything on you. You are deceived by the Government again. As the Administration has only provided a framework, you will have to mention the legislative intent again when you go take it to court and Fortunately, Dr Margaret NG has learnt a lesson and explicitly requested the

Government to respond to three points she has raised. Otherwise, she will be deceived again.

Regarding the securities and futures law, owing to the Lehman Brothers Minibonds Incident, I have looked up some information and found the speech of Dr Margaret NG who spoke in English that the Bill should not be passed and the Government should take precautions if it did. One year later, the relevant Bill was submitted to the Legislative Council again. President, you were still a Legislative Council Member while Mrs FAN was presiding over the meeting at that time. The Government surprisingly told us: "No, it must be passed. We do not have such responsibility, and now you can only take a glance at it." The Lehman Brother Minibonds Incident broke out in 2008 after the passage of the Bill. A large number of victims blamed the Legislative Council. So, I do not trust the Government and I will at most abstain, which is actually tantamount to voting against it. The Government has only itself to blame. If the Government has a goal which is the same as that of Members, then sign it, Buddy!

Now the enactment of the Competition Law is caught in the same situation. Despite the request that the legislation should ultimately be advantageous to consumers, the Government surprisingly said that consumers beware, which is a universal principle. But in Hong Kong, this would not be put down in black and white even though it has been expressly stipulated in the United Kingdom and the European Union

PRESIDENT (in Cantonese): Mr LEUNG, please refrain from making comments irrelevant to the question.

MR LEUNG KWOK-HUNG (in Cantonese): I am not. I just want to remind Honourable colleagues not to be deceived by the Government. The Government has deceived us one by one. We have been divided into 10 pieces and cheated, right?

MS EMILY LAU (in Cantonese): President, the Democratic Party supports this Bill and we have already said so many times. We support this move. In fact, it has come too late. A consultation was conducted in 2006, but the Bill was

introduced into the Legislative Council only in 2011 and it still had so many flaws. However, we really hope that the authorities will review those two pieces of legislation as soon as possible. At the same time, we are also very much concerned about the issue of independence. Just now, it was mentioned a number of times that there were deficiencies in this regard. The authorities also promised that the civil service establishment would be reviewed to see if the CA should be allowed to have an independent law-enforcement agency and how its composition should be decided. We hope that the authorities will consult the Legislative Council. In that case, we can discuss together and hopefully, independent people can really be selected to serve as members and perform their functions without any conflict of interest. Therefore, I hope that the Secretary, who has just taken office, can honour the undertakings made by the authorities as soon as possible, so as to improve the handling of the whole matter and avoid having to refer it to the Legislative Council again in the future, Chairman, just as in the incident relating to Jeremy GODFREY or other incidents. If it is not handled properly and disputes arise, a war of words will break out again in the Legislative Council. I hope the authorities can handle these problems properly.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, the three points raised by Dr Margaret NG just now have in fact been mentioned by me in my speeches. I therefore will not repeat them.

Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Communications Authority Bill be read the Third time and do pass. Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(No hands raised)

Mr LEUNG Kwok-hung rose to claim a division.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop

(Mr Ronny TONG raised his hand in indication)

MR RONNY TONG (in Cantonese): I do not mean to blame Dr Margaret NG but when I asked her how I should vote, she said that I should vote against it. Therefore, I pressed the "No" button. In fact, it should be the "Yes" button.

DR MARGARET NG (in Cantonese): We were talking about the second motion.

MR RONNY TONG (in Cantonese): President, as I just stepped into the Chamber, I was not sure which motion we were voting on.

PRESIDENT (in Cantonese): Mr TONG, do you mean to vote in favour of the motion?

MR RONNY TONG (in Cantonese): Yes.

Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Kong-wah, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Mr CHIM Pui-chung, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Paul TSE and Mr WONG Yuk-man voted for the motion.

Mr LEUNG Kwok-hung abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that there were 37 Members present, 35 were in favour of the motion and one abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Communications Authority Bill.

MOTIONS

PRESIDENT (in Cantonese): Motions. Proposed resolution under the Mandatory Provident Fund Schemes Ordinance that the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2011 be approved.

I now call upon the Secretary for Financial Services and the Treasury to speak and move the motion.

PROPOSED RESOLUTION UNDER THE MANDATORY PROVIDENT FUND SCHEMES ORDINANCE

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

The motion seeks to amend the various minimum levels of relevant income stipulated in Schedule 2 to the Mandatory Provident Fund Schemes Ordinance (MPFSO).

The MPFSO provides that unless exempted, an employer and employee must each contribute 5% of the employee's relevant income to a Mandatory Provident Fund (MPF) scheme as mandatory contribution. If the relevant income of the employee concerned is less than a minimum relevant income level, he is not required to make MPF contribution himself, although his employer still has to make MPF contribution for him. If the relevant income of the employee concerned is above a maximum relevant income level, both he and his employer are not required to make mandatory contribution in respect of the excess relevant income. Such requirements also apply to self-employed persons. Section 10A of the MPFSO requires the Mandatory Provident Fund Schemes Authority (MPFA) to conduct a review of the income levels at least once in every four years.

President, the purpose of setting a minimum relevant income level is to lessen the financial burden of MPF contributions on lower-paid employees and self-employed persons. The MPFSO requires that in conducting the review, the MPFA should take into account 50% of the monthly median employment earnings prevailing at the time of the review as compiled from the General Household Survey (GHS) conducted by the Census and Statistics Department (C&SD). The MPFA may also consider other relevant factors. The abovementioned level is \$5,500. Nevertheless, taking into account the implementation of the statutory minimum wage (SMW), both the Government and the MPFA accepted that the SMW rate should be considered at the same time when adjusting the minimum relevant income level, so that the lower-income group can continue to be spared of the burden of making MPF contributions.

Immediately after the SMW was enacted by the Legislative Council in January 2011, we consulted the Financial Affairs Panel on the MPFA's review findings in February 2011 and held a public hearing on 20 April 2011 for extensive consultation.

In determining the specific level, our starting point is to make reference to the hourly SMW rate, the basic assumption of a 26-working day per month arrangement and according to assumptions of different working hours, we estimated a monthly minimum relevant income level, during the course of which we have also extensively considered the views expressed by different sectors in the community. The level proposed in the motion, that is, an increase from \$5,000 to \$6,500, has taken into account the above references and it also reflects the broad-based consensus of the public, including the mainstream opinion expressed by Legislative Council Members, political parties and trade unions.

The next step is, taking account of the fundamental impact of the implementation of the SMW on the earnings of the workforce, particularly the low-income group, the MPFA plans to conduct a comprehensive review of the statutory adjustment mechanism prescribed in the MPFSO when the actual impact of SMW on wages is available, with a view to ensuring a clearer and more certain basis for future adjustment reviews.

Apart from a monthly minimum relevant income level, the MPFSO also specifies a daily income level for application to casual employees who are members of an industry scheme and employees who receive payment of wages more frequently than on a monthly basis. At the same time, the motion also proposes to make corresponding amendment to the minimum relevant income level on a daily basis, that is, increasing the existing level of \$160 per day to \$250 per day. Similarly, it is made with reference to the basic assumption of a 26-working day per month arrangement. As regards the minimum relevant income level for self-employed persons calculated on an annual basis, the motion proposes to increase the existing level of \$60,000 per year to \$78,000 per year correspondingly.

Based on the data of the fourth quarter of 2010, the proposed adjustment of the minimum relevant income level to \$6,500 per month would exclude an additional 180 900 employees and self-employed persons (that is, a total of

337 300 employed persons) from making mandatory contributions. However, these figures were collected before the implementation of the SMW. I would expect the actual number of people to be smaller.

To tie in with the adjustment to the minimum relevant income level, the MPFA will make corresponding amendments to the Mandatory Provident Fund Schemes (Contributions for Casual Employees) Order shortly in order to prescribe the corresponding amount of MPF contributions to be made that is applicable to employees of industry schemes under different income bands with reference to the latest minimum relevant income level to provide easy reference to employers and employees in compliance.

Regarding the commencement date, the target of the Government has all along been to increase the minimum relevant income level as soon as possible, so that the lower-income group can be spared of the burden of making MPF contributions. Trustees have made it clear to the MPFA that when implementing the revised level, trustees and over 240 000 employers in Hong Kong participating in MPF schemes must be given reasonable time to prepare for the system adjustment in order to avoid administrative confusions. In view of this, the MPFA has made intensive communication with the sector and consulted employers' association and used such as reference in determining the implementation date for the new income levels. Having carefully considered the views of the MPFA and the sector, the Government proposes to implement the revised minimum relevant income level on 1 November 2011.

Lastly, I would like to take this opportunity to thank the President and Members for their consent to expedite the handling of the motion. I implore Members to support its passage, so as to implement the amendments to the minimum relevant income level. Thank you.

The Secretary for Financial Services and the Treasury moved the following motion:

"RESOLVED that the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2011, made by the Chief Executive in Council on 14 June 2011, be approved."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Financial Services and the Treasury be passed.

MR WONG TING-KWONG (in Cantonese): President, in my capacity as Chairman of the Subcommittee on Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2011 (the Subcommittee), I now report on the deliberations of the Subcommittee.

The Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2011 (the Amendment Notice) proposes to increase the minimum relevant income level at which contributions must be made under the Mandatory Provident Fund Schemes Ordinance (MPFSO) from \$5,000 to \$6,500 from 1 November 2011 onwards. The proposal has made reference to the hourly SMW rate and the median monthly working hours.

During the scrutiny of the Amendment Notice, a member has queried whether or not the proposed minimum relevant income level has gone through public consultation. The Administration has advised that when the findings of the latest review of the minimum relevant income level and the maximum relevant income level were presented by the Mandatory Provident Fund Schemes Authority (MPFA) to the Panel on Financial Affairs (the Panel) in February 2011, some Panel members attending the meeting stressed the need to take into account the effects of the SMW in setting a minimum relevant income level. To further gauge public views on the minimum and maximum relevant income levels, the Panel convened a public hearing in April 2011 to invite views from stakeholders. There was a general consensus at the hearing that the minimum relevant income level should be increased to about \$6,500 per month. Taking into the views collated and having made reference to, among others, the hourly SMW rate and the median monthly working hours, the Administration came to the view that the proposed increase in minimum relevant income level from \$5,000 to \$6,500 is acceptable, as this also reflects the broad-based consensus of the public.

As the objective of prescribing the minimum relevant income level is to lessen the financial burden of Mandatory Provident Fund (MPF) contribution on low-paid employees, members have suggested that efforts should be made to

expedite the implementation of the minimum relevant income level. Some members have enquired that if employers of small businesses are not aware of the new arrangement and continue to use the obsolete minimum relevant income level for employees' contribution, whether they would commit an offence. The Mandatory Provident Fund Schemes Authority (MPFA) has advised that as the case does not involve failure to make MPF contributions, this should not constitute an offence under the MPFSO. As for the question of whether the employers concerned may have inadvertently contravened the labour law, members noted that they may not be subject to prosecution so long as the act is not done deliberately or without reasonable excuse. Members also noted that, apart from the fact that the MPFA has put in place a refund mechanism, upon detection of an overpayment of contributions made by employers, the trustee will follow up with the employer concerned on the appropriate refund arrangement. In the case of casual employees who are members of industry schemes, the MPFA would discuss with the trustees of the industry schemes on the arrangement of refunding the excess contributions direct to the casual employees concerned.

Since the MPFA will conduct a comprehensive review of the statutory adjustment mechanism under the MPFSO in the context of the impact of the SMW, the Subcommittee has emphasized the need for the MPFA to expedite the review to tie in with the review of SMW.

The Subcommittee has not proposed any amendment to the Amendment Notice.

President, the following are my personal views and those of the DAB on the Amendment Notice.

Since the Amendment Notice proposal is intended to make corresponding adjustments to the minimum relevant income levels consequent to the implementation of SMW, it is a timely measure that is in line with the mainstream opinion in society, so the DAB supports the Amendment Notice.

Some Members consider that the Amendment Notice proposal should be implemented as soon as possible. They are not satisfied that it would take four months for its commencement because they think that the adjustment of systems is not complicated and there is prior experience as there was a precedent when the minimum relevant income level was adjusted in 2002. Moreover, as trustees are

charging high management fees, they should provide quality service and assist employers in making adjustments to their systems. The Administration has explained that trustees have to carry out a certain amount of work in making adjustments, such as program operation, systems tests and publicity. Besides, since 75% of all employers use their own systems, ample time is required for making preparations. The Administration has also discussed with them and reached a consensus before setting the commencement date at 1 November. In this regard, the DAB also hopes that the Amendment Notice can come into operation as soon as possible, so that low-paid employees can get out of the "contribution net" as soon as possible. However, bearing in mind the fact that recently, SME employers have been exhausted by coping with the implementation of SMW and they are painfully overwhelmed by the computation of wages and holidays now, and they also have to deal with the adjustments to the relevant income levels for contribution purpose, so with new measures coming one after the other, I am afraid they will not be able to cope, thus resulting in confusions and labour disputes if there is insufficient time for preparation and system update. I believe Members will not wish to see this. Moreover, before the commencement of the Amendment Notice, four months of contribution will be made by employees and kept in the employees' own MPF accounts. Moreover, these contributions may also increase due to investment gains. Therefore, employees will not necessarily suffer any loss. Therefore, four months are an appropriate period of time that can strike a reasonable balance among various parties. After consideration, the DAB considers this acceptable.

Lastly, the DAB urges the Administration to launch extensive publicity on the new arrangement as soon as possible to give both employers and employees a clear idea of the arrangement. Moreover, the Administration should also urge trustees to monitor the contribution situation more closely after the implementation of the new arrangement and upon detection of an overpayment of contributions made by employers, apart from notifying the employers concerned, refunding arrangements should also be made as soon as possible. President, the DAB also hopes that the MPFA can keep tabs on the actual situation and public sentiments in the community more closely and keep abreast of the times, so that future reviews and amendments to the Ordinance can appropriately reflect the social reality and needs.

With these remarks, President, I support the resolution.

MR TOMMY CHEUNG (in Cantonese): President, regarding the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2011 (the Amendment Notice), which proposes to increase the minimum relevant income level for employees' contributions to Mandatory Provident Fund (MPF) schemes from \$5,000 to \$6,500, I would like to raise several points.

Firstly, in determining the minimum relevant income level, the Administration has made reference to the hourly rate of the SMW and the median monthly working hours, in particular, the median working hours of the four low-paid sectors identified by the Minimum Wage Commission, which is 8.5 hours per working day, thus arriving at the amount of \$6,500 as the level for new proposal.

I wish to point out that the working hours in many low-paid sectors are actually more than 8.5 hours. Although with the implementation of SMW, there will be more cases of reduction of working hours, at present, due to the pressure exerted by trade unions, apart from wages, employees in general also have paid meal breaks and rest days, so the income of many low-paid employees have increased significantly. The monthly income of many people has already exceeded \$8,000 and even \$10,000. Therefore, I think the proposal to increase the MPF minimum relevant income level to \$6,500 warrants further consideration.

However, trade unions of various political party affiliations have already made a joint demand to set the minimum relevant income level at \$6,500. Since the Amendment Notice only affects employees' contributions, I believe employers will not have strong views. However, I wish to stress that in future, the Government should be mindful of using reference that reflects the actual situation.

Moreover, I think that employers were not adequately consulted in the present legislative amendment exercise. Although the Administration indicated that adequate consultation had been carried out, that a public hearing on the amendments had been conducted at the meeting of the Panel on Financial Affairs on 20 April and that employers' representatives had also submitted representations, I noticed that our discussions have focused mainly on the minimum level and there was no in-depth discussion on the administrative difficulties for employers arising from the change in the level.

We must know that employee mobility in the catering industry is high and employers are more inclined to hiring part-time employees. Moreover, there are industry schemes for our catering industry and the construction industry. Although unknowingly deducting excessive wages for MPF contributions is not a deliberate contravention of the law and would not be regarded as having committed a criminal offence, nor would one be prosecuted by the Commissioner for Labour according to labour legislation, the point is that it is very troublesome for employers to refund employees the excessively deducted amounts. If an employee is just a part-time worker and the employer has no idea of his whereabouts, how can the money be refunded to the employee? Therefore, this actually causes the public a lot of troubles.

Fortunately, this time, the Subcommittee on Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2011 (the Subcommittee) convened a meeting and found out the foregoing problem. The Mandatory Provident Fund Schemes Authority (MPFA) also undertook, in response to my request, to follow up with the trustees of the industry schemes to make appropriate arrangements especially for the casual employees in the catering and construction industries. In order to reduce the hassles for the industries, when it is found that an excessive amount of money has been deducted from the wages of a casual employee as MPF contribution, the money will not be returned to the employer, rather, the trustee will be responsible for making refunds to refund the casual employee.

In fact, we should not underestimate the practical difficulties posed by the amendment. Some members in the industries may have to make adjustments to their computer systems for MPF computation on their own. Some may have to outsource the adjustment and the subsequent tests and changes to computer and information technology companies. However, I am most concerned about those SMEs that lack software support, particularly some small restaurants. They can only do the computations one by one manually. It is an extremely heavy workload for enterprises that have a lot of very mobile and casual employees.

Once an MPF trustee found that an employer has over-deducted wages and made a refund, the employer concerned has to process the case and make a record anew. The code of conduct for employees, contracts, relevant documents, and so on, will also have to be changed at the same time. All these matters would

require the allocation of additional time and manpower in addition to those required by the daily heavy workload. Some employees of small enterprises with tight resources have to compute the wages by themselves. They have to do everything on their own and might not be able to adapt to this in a short time.

I understand that many elementary employees hope that the relevant amendments can be implemented as soon as possible, so that they can "pocket more money" instead of seeing their wages being eroded by the administrative fees charged by MPF scheme trustees. I absolutely have no intention whatsoever of impeding employees from benefiting from this but we also have to strike an appropriate balance with regard to the actual difficulties faced by small employers. Therefore, I support the Government's claim that the industries need four months to make preparations and the commencement date be set at 1 November.

President, I think Members would also agree that the Government should not force this Council to pass the Amendment Notice. This time, the Administration threatened that if the Amendment Notice could not be passed today, it would not be possible to implement the revised minimum level in time on 1 November 2011 and as a result, the Subcommittee in charge of scrutinizing the Amendment Notice decided against convening any public hearing due to the agreement of a majority of Members. I think this practice should not be encouraged.

As a matter of fact, it can be seen from the Subcommittee's discussion that the Administration has neglected the administrative difficulties posed by the amendment to employers. In fact, if the Administration considered the time to be limited, why did it not table the Amendment Notice to the Legislative Council earlier, so that the Legislative Council could have sufficient time for deliberation, so as to ensure that all stakeholders could be adequately consulted and understood?

If the Administration thinks that this Amendment Notice can be pushed through in haste because it has secured the support from the trade unions, President, and if the Government thinks that after securing enough votes, it can steamroll everything and even the consultation on the employers can also be dealt with casually, this will be far too irresponsible. Once the new amendment is implemented, it will cause a great deal of troubles and confusions to SMEs, just

as did the introduction of SMW, and cause the Administration's prestige to suffer another setback. Therefore, I hereby solemnly demand that the Administration must consult employers adequately when reviewing the minimum income level for employees' MPF contribution in future.

Finally, being a representative of the catering industry, I reiterate that I am gravely concerned about the difficulty in relaying the message on the relevant amendment to over 10 000 restaurants in a short time.

Although the Administration said that publicity would be launched via emails and print advertisements, I can tell the Secretary that the catering industry is a very busy industry. They may not have time to read the newspaper or the money to buy newspapers, nor do many of them know how to go online or check emails. In particular, people like us who run small restaurants always have to immerse ourselves in working with turners and calculators and we actually have no idea about what is happening in the outside world.

Therefore, I urge the Administration to formulate targeted publicity in view of the unique characteristics of specific sectors, in particular, the catering and construction industries, which have joined the MPF Industry Schemes, for example, by issuing letters through the Food and Environmental Hygiene Department to all food business licensees to inform them extensively of the amendment.

President, I so submit.

MR IP WAI-MING (in Cantonese): President, the Hong Kong Federation of Trade Unions (FTU) welcomes the Government's willingness to increase the minimum level of relevant income for making contributions to the MPF to \$6,500 because we have requested this for a long time.

When the Government was conducting a review of the MPF System this year, the MPFA proposed as early as in January this year that the minimum level of relevant income be lowered to \$5,500. However, at that time, the MPFA stressed that whether or not this proposal should take into account such factors as the minimum wage is ultimately a policy decision to be made by the Government. At that time, we expressed disagreement but the Government only said that it

would give this matter careful consideration and also pointed out that the factor of minimum wage would only be considered in the next review of the relevant income level. However, the FTU already held different views at that time. We believe that the Government should consider the implications of the SMW, in particular, it has to make reference to the income level under such schemes as the Work Incentive Transport Subsidy Scheme.

In the end, the Government probably found out only belatedly that if the factor of minimum wage is not taken into consideration, some employees may end up getting less on account of the increase, that is, after they have become eligible for the minimum wage, they have to make MPF contributions, so in the end, their actual monthly income may be less than before. It was in these circumstances that we found the Government willing to consider the factor of minimum wage. No matter how, even though the Government has accepted the relevant proposal, it will be implemented only on 1 November this year, so in fact, elementary employees have to make additional MPF contributions for several months for no good reason.

President, we must not take these several months of additional contributions lightly. Over \$100 may be needed each month and the amount will add up to several hundred dollars in a few months. To the elementary employees, several hundred dollars are actually very useful, for example, it can be used to pay their electricity bills, water bills and other charges.

President, in the past three days, I assisted a group of workers in the lifts and elevators industry in a campaign lobbying for a pay rise. The worker with the lowest daily wage makes only \$208, which is a basic wage that does not include overtime pay. Their wages range from \$208 to some \$450 and they were only lobbying for an additional \$20 in wages for each day and this amounts only to some \$200 to \$300 a month. However, to them, this increase can already ease their burden of living. For this reason, I hope that when the relevant government officials consider this aspect, they can do so from the angle of how to take care of the living of elementary employees more often by considering how to prevent causing troubles to elementary employees or preventing them from paying several hundred dollars in MPF contributions for no good reason.

Therefore, we hope that when the Government makes any adjustment to the minimum level of relevant income in the future, it should consider whether or not it should be synchronized with the adjustments in minimum wage. This is because the Minimum Wage Ordinance already provides that even if the Minimum Wage Commission (MWC) would take into consideration the minimum wage level, which is reviewed at least once every two years, and assuming that there is a new level, from review to implementation, there is still a time gap with the minimum wage. I hope the MPFA and the Financial Services and the Treasury Bureau will consider whether or not the minimum level of relevant income has to be considered at the same time as the MWC adjusts the minimum wage, so that it can be adjusted in tandem and come into effect together with the minimum wage, so as to prevent elementary workers from making contributions for several months. Often, the administrative work for the authorities will increase, thus increasing their workload. Therefore, we hope that the Government can give us a positive response in this regard.

In fact, when the Government announced the increase in the minimum level of relevant income to \$6,500, some people already pointed out that due to the adjustment of the minimum level of relevant income upwards to \$6,500, the accrued MPF benefits for employees would actually decrease and of course, we are aware of this point. However, this precisely underscores the drawback of the present MPF System. The Government has all along stressed the three pillars but at present, the monthly income of many low-paid workers actually cannot fully cover their daily expenses. Now, they even have to make contributions and doing so will make them financially straitened. They cannot even meet their immediate needs, not to mention their long-term living.

The MPF System has been implemented for more than a decade and all along, we have demanded that the Government conduct a long-term review of the MPF System to make it better meet the interests of workers in Hong Kong, as well as solving the problem of retirement protection for workers in Hong Kong. At present, there are also many proposals on resolving the issue of retirement protection in society and the FTU has also raised some proposals. We also hope that the Government can consider various proposals in detail and review the MPF System comprehensively, so as to make it a retirement system that can protect retired workers in Hong Kong better.

Secretary, not to mention the fact that the decrease in their amounts of contributions may reduce their accrued benefits, in fact, all along, we have criticized the excessive administrative fees charged for MPF schemes that erode the accrued benefits of workers. In addition, since the transparency is inadequate, we have all along requested the Government to enhance the transparency of the charges levied by MPF schemes, in particular, the management fees that employees are charged each year. We believe the managers of MPF schemes should set them out clearly to facilitate comparison by our fellow workers, so that the amounts of management fees charged by trustees can be monitored easily.

President, just now, I have talked about our views on the MPF System. We hope that the minimum level of relevant income of \$6,500 can be implemented as soon as possible and we hope all the more that the Government can set the minimum contribution in the future and prescribe how it should be implemented in tandem with the minimum wage. I hope the Government can prepare a consultation document as soon as possible on the implementation of the relevant mechanism. Thank you.

MR LEE CHEUK-YAN (in Cantonese): President, first of all, I have to respond to an issue that made Mr Tommy CHEUNG very angry. He pointed out that so long as the Government had got enough votes, it would not consult employers when implementing the relevant policies. Mr CHEUNG has already made such remarks a number of times, so I agree very much that when the Government implements the relevant policies, it must carry out consultations. If he is still so angry, he should oppose the replacement mechanism of the Government first of all instead of talking about other matters because the Government did not even carry out any consultation on the introduction of a replacement mechanism, not even any bogus consultation. So, if Mr Tommy CHEUNG is dissatisfied with the absence of consultation by the Government, he should state his stance even more strongly by opposing the replacement mechanism.

President, coming back to the question today, all along, we have lobbied for an upward adjustment of the existing minimum level of relevant income, which is \$5,000 currently. Even before the setting of a minimum wage, we already considered that it was only reasonable to raise the minimum level of relevant income to \$6,000 because to low-income workers, they cannot get by at all, nor can they meet their daily needs. This is a most pathetic situation.

In their discussions on this issue with us, a lot of people think that the MPF is designed to protect our future life in retirement. If we do not make contributions, when we retire in the future, would low-income workers not receive even less money? I totally agree with their view but the most lamentable point is that to some workers and low-income families enjoying little financial security, the distant future is a luxury that they cannot afford, so this is why it is so pathetic.

Of course, we have also told them to save for the future and that the MPF is designed to protect their future life but their direct response really makes us lost for words. They said, "At present, we are just scrapping by, so what do you think we should do?". They are right. If they are just scrapping by now, can we talk about the future with them?

First, we believe that at present, the Government, in raising the minimum level of relevant income to \$6,500, wants to respond to the demands of this segment of low-income families, so that at least, they can meet their immediate daily needs. Some people may ask: After they have met their daily needs, what about their future living? Do you not care about their future? The Confederation of Trade Unions (CTU) has never thought in this way. We absolutely care about their future. What we are most concerned about is the matters that the Government has all along been unwilling to respond to.

This Government is really hypocritical. Each time I speak, I have to upbraid it. The hypocrisy of the Government lies in its claim that it is concerned about the issue of retirement protection for workers, saying that it would definitely let workers have more money in retirement and the establishment of the MPF System is precisely done in the interest of workers, so all of us must make savings.

However, there is one thing on which the Government has refused to make any concession or conduct any review all along. In the meetings of the Subcommittee on Retirement Protection, government representatives stated in clear terms that no review would be conducted on the issue of using MPF contributions to offset severance pay. However, if this problem is not solved, workers will forever be taken advantage of. At present, low-income workers earning less than \$6,500 do not have to make any contributions. Although such employees do not have to make contributions, employers still have to. However, even the contributions made by employers are an illusion. Why?

Because the severance pay can be offset by MPF contributions. If employees do not have to make any contributions and the contributions made by employers can be used to offset the severance pay, to workers, what can they get when they retire? The answer is nothing whatsoever. Therefore, if we look at it from this angle, the entire MPF System is bogus. This is not an MPF System, rather, it is a system of funds for making severance payments or long service payments and ultimately, the funds are only used to settle long service payments.

Of course, some workers manage not to be laid off and they quit of their own accord, so they can get some money back. However, to the low-income workers, their risk of being dismissed is very high. Why? This is very simple. The employers of cleansing workers and security guards change almost once in about four or five years because of subcontracting. When their contracts expire after four or five years, it is necessary to submit a tender again, so they cannot work for the same employer for a long time. To workers, the severance pay they get is offset by their MPF benefits. If they cannot get their severance pay and are not forced to resign, they will end up getting nothing.

Therefore, under the entire system now, if a worker has been laid off a number of times, in the end, they cannot get even a single cent and workers whose wages amount to less than \$6,500 do not have any retirement funds contributed by themselves, so they really will have nothing. However, all along, the Government has not dealt with the issue of using MPF funds to offset severance payments and long service payments, and this is how the Government is hypocritical.

The Government is even hypocritical to such a state: Some workers asked the Government why they were not allowed to get back their MPF funds even when they lost their jobs or were seriously ill. The Government pointed out that this system was designed for their life in retirement, so they had to wait until 65 years old to get back the money. However, when employers lay off workers, they can withdraw money from the MPF. Employers can withdraw money from workers' MPF accounts to pay the severance pay that should originally be paid by employers.

Of course, the Government would say that this is related to the historical background and of course, I am aware of this. At that time, one of the reasons for my opposition to the MPF was precisely this issue of offsetting, but my

amendment was voted down. Certainly, I know the reason is a historical one and I also know that it had to do with the functional constituencies because they always cast opposing votes. However, if the Government is really planning for the retirement life of workers, it should support workers' retirement and abolish the offsetting mechanism to protect workers' retirement. Making appropriate planning for workers' retirement life is the Government's responsibility, but the Government did not do so. Rather, it turned the MPF into a "lame" MPF, a "short-pile" MPF.

The Government may think that I am again dwelling on matters that I talked about frequently in the past, but I must raise this matter frequently, until it is resolved.

Now, coming back to the issue of \$6,500 again, I wish to raise two matters in particular. First, I have already pointed out earlier on that I support the calculation formula for this amount of \$6,500 because this is also the proposal of the CTU, that is, to multiply the minimum wage by the median wage of full-time low-income workers and this is how the amount of \$6,500 came by. The Government told us that if we use this formula for computation, the result was some \$61,000. In view of this, I made an enquiry with the Government, saying that under my proposal, only full-time low-income workers were included in the calculation but the Government also included part-time workers in the calculation. We all know that the working hours of part-time workers are surely shorter. The Government explained that part-time workers accounted only for about 10% of the total. However, the result of the calculation would surely be more than \$61,000, so Members thought they might as well set the minimum level of relevant income at \$6,500 because after adding "meal-break pay" and pay for rest days, the amount is more or less at that level.

This formula has no problem in itself, but I hope that the calculation in the future can be more accurate and will include only full-time workers rather than part-time workers as well. However, this is only a technical issue and in principle, we believe that this level of \$6,500 poses no problem.

I hope that in the future, if the minimum wage is adjusted, the authorities will adjust as soon as possible the minimum level of relevant income according to the adjustment to the minimum wage. We raised this point in the Subcommittee, but the Government said that a review would be necessary at that

time and it all depended on the median at that time. However, I think that since this time all of us have a consensus to do so, the best appropriate actually is to use this method "automatically" in the calculations in the future and there is no need to come back and hold discussions on each occasion.

President, the second issue that I wish to talk about is: What should workers earning less than \$6,500 do? It is not true that we do not care about their future retirement. I believe that the best approach is for the Government to make contributions for them. This is a targeted approach, not "handing out money indiscriminately" even though what the Government likes the most is to hand out money indiscriminately.

If we want to take targeted measures, to this group of workers, it means making contributions for them, so that they can have savings when they retire at the age of 65 years in the future. Of course, sometimes, workers may not like to make savings. However, from a macro perspective and from the angle of retirement planning, doing so is to help them.

The CTU thinks that the Government should put in place a policy, so that people earning low wages and hence do not have to make contributions to MPF schemes will all have the Government make contributions for them. In fact, the number is not great. To the Government, this makes very little difference in the final analysis. Why? Because if they are not assisted in making contributions, in the future, they will apply for old age CSSA and the funds for old age CSSA will also come from the Government. If we help them make contributions now, the expenditure on CSSA can be reduced in the future and this is also beneficial to workers.

However, of course, we hope that ultimately, universal pension for the elderly can be introduced. In this regard, I am not going to say too much here. The Hong Kong Government is not giving workers or the elderly in Hong Kong a fair deal, that is, all members of the public can get nothing upon retirement and it does not offer any pension to our elderly. This is very different from the practices in other places. When the citizens in other countries go into retirement, they get a sum of pension, which gives them a sense of security. However, Hong Kong is a place utterly devoid of any sense of security and I think this is also an area in which change is needed in Hong Kong. We have to give all members of the public a sense of security because old folks nowadays have no sense of security at all. Therefore, another proposal of mine is the one

that I mentioned earlier on, that is, the Government should make contributions for workers earning less than \$6,500.

One last point that I wish to make is that we are not satisfied with having to wait until 1 November for the whole thing to be implemented. The Government's explanation is that the trustees have to make proper arrangements in such areas as the whole computer system. I often think that these trustees really know how to impose charges. They are formidable when charging administrative fees but when they do their work, they are utterly feeble.

In fact, this is most unfair. I often think that the administrative fee is tantamount to taking advantage of workers. Now that the total amount of MPF funds has reached more than \$300 billion, when they levy \$2 billion or \$3 billion on the contributions each month all along, they have been charging on average 1.8% as the administrative fee. I learnt that 0.6% therein is the investment fee and 1.2% is the administrative fee.

Come to think about this. Each month, 1.2% of the contributions is levied as the administrative fee and to date, 1.2% has been grabbed from this sum of over \$300 billion, so a lot of money has been made. Now, we demand that a faster job be done, but they have gone so far as to say that we cannot have it and that it can be done only by 1 November.

Therefore, the administrative fee of the MPF schemes is a very infuriating aspect. The Government only cares about letting those consortia and trustees gain the benefits and they are all banks and insurance companies. The Government lets them earn such a lot of administrative fees, but when the time comes for them to do something for the workers, they move very slowly. Sometimes, when MPF contributions have to be recovered, it is necessary to rely on the trustees to remind employers or recover MPF contributions from employers on workers' behalf and often, the progress is also very slow.

President, lastly, I wish to say that I think this point about administrative fees is precisely why we feel angry about the MPF. In addition, we are also very dissatisfied with the fact that we have to wait until 1 November for this resolution to come into effect.

Thank you, President.

MR WONG KWOK-HING (in Cantonese): President, some time ago the Mandatory Provident Fund Schemes Authority (MPFA) has suggested revising the minimum relevant income level for contributions to the MPF schemes from the existing \$5,000 to \$5,500. However, since the implementation of minimum wage, the income of the wage earners in Hong Kong will definitely exceed \$5,500. The effect of this is everybody in Hong Kong will have to make contributions and no one is spared. Now the basic income for a wage earner working full-time and receiving the minimum wage is \$5,824 per month. If this minimum income level of \$5,500 is put into force, the income for those grassroots will drop to some \$5,500. This situation is like a zero-sum game and the wage earners will lose more than they can possibly gain.

Subsequently, against the background of strong public discontent, the Government decided to raise the minimum monthly income level for the purpose of MPF contributions from \$5,500 to \$6,500. As a result, more low-income wage earners do not have to make the monthly contribution of \$250. With respect to this latest amendment, I can only give the barest minimal welcome. Or it can even be said that I can only accept it with reluctance. This is because if the implementation of this Notice is further delayed, it will incur greater loss for the wage earners. Therefore, the improvement is only a very small step, and a very slow one.

President, after the new minimum relevant income level comes into effect, it is estimated that 180 000 employees and self-employed persons will not have to make any contributions. They can keep \$325 more a month in their pockets. At the same time, those who do not have to make any contributions will increase to some 337 000 persons. However, in view of the fact that the income ceiling for application for the travel allowance is also \$6,500 — this can be called a low income — if an application is successful, the applicant will get \$600 from the Government in travel allowance. When this sum of \$600 is added to the original \$6,500, the sum will be \$7,100. Then the result is that the person concerned will have to make MPF contributions at an amount of \$355. When we add and subtract these sums, at the end of the day these applicants will only get a net \$245 in travel allowance.

President, let us hear some of the most recent news. The Community Care Fund decided to give out \$6,000 to new arrivals to Hong Kong who pass the means test. What is the income ceiling for a one-person family? It is \$7,300.

Now this amendment by the Government is lagging behind the level set by the Community Care Fund yesterday. What does having a low income mean? For a one-person family, it is lower than \$7,300. I think this level which has been adjusted upwards cannot in effect reduce the financial burden of these low-income people. Therefore, I wish to suggest to the authorities that at present, the most suitable minimum relevant income level should be raised to \$7,500. This would be more reasonable and it will truly benefit the wage earners from the grassroots.

Apart from that, when the authorities set the minimum wage level, the level was worked out with reference to the median wage for the second quarter of 2009 as compiled by the Census and Statistics Department (C&SD). But if we use the median wage for the second quarter of 2010 for computation, the hourly wage for wage earners in Hong Kong has gone up to \$59.5. This is an increase of \$1 or 1.7% when compared with the figures two years ago. So if we use the data for 2010 as the base, the minimum wage now should be raised to \$28.5.

President, this sum of 50 cents may appear to be very small, but for the wage earners at the grassroots, a dollar saved is a dollar earned. They will have 50 cents more if 50 cents are saved. Over the past six months, inflation in Hong Kong has been always on the rise and many wage earners at the grassroots have felt the great pressure. When the Government sets out to adjust the ceiling or lower limit of relevant income for purposes of MPF contributions, it should also solve the problem of a time lag in the data used to determine the minimum wage. For if not, it would be difficult for the wage earners to enjoy this advantage of being exempted from making contributions.

The other day, the C&SD announced that the Composite Consumer Price Index had gone up by 5.2%, the highest in 34 months. What makes the citizens feel distressed is that the inflation rate has been rising every month since last October. It has risen by 3% in six months. From this we can feel the tremendous threat of "inflation being fiercer than a tiger". I think we need only take a walk on the streets to find that people are really having a hard time. The ordinary members of the public are most worried about the fact that inflation just stays on, with no signs of going away. The income of the ordinary wage earners cannot catch up with the rise in prices and even when the minimum wage is now in force, it would not help things so much. And so they will just have to scrimp and save, by all means.

President, about the decision made by the authorities to raise the minimum relevant income level for MPF contributions only when the minimum wage has been in force for six months, that is, on 1 November this year, I think this is obviously lagging behind the prevailing developments. This decision therefore must be put into practice as soon as possible so that wage earners will not have to make contributions to MPF schemes according to the requirement that those with a monthly income of \$5,000 or above will have to do so. And in this way they will have to contribute for a few months more. Actually, it is because of this situation that we are forced to lend our support. This income level of \$6,500 is definitely out of tune with the reality.

President, the MPFA completed its review last year and released a report. During the consultation exercise held at that time, the issue of the income level for exemption from MPF contribution was included, then a consensus was forged in the community. When added to the fact that the MPF System has been in force for more than 10 years and a mechanism is in place and running smoothly, now there is only a slight change in the amount of money and so if any change is to be made to the ceiling and lower limit, the work is not complicated at all. The procedures concerned should start as soon as possible and the change should be made. But unfortunately, even though the system has been in force for 10 years, the change to be made this time is still made at the pace of a turtle, that is, dead slow. So even if the Notice today will certainly be passed, I hope that the authorities should undertake a review and examine why this slow pace takes place and why the system cannot be speeded up, why reviews are always lagging behind and why the findings of these reviews are always lagging behind once they come out. I hope that the Government and the MPFA should reflect on this outdated system and see if its efficiency can be enhanced.

President, when mention is made of the management of MPF schemes, I think I have to raise the problem of excessively high management fees charged by the MPF schemes and public discontent with the rate of return which is too low. As we all know, the management fees for MPF schemes are about 2%, which is far higher than those charged in other advanced countries. After deducting this sum of management fees which is about 2% on average, the annual rate of return over the past 10 years is only 5.5%. The MPF has in reality become the channel through which fund companies eat up the retirement funds of the people earned by hard toil. As a result, there is not much that the average wage earner can

benefit, although they are the ones who are most affected. These fund companies are the greatest beneficiaries. As a matter of fact, in the Budget this year, at first the Government had planned to inject a sum of \$6,000 into each MPF account, but it gave rise to strong reactions and discontent. This should be a lesson for the Government in reflecting on the various shortcomings of the existing MPF System.

Take the example of a wage earner who makes \$10,000 a month. Suppose he is to retire after making MPF contributions for 30 years, and when added to factors like the dividend he earns and offsetting by the effect of inflation, at the end of the day he can get back about \$500,000 in terms of the purchasing power today. But if we look at the average life expectancy of the people of Hong Kong and if he only has some \$2,000 for living expenses after retirement, we will find that it is about the same as the standard CSSA payment for able-bodied persons aged 60 or above, being \$2,680. Furthermore, this sum of money is far below the poverty line of an income of \$5,000 monthly.

Also, the operation of these funds lacks transparency. The findings of some surveys show that nearly 80% of the interviewees say that the MPF management companies have never explained to them the management fees and administrative fees of these funds or they are only given very brief explanations. Most of them have little or no knowledge of important information like the operation of these funds, the administrative fees, percentages of contributions and guarantee charge, and so on.

Moreover, as various degrees of risk in fund investment are involved in MPF schemes, it can be said that ordinary members of the public have no way to understand the complicated terms and conditions of the agreements. An example is that a guaranteed fund claims to be able to give a guarantee in capital or rate of return to investors, but when we read the terms and conditions carefully, we will find that most guaranteed funds have some prerequisites and the most common ones are a lock-in period, the meaning of which is that the investor must retain his capital in the fund before the expiry of the lock-in period and if a member switches to another fund during the period, he may not be able to enjoy that guarantee anymore.

In addition, some of these guaranteed funds have very strict withdrawal terms. An example is that the account holder can only withdraw the accumulated benefits under such specified circumstances as when he reaches the age of 65, retires early, dies or completely loses his working capacity, and so on. In general, these terms for guaranteed funds may even permit the trustee to revise or even cancel the guaranteed rate of return after giving a notice in advance to the account holder. The average wage earner may not be able to understand all these complicated terms. So when the MPFA is to conduct a review, it should require the management companies of MPF schemes to list all terms and conditions in a language that is easily comprehensible, and to make the meaning of complicated and difficult terms uniform.

President, in order to ensure that the public will have confidence in the MPF System, the Government should speed up its efforts in revamping the existing system and it should start with the regulatory mechanism. Now the contributors do not have the right to choose the fund companies and they can only hand over their contributions to the fund companies chosen by their employers. For the employers, they will only regard the MPF contributions as part of the costs of production and they do not care if the employees can derive any gains from the MPF schemes. Moreover, they will not spend time to compare different fund companies and see which one is better. Therefore, it is inevitable that this semi-portable approach to MPF should be launched and competition be brought in. This will make the fund companies reduce their fees and charges at their own initiative in order to attract the employee contributors. The ordinary members of the public are waiting anxiously for the introduction of this semi-portable approach to MPF and the authorities must therefore speed up the pace of reform in this regard.

Lastly, I think the Government must set up a universal retirement protection system as soon as possible before the problem of population ageing in Hong Kong can be addressed and the elderly people can enjoy any protection in their retirement life.

Thank you, President.

DR PAN PEY-CHYOU (in Cantonese): President, in a banquet recently hosted by a photography association, I went into a relative whom I have seen less often. When he was young, he worked as a technician in a large foreign-funded factory. Now, he is aged over 60 and has retired for several years. He is living with his wife in a Home Ownership Scheme flat, and he has already paid off his home mortgage. Now, living on his personal savings, pension and the living expenses given by his children, he can be described as leading a worry-free life in his twilight years. He told me that he would spend a lot of time travelling with the photography association everywhere to take photographs. Sometimes, he would also do voluntary work and spend time with his grandchildren in his spare time.

Such a retirement life is indeed enviable. But in Hong Kong, only a small fraction of wage earners — most of them belonging to the middle class — can enjoy such a retirement life. For the majority of wage earners, they struggle hard throughout their lives to work in order to make and save money, but still they have to worry that their post-retirement lives are not protected. In fact, if Members look up the data, they will find that such worries are not unfounded. According to the figures in 2009, there were approximately 160 000 elderly CSSA recipients who were aged over 60. Hence, the wage earners in Hong Kong are still far from enjoying any sense of security.

Precisely 10 years have passed since the introduction of the MPF scheme by the Government in December 2000. In fact, the MPF scheme has developed into a large-scale fund. As revealed by the statistics of the fourth quarter of the General Household Survey last year, of the 3.56 million employed population in the territory, 70% had MPF accounts; 2.5 million people were making MPF contributions; and only 3% should have made MPF contributions but did not have any MPF accounts.

As of this year, the MPF has accumulated up to \$378.3 billion. Currently, there are 19 approved trustees, 41 schemes and a total of 422 constituent funds. Given its scale and impact on so many people, can the MPF really enable the wage earners in Hong Kong to spend their twilight years happily? The answer is in the negative.

As several colleagues mentioned just now, the MPF System is full of defects, with the offsetting mechanism being criticized the most. Under the existing system, employers can use their contributions to offset long service and

severance payments. This offsetting mechanism has seriously undermined the interests of wage earners. The employers' contributions are actually part of the rewards for wage earners to be used as living expenses upon retirement. All the money is earned by sweat and toil. So, why should it be used to "fill the pit" on behalf of employers?

Besides, we have recently found that the wage earners of the new generation are mostly contract staff, which means that their contracts are renewed every one or two years. Upon the completion of each contract, their MPF contributions will be eroded one more time. Such being the case, when young people of the "post-80s" or "post-90s" generations grow old, how much will be left in their MPF accounts? Hence, this offsetting mechanism is the most vicious of all under the entire MPF System. In fact, employers have also found it convenient to exploit this mechanism. That explains why the use of MPF contributions for offsetting purposes has rocketed after the introduction of the MPF a decade ago.

The next most criticized defect of the MPF System is that wage earners do not have much choice. Currently, they are not allowed to choose their trustees, or MPF providers, and this is the most serious problem. As wage earners can only choose different types of constituent funds but not trustees, there is a lack of competition, thereby giving rise to many shortcomings and consequently "fattening" their trustees. Later, I will explain in detail the shortcomings of the MPF, such as low rates of return, exorbitant fees and charges, and so on.

The poor rates of MPF return have been criticized by Members and the community for a long time. During the past decade, the average MPF growth rate was a mere 5.5%. I recall that Mr TAM Yiu-chung has recently raised a question about MPF returns. Compared with the growth rate of foreign exchange reserves of more than 7%, the rate of MPF return is even poorer. In fact, if we have bought funds other than the MPF, we would have known that the return rate of 5.5% is barely satisfactory.

The exorbitant MPF management fees are also a great concern to the public. The average rates of MPF management fees, which are slightly above 2%, are higher than the management fees charged by non-MPF funds of a similar nature. Even the management fees charged by different MPF providers for MPF products of a similar nature can show a difference of more than 10 times. What is it all about? Hence, wage earners are full of grievances. They are being held

and robbed, with nowhere to escape. The MPF is actually a mandatory robbery. Now the Government is saying that legislation will be amended to introduce more flexibility. But actually, the right to choose of employees will only increase slightly. The amendments, which are only cosmetic changes, cannot fundamentally change the problem of MPF schemes lacking in competition.

The third major problem of MPF is poor regulation. The MPFA does not have the power to sanction offenders. In the past decade, no MPF intermediaries have had their licences revoked because the MPFA does not have the power to revoke licences. Now, the Government has plans to amend the law to increase the power of the MPFA. I think this will help slightly. However, there is another more serious problem, namely "subjecting one industry to several regulatory authorities". Since MPF trustees operate other businesses in addition to MPF services, they are regulated by different departments. In fact, this has made it impossible for a unified regulatory mechanism to be established for MPF. As a result, MPF has in essence been reduced to a "fat piece of pork". It can be said that this "fat piece of pork" can continue to bring lucrative income while wage earners are subject to exploitation.

In fact, public grievances have run quite high. For instance, when announcing the Budget in March this year, the Financial Secretary originally planned to inject \$6,000 into each MPF account of the public. However, this proposal induced strong reactions. I believe even the Financial Secretary did not expect and understand why the people would react so angrily to his proposal of handing out money to give them some extra money to use when they grow old and retire. The people were furious because they found the MPF managers not only outrageous, but also pocketed too much money and performed too poorly. In the end, the Government was turned into a MPF victim.

Hence, I would like to put forward a proposal raised by the FTU. First, the offsetting mechanism should be scrapped to truly protect the rights and interests of wage earners. Second, MPF should enjoy full portability. As the saying goes, "Whoever has a choice is the boss". If wage earners can choose the trustees to manage their MPF, competition can definitely be enhanced. Only with competition can there be progress, and only with competition can there be higher returns and lower administrative fees. Third, the MPFA must be given bite, so that it can revoke the qualification or licence of a trustee or an intermediary once he is found to have violated the rules.

In addition, we may consider diversifying the usage of the MPF. Let us look at one of our neighbours, Singapore, where MPF can be used for paying home mortgages, purchasing life insurances, meeting education expenses for children, purchasing specified financial products (including sovereign bonds), and meeting part of medical expenses. However, the MPF of Hong Kong people can only be seen but not used. Can we make reference to the practices of other places?

(THE PRESIDENT'S DEPUTY, MS MIRIAM LAU, took the Chair)

For wage earners, MPF is actually like "chicken ribs" — which give wage earners a feeling of helplessness. The logo of MPF is a nice-looking tangerine. Actually, the MPF is like a tangerine, and we really have a "tangerine¹" only. We hope that the Government can strive to enhance MPF before considering ways to give wage earners better retirement protection, so that they can have a tree full of fruits rather than just a "tangerine", and feel satisfied.

Lastly, I would like to say a few words about raising the lower limit for monthly income from \$5,000 to \$6,000 for the purpose of making MPF contributions. I think it is reasonable to raise the ceiling. In fact, as mentioned by several Members just now, the low-income grass-roots workers have little cash in hand. Honestly, it really makes life difficult for them if they are required to put aside a sum of money as savings for their use upon retirement in the future. Therefore, if the lower limit for monthly income is suitably raised, they will have more money to meet their daily needs.

If a calculation is made on the basis of the minimum wage (including rest days), a person can earn a monthly income of approximately \$6,700 if he works eight hours a day. I think that the Government should draw up a mechanism clearly to link the minimum wage with the MPF contributions in order to pre-empt disputes. As pointed out by a number of colleagues just now, the two should take effect simultaneously. I believe it is feasible technically. Although it is already late this time around, I hope they can take effect simultaneously in the future. For instance, if the new minimum wage takes effect on 1 May, then the lower limit for monthly income for the purpose of making MPF contributions

¹ Having a "tangerine" means having nothing.

should also take effect in May. I believe Hong Kong people in general will support this proposal.

I so submit.

MR RONNY TONG (in Cantonese): Deputy President, it is hoped that after the debate today, this motion can be passed, so that the minimum level of relevant income at which employees have to make MPF contributions can be raised from \$5,000 to \$6,500. This minimum level will only affect the contributions made by employees but not those made by employers. Therefore, to employers, there will be no direct impact.

Deputy President, precisely for this reason, in the House Committee, when we were discussing how to deal with this motion, some Honourable colleagues asked if it was necessary to establish a subcommittee to scrutinize this motion. At that time, Mr Tommy CHEUNG asserted with all righteousness that this Council should adopt a serious attitude in enacting legislation. Although the changes in the policy in this area have been discussed in the meetings of the relevant panel a number of times and Members have not expressed any disagreement, we should still deal with this matter solemnly by establishing a subcommittee to scrutinize this motion.

Of course, what he said was entirely correct and for this reason, we established a subcommittee to scrutinize this motion.

Just now, when Mr Tommy CHEUNG spoke, he expounded righteously on the due responsibilities of Legislative Council Members. He said that although this motion would not affect employers, the Government should have consulted the employers, that if the Administration considered time to be limited, it should have tabled the Amendment Notice to the Legislative Council earlier. The Government should not think that after securing enough votes, it could steamroll everything and force Legislative Council Members to pass this motion as scheduled, lest, according to it, its policies would be affected.

Deputy President, I think his remarks were really weighty and powerful and every sentence rings true. I agree with them totally. Precisely for this reason, I hope very much that Mr CHEUNG will put into practice this spirit of lawmaking consistently. Here, I call on the voters of Mr Tommy CHEUNG to

ask him to vote against the Bill on the replacement mechanism, so as to practice this kind of commendable spirit in enacting legislation.

Just now, I said that this motion would only affect the minimum level of relevant income at which employees have to make contributions, however, this issue has given rise to another even bigger issue. If the minimum level at which employees have to make contributions is raised, this can really resolve their pressing difficulties and at this stage, their expenses will be reduced and their living may see some slight improvement. However, precisely because of this, when employees go into retirement in the future, the retirement protection that they may enjoy will also shrink, so how can this problem be dealt with? Deputy President, when we discussed this policy over and again in the relevant panel, I demanded openly a number of times that the Government face this problem squarely because this is not just a matter of individual employees having no retirement protection upon reaching the retirement age and having to reap what they have sown when they reach retirement age. The problem is not as simple as that. If the people of Hong Kong do not enjoy any financial security on retirement, this may lead to many other problems.

Deputy President, we need not talk about other issues and we can simply talk about healthcare. If members of the public cannot take care of their own health, they have to rely on the resources of society and such resources belong to all of us. Therefore, society, in particular, the Government, has a very important responsibility, that is, to ensure that all Hong Kong people can lead a secure life in old age.

This being so, in the meetings of the relevant panel, I openly demanded that the Government assume responsibility for employees who cannot or do not have the means to make contributions. The money at stake is not a great deal, so the SAR Government has adequate resources to pay for such welfare assistance.

Of course, the Government surely will not agree and it is unwilling to spend even a little bit of money. The Government was not in the slightest miserly when handing out some \$30 billion, but on the policies to improve public living, the Government has all along behaved in such a way that it looks as though it has nothing to do with it, shifting the problem to the business sector or employers instead.

Deputy President, what is equally important is that this highlights the feasibility of solving the problem of retirement through the mode of personal savings under MPF.

It is now most timely for us to reconsider whether or not to adopt the mode of personal savings to deal with the retirement problem. As I said just now, if such a mode is adopted to deal with this matter, some low-income employees will have to leave this net of retirement protection when they cannot afford to make contributions or their wages are simply below the minimum level of relevant income for making contributions.

Precisely for this reason, I think the Government is duty-bound to reconsider if it should deal with the retirement problem through the mode of making collective savings.

Deputy President, certainly, I have voiced such views because at present, there are very strong voices in the civil society calling on the Government to study the establishment of a universal retirement protection scheme as soon as possible. The objective of such a scheme is to introduce a mode that imposes the least additional financial burden. We propose that through the allocation of a certain amount of money by the Government, a seed fund of \$50 billion can be established and with the savings made by all members of the public, the elderly can have something to fall back on and lead a secure life in old age.

I believe such a proposal merits the Government's serious consideration. Otherwise, after the introduction of a minimum wage, since the wage level may change every year, the Government will have to ask the Legislative Council to lower the minimum level of relevant income at which employees have to make contributions every year, thus making more and more people fall out of this net of retirement protection. In fact, this will only aggravate the problem.

Deputy President, I hope that through the opportunity today, at the same time as we pass this motion, the Government will face up to the retirement problem of Hong Kong people.

Thank you, Deputy President.

MR WONG SING-CHI (in Cantonese): Deputy President, the Government initially proposed in the Notice that the minimum level of relevant income for contribution is actually \$5,500, that is, a rise from \$5,000 to \$5,500. In fact, it is not unhelpful to increase it to \$5,500. Some 75 800 employees and 7 600 self-employed persons will still need not make any MPF contribution, and these 83 000-odd people can have \$250 to \$266 more at their disposal each month.

However, if the amendment is really passed as such, I believe everyone will tease it and say, "Is there a problem?" The reason for this is that the Government has so many different standards for the lower income limit. In MPF, it is \$5,500; in transport allowance, it is \$6,500; in applications for singleton public housing units, it is some \$8,000; and in the ultimate minimum wage, it is still not determined whether it is \$6,200 or \$6,300. These so many standards have made the whole society very confused. So, when the Government put forth this proposal, I believe most Members also considered that the lower limit of \$5,500 was problematic. For this reason, after repeated deliberations, the Government proposed an amendment today seeking to set the minimum level of relevant income for contribution at \$6,500.

Well, it shows that the Government is prepared to listen. It also proves that the Government is not as hard as a piece of iron in handling some matters, willing to listen to the opinions of the public. But I hope that the Government will listen to our opinions not on these matters only. The low-income group in fact faces many other difficulties, which remain unresolved to date. Secretary Prof K C CHAN may be very relaxed now as today's motion will be passed uneventfully. However, the question is that I believe he still needs to make an effort to deal with a lot of other matters following the passage of this Amendment Notice. He cannot put so many matters on hold like what he had been criticized in the past.

Deputy President, the proposal this time around is to amend the minimum level of relevant income for MPF contribution to \$6,500 and hence increase the pocket money of the low-income group, or enable them to live financially not too tight. In our fight for a minimum wage, all along, we wish that the income of the low-income people can meet their needs of living. Our aim is not to enable this group to live affluently because that is impossible. All we hope is that they can meet their needs of living.

As regards the existing minimum wage level, many Members said that the point was not about \$5,800, \$6,100 or \$6,300. Actually, some members of the public have to work 10 hours a day to earn a monthly wage of only \$6,900. This group of people can only lead a frugal life with such an income. But we have to take 5% from this meagre income so that they can save up an amount for retirement protection, saying that they will have a chance of leading a better retirement life. However, very often such a claim only deceives the low-income group and ordinary citizens into drawing 5% out of their meagre income, which is in fact very painful to them.

As such, many Members have also proposed that since the practice of drawing 5% out of the meagre income of these low-income earners causes hardship and is not a satisfactory arrangement, it would be better for the Government to make contributions for them. Why is it that subsidies cannot be provided by the Government? We hold that the Government should comprehensively consider this proposal. But I believe Secretary Prof K C CHAN will not consider this now. Judging from his look, I believe he will just sit here and do nothing in the coming year, just praying for luck that all Members will support and pass his motions. He will not initiate to do anything. However, this is not important as we can take it as if we were talking to the future Chief Executive or directors of bureaux.

Deputy President, given the existing income level of \$6,500 or less for a worker, if he has to contribute 5% of his income to the MPF schemes, and assuming that he is some 30 years old, he has to work more than 20 years before reaching the retirement age of 60 something, and if he makes a monthly contribution of about \$300 on top of the contribution of \$300 or so made by his employer, he will have saved only an amount of more than \$100,000 net of interest in 30 years according to my calculation. If we do some further computations Mr WONG Kwok-hing said earlier on that it was \$500,000, but I question whether it would be as much as \$500,000. I assume that he can take back \$300,000 to \$400,000 upon retirement, which appears to be a very large amount for an ordinary citizen, and which however will actually be used up very soon. If the medical expenses are added to it, his retirement life will become more difficult.

The Government said the MPF is a vital pillar to enable members of the public to retire with peace of mind. But I believe the reality is absolutely not that. If the Government does not consider providing the people with more

security or saving initiatives, it will be impossible to help the low-income earners to live a retirement life contentedly with sole reliance on the existing MPF System.

Deputy President, the Democratic Party is now considering some proposals. Of course, we will continue to support the universal retirement protection scheme proposed in the community. But this kind of scheme actually involves a lot of arguments and difficulties. According to my observation, the existing Government will not introduce any initiative as regards people's livelihood. However, in the political aspect, for example, suppressing people with different political opinions, the Government can change everything within a couple of days. As such, I do not pin any hope on the incumbent Chief Executive and directors of bureaux really. Nevertheless, I hope that more discussions can be conducted in the community and in society and we should not rely solely on the MPF. Even though the proposal to increase the minimum level of relevant income for MPF contributions from \$5,000 to \$6,500 is passed, many people still cannot enjoy a decent retirement life indeed.

So, the Democratic Party has proposed that apart from looking deeper into the retirement protection scheme suggested by the Joint Alliance for Universal Retirement Protection, we actually still need to explore some new ideas in various other aspects. For example, can we consider encouraging some retirees to inject their MPF into a personal fund, so that they can receive a certain sum of money as monthly pension when its amount reaches a certain level?

However, if a retiree injects his MPF into a fund and its investment fails to bring him, say, \$3,500 each month, the Government will have to provide subsidies. If the amount injected is enough, he will receive a bit more, and the amount injected into the fund will become his assets which can be given to his descendants upon his death. The Democratic Party is now examining such proposals, and we will consider some more proposals from various perspectives.

The World Bank has already launched the five-pillar approach — not the three-pillar one, but now our Government still adopts and emphasizes the three-pillar approach. I do not know why the Government has lost the other two pillars. The Hong Kong Government thinks that it is governing an international city, but I do not know why the SAR Government still seems to think that it is

enough to have three pillars while the World Bank has already started to promote the five-pillar approach. It must be noted that a three-legged chair will tip over.

As such, I hope — I really do not want to talk about this anymore as I know the Secretary will not do it — that the next Government and the new Chief Executive who will be elected very soon in January or February next year will make the government officials appreciate the people's sentiments and do something on universal retirement protection as soon as possible, so that members of the public can live in a more contented manner upon retirement.

I think the general public now hold a lot of grudges and are very disappointed with the Government in respect of matters relating to people's livelihood. Even though the Government is going to hand out \$6,000, I think it will not win the favour of most citizens. On the contrary, it will lead to more grudges if the handout is not made quickly enough and members of the public do not receive it until a much later time.

So, Deputy President, I hope that the existing SAR Government can really do some soul-searching about its inadequacies and try to do things where its capabilities permit. For those things the Government is unable to do, I think the citizens will not have any expectations on it. However, I would expect that the motion moved in this Chamber and some of the contents that we have discussed here can be put on record, so that the persons in charge of the future SAR Government will have a chance of drawing reference from it and really put the relevant initiatives into implementation.

Deputy President, the Democratic Party supports the adjustment of the minimum level of relevant income for MPF contributions this time. We hope that we can further press the Government in future discussions on the maximum level of relevant income and urge the Government to do a better job of universal retirement protection.

Thank you, Deputy President.

MR LEUNG YIU-CHUNG (in Cantonese): Deputy President, regarding the proposed amendment today in respect of the Mandatory Provident Fund Schemes Ordinance (the Ordinance) which seeks to increase the minimum level of relevant

income for MPF contributions made by employees from \$5,000 to \$6,500 each month, I think there is only one reason that I will not oppose it. That reason is very simple, that is, there are 83 000 or so employees whose income is at such a low level that if we have to draw 5% from their income as MPF contribution, they will be barely able to meet even their own needs of living. If they have to take care of the living of more than one family member, they will find it very difficult and simply unable to cope with the prevalent surging prices. So, under such circumstance, I have no alternative but to accept this amendment.

Deputy President, I wish to clearly point out that though I do not oppose the amendment, it does not mean I support it. Why? The reason relates to the nature of the MPF set out in the Ordinance to which I disagree. I voted against the MPF System as early as 1996, and the problems prevailing at that time actually still exist today, including leaving housewives in a state of uncertainties when they "retire" as they have not made any MPF contributions. This is one of the very important reasons for my disagreement. Moreover, for some low-income workers, though they have made contributions, the MPF benefit they can receive in the future will be very small. It will be fortunate and joyous if they can receive \$2,000 or more each month when they retire. However, according to my estimation, it is in fact very difficult for them to receive such an amount of MPF benefit.

I have made enquiries with many workers who have made contributions to the MPF for some 11 years, but they said that their MPF accounts have so far accumulated an amount of contribution of about \$80,000 to \$100,000 only. For older workers, even if they continue to make contributions so that the amount of contribution in their MPF accounts will double and reach the level of \$200,000 or \$300,000, this amount will still have to sustain for 15 to 20 years after they have reached the retirement age, and calculations show that they can only receive \$1,000 or so each month or even less. May I ask how such an amount can maintain their living?

The Government claims that this is a vital pillar for retirement protection and everything centers on this system as the possibility of relying on other alternatives such as saving is even more remote, not to mention the Comprehensive Social Security Assistance (CSSA) recipients. I simply do not approve of the nature of the MPF. However, I also feel helpless as the

legislation is already there, and as such all I can do is not to oppose the amendment proposed by the Government today.

However, as many colleagues have said, and as Mr Ronny TONG also mentioned earlier on that these low-income workers simply have no means to save money as they are almost unable to make ends meet every month. If they need to make contributions, they will receive 5% less of their income so as to save up merely an amount of \$200,000 to \$300,000 or even less for their retirement based on the estimates set out just now. So, the Government must deal with this problem. At present, these 80 000-odd workers may feel joyous for having no need to make contributions. However, the joy today may only become sufferings in the future. The Government really cannot make some people enjoy immediate happiness but not getting any benefits actually. Though they do not have to draw part of their income to make contributions now, the question is what their life will be after retirement, which is another headache. So, all this amendment to the Ordinance can get is simply not any applause, but reluctance and helplessness only.

Secretary, I hope you will really do some research on this. The community has broached many proposals on resolving the retirement issue, including setting up a universal retirement protection system, which would be a small yet more effective proposal to solve the elderly and retirement problem. However, unfortunately, so far the Government has not rolled out any proposal. At the meeting last week, we asked the relevant department about this, and the reply we got is that the issue had been referred to the Central Policy Unit (CPU) years ago for research, but there have not yet been any results. The authorities hope that the CPU can deliver the results at the end of this year or early next year to the Government, but that does not mean there will be progress as the Government still needs to conduct a study on the research report, and only on finishing the study will the Government explore if there are any feasible proposals. I believe that even if any proposal comes out of that, it will not be implemented without making any consultations on the grounds that it has already been discussed for a long time in society, just like the case of the replacement mechanism. The Government will definitely conduct consultations on this, which will possibly last not just two or three months, but a much longer time. What follow then will be rounds of deliberations. As a result of this, even if a

proposal can really come out of this, it will further take a long period of time before the proposal can be implemented.

Basically, it does nothing to solve the problem of an ageing population we have to face as always mentioned by the Government. Meanwhile, the Government keeps telling us that there will be one elderly person in four citizens in 2033. It seems to be a distant problem — still some 20 years from now, but it would actually come right before us in a flash. Moreover, the problem will not become the gravest only in 2033, as it has begun to deteriorate now. What should we do to solve the problem?

The amendment to the Ordinance this time around simply has not touched on this problem. Neither has the entire MPF System genuinely taken into consideration how we can provide greater protection for the living of retirees in their twilight years. As such, I feel a strong sense of helplessness about the passage of this amendment today. A large group of members of the public still hopes that the Government can put forth a more forward-looking proposal, but the amendment we have now is even worse than some fragmented patchwork, which can lessen their hardship only by reducing their contributions without providing them with any benefits at times of difficulties. The only merit of reduced contribution may be that the amount of contribution incurring losses can be reduced when the economic situation turns bad as that amount of income is still in their pockets or has already been used up. Actually, many workers who have made MPF contributions have told me that their contributions can only incur losses, rather than making any returns. Of course, overall speaking, the return on MPF investments is higher than the inflation rate, but that only refers to the overall figures. As regards the situation of individual workers, their MPF investments have simply made no profits, and some have even incurred losses.

In addition, nobody knows what will happen in the future. Despite the current situation of a robust economy, no one knows whether it will reap profits in the future. We have seen the situation of grave losses a couple of years ago when losses were common. So, given its unsound nature, the MPF does not offer any particular benefits.

So, I wish to make use of this opportunity of amending the Ordinance today to tell the Government again that it should not feel complacent and think that there are already some pillars to brace it up. Those pillars, however, have

actually shown signs of dilapidation and will collapse at any time. We hope that the Government can put in place more specific, concrete and firm pillars to support the living of the elderly people in their twilight years, and implement universal retirement protection as soon as possible.

Universal retirement protection is not infeasible, for example, though the Government will allocate a provision of \$40 billion this year for giving "cash handouts", many members of the public have put forth the counter proposal that instead of taking the "cash handouts", they would rather using the provision to set up a universal retirement protection fund instead. If the Government can make a provision of \$40 billion per annum, the pool together with investment returns will accumulate to more than \$200 billion in, say, five years, and then the workers, employers and even the Government will commence a tripartite contribution arrangement from the sixth year. In this way, I believe, it will be able to set up a universal retirement protection system, so that the contributors can receive a pension of \$2,000 to \$3,000 monthly on reaching the age of 65. This approach is actually supported by a lot of people. Therefore, I hope that the Government can earnestly consider rolling out this long-term and effective proposal during its review, instead of making fragmented patchwork on the legislation only.

Ms Anna WU, Chairman of the Mandatory Provident Fund Schemes Authority (MPFA), has said that she also thinks that many areas need changes, and she even supports the implementation of universal retirement protection. However, as she is not a government official, nothing will help even with the support of the MPFA if the Government does not have such a plan. So, it is most imperative that the Government itself should draw up a clear position as to whether or not it will adopt this approach. However, it is not the right direction for the Government to only refer the matter to the CPU for research and incessantly resorted to delays and procrastinations. Therefore, I asked the Government direct in the last meeting what the position of the Administration was and demanded that the authorities should not put up further delays just trying to shirk its responsibilities. It is incumbent on the Government to assume this responsibility, and I hope the Government will have some better news to crack as soon as possible.

I so submit, Deputy President.

MR FREDERICK FUNG (in Cantonese): Deputy President, today's amendment can be considered as a piece of "chicken rib" — tasteless to the palate but not worthless enough to be discarded. If we do not accept it, it would be a case of not increasing the very little existing assistance given to the elderly when it should have been increased actually. This is unjustifiable. However, if we accept it, it would give the Government an excuse to say that the MPF and the retirement problems have been resolved and there is no more need to seriously consider how best to deal with the ageing and retirement problems in Hong Kong. In that case, the MPF will become a major reason for the Government not to carry out any further improvements and reform.

The Government holds a lot of information, and the Steering Committee on Population Policy led by the Chief Secretary for Administration should conduct some information analysis on the demographic change, be it the existing low birth rate or the ever increasing number of elderly people. The Census and Statistics Department (C&SD) has also provided us with some figures showing that the number of elderly people is on the rise. Nevertheless, I have to emphasize that the rise in the number of elderly people should not be seen as a negative factor or be taken as a reason for the Government to smear them as a burden. If we want to tackle the problem, we have to make commitments on various other fronts, including retirement fund, elderly services, hospital and sanatorium services, and so on. Actually, these figures are not that frightening in various other areas. I hold that quite a few elderly people who retire at 65 and receive the MPF payments still have the ability to work. The question is that we have not genuinely conducted some research and analysis in order to make proposals on how to enable these elderly people aged 65 or above to continue to give play to their working and economic abilities in society leveraging on their experience and capability.

On this issue, the C&SD has provided us with some figures. According to its statistics in 2009, in the next 30 years, that is, up to 2039, the elderly people aged 65 or above will account for 25% of the entire population in Hong Kong, which means there will be one elderly out of four persons, thus amounting to about 2.4 million elderly people. The figure sounds most frightening, but I need to stress once again this question: Will all these 65-year-old really become dependent persons in the community by 2039? I totally disagree with it, nor can I accept it. So, we need not be frightened by this figure.

However, though not being frightened by this figure, it does not mean that we need not deal with the problem now. Actually, about 10 to 20 years ago, some community groups had already incessantly urged the Government to better the retirement protection system and scheme. The earlier we implement the retirement scheme, the better results we get. No matter how many elderly people we have in the future, the problem can be tackled and resolved.

Regarding the MPF issue, the biggest problem is that the system excludes people of several sectors. Some colleagues have said earlier on that housewives are excluded. For the low-income people, even though they need not make contributions or the employers will make contributions for them, the amount is still very low, and after having made contributions for 20, 30 or 40 years, the monthly amount payable to some of them may be even lower than that of CSSA or equal to the CSSA amount, such that they are just ineligible to apply for CSSA. The elderly have worked for Hong Kong for their whole life — much effort has been made though no achievement. Does that mean they have to live their life with an amount that is equal to or even lower than that of CSSA when they retire? This is the second group. The third group is the existing elderly people. Of course, the elderly aged 65 or above now do not have MPF. For those wage earners aged 40 or above, even though they do have work and will have made contributions for about 25 years when they reach the retirement age of 65, the amount they can receive will definitely be lower than the CSSA amount. As such, I cannot see that the existing so-called MPF System can really enable the elderly in the future — from the age of 40 to 65 (25 years later) as I have said just now — to get an amount of money that can ensure them protection for their retirement life.

I used to be a member of the former Commission on Poverty (CoP) set up by the Government to alleviate poverty, in which the elderly issue is one of the items for discussion. From early 2005 when the CoP was established to mid-2005, the CoP had demanded that a study on retirement protection be conducted, and we were aware that the think tank had already conducted a research on retirement protection for the elderly. Deputy President, since mid-2005, 2006, 2007, 2008, 2009 and 2010 have gone by, and now it is mid-2011 — six years already. We can build one half of an airport in six years' time. But we have not uttered a word on the elderly problem. Is it that the CoP had done nothing, or had taken action but could not find a way out, or treated the

figures obtained from the research from a negative perspective and dared not consider any solutions as the figures were too alarming?

In any event, this is not an excuse for the Government's think tank not to tender advice to the Government, given one of its tasks is to tackle and solve the elderly retirement problem. No matter how worse the situation is, they should present the problem, so that Hong Kong people can discuss and consider some solutions together. I always consider that "the wisdom of the masses equals that of the wisest individual". We should not evade the problem by ignoring it and by not mentioning or talking about it. Of course, another scenario is the possible dereliction of duties, in which they say they need to handle other matters of a higher priority than this one to the effect that they just ignore it and put it aside all along without doing anything ultimately. However, Deputy President, no matter what the reasons are, I think that it is unacceptable.

The community has come up with a proposal urging that universal retirement protection be implemented immediately. This proposal has even been handed over to actuaries to help with some computations, and the data thus obtained indicate that the proposal is feasible. The data can even project that if the system is set up within 30 years, the Government needs not make any further injections of funds, except for the first injection — I will further talk about the first injection later. Among the several universal retirement protection schemes proposed by the community groups, I agree with and support the one proposed by the Hong Kong Council of Social Service. What is its proposal? It deals with the elderly who are existing CSSA recipients — approximately 150 000 households are receiving CSSA now. There are presently two categories of elderly — those aged 65 or above and those aged 70 (the former is required to take an income test while the latter is not) — receiving the Old Age Allowance (OAA), totalling approximately 200 000 elderly people, and the OAA payments are granted by the Government. If we implement a universal retirement protection system in the future and if each elderly can receive \$3,000 monthly, naturally they will not need to apply for the OAA, and neither will they apply for CSSA. If calculated on the basis of current figures, the amount involved is about \$20 billion to \$25 billion plus the provision for the MPF. Of course, we will not request the wage earners or the employers to further increase their contributions to the universal retirement protection scheme. We may inject a certain percentage of the MPF contributions — that can be 2% to 3% — into the

universal retirement protection scheme. By then, there will be two regimes operating concurrently.

Of course, Members may also be aware that the amount of contributions to the MPF may increase in the future. Despite the fact that we are still considering this proposal and have not broached the scheme today, we may bring it up later for discussion.

Regarding the proposed increase of the maximum level of relevant income to \$20,000 for MPF contributions, the issue is still being discussed in society. Can it be increased in two phases, that is, from \$20,000 to \$25,000 and then to \$30,000? That is to say, the amount of contribution will be increasing constantly. In other words, the scheme will start with our contributions, and then the Government will provide a one-off provision of more than \$20 billion. Of course, it would be better if the Government can allocate a provision of \$50 billion as the public coffers are flooded with reserve. After all, it will spend more than \$30 billion on making the "cash handout". Unless the Government tells me that the income of members of the public will drop drastically in the next five years, the universal retirement protection scheme can actually be implemented forthwith using the existing CSSA and OAA payments of more than \$20 billion as the base plus the Government's injection of \$25 billion, totalling approximately \$50 billion. With such a scheme, the elderly people aged 65 or above can receive \$2,500 to \$3,000 monthly. Given that the existing CSSA payment for an elderly person is \$3,500, if the elderly can receive \$3,000, it will be on par with the CSSA amount.

The community has come up with a lot of proposals, but the Government has not paid any attention or made any response to them, saying that they are "inappropriate". Meanwhile, its think tank has spent six years but still failed to come up any proposal. Therefore, it has been criticized in the community as "lame" rather than being regarded as a think tank, because it is really incompetent in performing its duties.

Deputy President, our discussion today is on whether or not the minimum level of relevant income should be increased. Actually, the issue needs no more discussions and we must raise the minimum level of relevant income. If calculated on the current basis of \$5,000, it is even lower than the minimum wage. Members of the public are unable to make ends meet and meet their daily

expenses with their income, and they also have to make contributions. This has imposed increased pressure on them. So, I support the increase of the minimum level of relevant income for MPF contribution to \$6,500, and I think that this should also be the lower limit of minimum wage while the upper limit can be raised to \$8,100.

Under such circumstance, as I said in the beginning of my speech, I think that the proposed amendment to the MPF regime this time is like a piece of "chicken rib" — tasteless to the palate but not worthless enough to be discarded. I feel somewhat difficult if I do not support it; but if I support it, I find it a bit unbearable. I have spoken today in the hope that the Government can further consider the issue, especially the mechanism that there are two commissions directly under the Government, and the research conducted by the Government's think tank. Will they please announce the results of the research together with the recommendations, if any, as soon as possible; if not, they should also let us know the general situation of the research, so that the community can give its opinions by applying public wisdom.

Secondly, should the Steering Committee led by the Chief Secretary for Administration conduct an analysis on the basis of the demographic change published by the C&SD? Of course, this includes not only the elderly, but also the low birth rate, manpower distribution, conditions of the elderly, and so on. I must stress once again that the elderly, being a group of people who have accumulated more experience in society than any other groups, are not a burden. As we all know, the elderly we are talking about today generally refers to those who are old, physically weak and incapable of doing anything. However, given that Hong Kong has been striving to become a knowledge-based economy, its economic impetus does not necessarily lie in the physical capability actually. Very often, we can earn a lot of money by making a couple of phone calls or by punching a couple of keys on the computer, and it is not necessarily to use physical labour as a yardstick. Furthermore, we can also see quite a few of our senior government officials taking up jobs with better development and higher salaries upon retirement than their previous jobs as high-ranking public officers.

We also see pictures on the television screen that look a bit sad, but that precisely reflects the tenacity of the elderly. Some elderly people have to bend their backs to collect cardboards and waste in order to make a living. They find something of value from the waste and make money from it. We cannot look down upon such ways of making money. Quite a few elderly people have been

collecting waste since they were young to make a living and pay for the schooling of their children, and they may even own one or two flats. Some elderly aged 60 to 70 are still engaged in such work.

Among the CSSA recipients, 65% are elderly, and so we may think the elderly people are a burden. Actually, what is the exact number of these elderly people who are receiving CSSA? The number is only some 150 000 people, but how many elderly people are there in Hong Kong? We have approximately more than 1 million elderly people in Hong Kong, and only some 10% or more of them are receiving CSSA. So, we cannot treat the elderly with a negative attitude. Rather we have to look at them from a positive perspective, such that we can find the elderly are economically energetic, still able to serve the community.

Another problem is whether or not we have the channel and platform to enable these elderly people to develop themselves? This is exactly the reason why I expect the Government's think tank and the Steering Committee under the Chief Secretary for Administration to map out a proposal to solve the problem. We have emphasized from time to time that social enterprise is a way out as many successful social enterprises have elderly people on their payrolls. For instance, the Gingko House, being a successful example, has now opened its third branch restaurant whose customers, being both people in the neighbourhood and other citizens, are served by the elderly people. If the Government can provide them with the platform and support, I believe there will be more social enterprises like Gingko House. I hope the Government can proactively consider the matter from this perspective. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Financial Services and the Treasury to reply. This debate will come to a close after the Secretary has replied.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, first of all, I thank the Chairman of the Subcommittee and various Members for speaking just now. The scope of the speeches delivered just now was extensive, including retirement protection, making improvements to the Mandatory Provident Fund (MPF) System, and so on. Concerning the issue of making improvements to the MPF System, in the past, I had said on a number of occasions that I was very much concerned about how improvements can be made to the MPF System, including the level of charges, and so on. I am very concerned about all these issues and will follow them up proactively. However, on this occasion today, I am not going to make any response for the time being, whereas some other views are basically criticisms alleging that the amendment proposed by the Government to the minimum level of relevant income has come too late and too slow. I wish to respond to these areas.

Concerning why the Government did not introduce the amendment to the Legislative Council for scrutiny at an early date, as I said in my speech moving the motion, after the Government had received the report of the Mandatory Provident Fund Schemes Authority (MPFA) and done some statistical analyses concerning the existing mechanism, we could already see that it was necessary to consider how the minimum wage would affect the minimum level of relevant income and the relationship between the two as the former has an effect on the latter. This is because in our original review mechanism, only one of the points for consideration was spelt out, namely, the monthly median income. We believe the monthly median income cannot reflect the effect of the implementation of the statutory minimum wage (SMW) on the minimum level of relevant income, so we have to assess these two issues properly before putting forward a further proposal.

Therefore, in January this year, after the enactment of the legislation on minimum wage, the Government took action soon afterwards by consulting the Panel on Financial Affairs on the outcome of the review conducted by the MPFA. At that time, no recommendation was made to set the minimum level of relevant income at \$5,500. The amount of \$5,500 was a reference point suggested by the figures available then, but the Government also made it clear at that time that we would put forward our proposal only after considering the effects of the minimum wage and consulting Members at the same time. Subsequently, government representatives attended the public hearing arranged by the Panel on Financial

Affairs on 20 April and having heard Members' views, the Government finalized this proposal soon afterwards and activated the legislative process. Therefore, I wish to point out that the Government proposed this amendment only after duly considering all factors. This amendment also reflects the understanding gained by members of the public, Members and the legislature of the effects of the SMW on the income figures in the period between the enactment of the legislation on minimum wage and its implementation. It was after a consensus had been reached that I proposed this amendment.

The second view expressed by Members was why the Notice would come into operation so late and why it could not come into operation at an earlier date. A Member also asked if we could bring forward the commencement date of the Notice. I wish to point out that, as I said in my speech just now, the commencement date of the Amendment Notice was set after the Government had carefully considered the views of the sector and the MPFA, as well as the results of the survey conducted by the MPFA on major employer organizations. We must bear in mind that the adjustments to the systems involve not just the trustees but also over 200 000 employers. They have to make changes to the payroll or contribution software, either by themselves or by hiring information system service providers to do so, and after making adjustments to their systems, they have to perform full-scale tests on the contribution flow in the system after changes have been made to reduce the incidence of errors. Therefore, we must give them a reasonable of period of time to make preparations. In fact, compared with the adjustment to the minimum level of relevant income on the last occasion in 2002, when it took the Government six months to make preparations, this time, we have compressed the time to four months. However, to avoid causing confusions by all means, the MPFA will actively give publicity to this matter and through other channels, enable employers to begin to prepare for this change at an early date. I believe the date of commencement this time around has fully taken into consideration the time needed by employers for implementation and the need to reduce the burden on low-income people to make contributions.

Some Members are also concerned about the future mechanism for reviewing the minimum level of relevant income. I have said just now that the MPFA already has a plan to carry out a comprehensive review of the statutory adjustment mechanism in view of the relevant figures after the actual effects of the SMW on the income distribution of employees have become more apparent. At this stage, the MPFA expects the actual effects of the SMW to appear 18

months after its introduction, so it believes that it is more appropriate to begin this review about 18 to 24 months after the introduction of the SMW. The Government will ask the MPFA to pay close attention to the actual situation and make appropriate arrangements.

As regards the scope of the review, the review planned by the MPFA will cover a number of areas, including whether or not it is appropriate to continue to adopt the existing adjustment mechanism, and whether or not there are other options that can be used as the basis for adjusting the two income levels. We and the MPFA all adopt an open attitude towards all proposals, including the proposals put forward by various Members just now.

Deputy President, I hope Members can support the amendments to this subsidiary legislation.

DEPUTY PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Financial Services and the Treasury be passed. Will those in favour please raise their hands?

(Members raised their hands)

DEPUTY PRESIDENT (in Cantonese): Those against please raise their hands.

(No hands raised)

DEPUTY PRESIDENT (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

MEMBERS' MOTIONS

DEPUTY PRESIDENT (in Cantonese): Members' motions. Two motions with no legislative effect. I have accepted the recommendations of the House Committee: that is, the movers of motions each may speak, including reply, for

up to 15 minutes, and the mover of the first motion may have another five minutes to speak on the amendment; the mover of amendment may speak for up to 10 minutes; and other Members each may speak for up to seven minutes. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

DEPUTY PRESIDENT (in Cantonese): First motion: The 20th anniversary of implementing the Hong Kong Bill of Rights Ordinance.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Ms Emily LAU to speak and move the motion.

THE 20TH ANNIVERSARY OF IMPLEMENTING THE HONG KONG BILL OF RIGHTS ORDINANCE

MS EMILY LAU (in Cantonese): Deputy President, I move that the motion, as printed on the Agenda, be passed.

Deputy President, the motion I have moved today is "The 20th anniversary of implementing the Hong Kong Bill of Rights Ordinance". In June 20 years ago, Deputy President, you were also in this Chamber. At that time, the then colonial Legislative Council enacted the Hong Kong Bill of Rights Ordinance (HKBORO). Deputy President, I have looked up the relevant records of the time and found that not many sparks had flown in the discussion then. Before speaking on the said records, Deputy President, we need to remind ourselves why the British-Hong Kong Government enacted the HKBORO. In consequence of the Beijing massacre on 4 June 1989 which caused the people of Hong Kong to panic so much, the then British-Hong Kong Government had to launch a number of proposals to keep the people of Hong Kong from fleeing and to boost their confidence. Such proposals comprised the new Airport and the rose garden project, as well as the introduction of the HKBORO and the subsequent Right of Abode Scheme offering the right of abode in the United Kingdom to some 200 000-odd people (mainly those belonging to functional constituencies).

Deputy President, the HKBORO seeks mainly to include the majority of the rights provided under the International Covenant on Civil and Political Rights (ICCPR), which the British had already introduced to Hong Kong in 1976, into the local legislation. Certainly, we need to know that the Basic Law promulgated by the National People's Congress in March 1990 came into operation on 1 July 1997, and that the Basic Law also carries references to the International Covenant on Human Rights. Hence, these are the elements of the tripartite referred to in the prevailing argument over having a troika or a solid tripartite to safeguard the human rights of the people of Hong Kong. That is why I moved today a motion on the 20th anniversary of implementing the HKBORO, in the hope that we will look review history, examine our present situation, and think about what we should do next.

(THE PRESIDENT resumed the Chair)

President, the 1 July rally will be held tomorrow, and I believe the feet of the SAR Government are trembling now. If tens of thousands of people should take to the streets tomorrow, I believe Secretary Stephen LAM and other accountability officials would have no idea how they could shoulder the responsibility.

President, let us review the debate held in the Legislative Council on 27 June 1990. At that time, your party (your party was not yet established then) or your representative in the Council, Mr TAM Yiu-chung, said something to this effect, "The Chinese authorities have repeatedly denied the status of the Bill of Rights. If the Government unilaterally passes it, the Bill of Rights will inevitably have a lifespan of only seven years as a result of this born deficiency. This will defeat the purpose of the Bill of Rights. The kind of political impact that may arise will be something that Hong Kong people do not want to see." Naturally, Mr TAM then went on to criticize the British-Hong Kong Government for bringing up the issue, saying that the International Covenant had been introduced to Hong Kong since 1976, but the British-Hong Kong Government never did anything about it until that very moment. Honestly, President, do you believe the British are so well-intentioned? They waited until that time to do something just because they were forced to do so in the wake of the massacre in Beijing. Whether or not the Chinese Government recognizes it, the HKBORO

has been in place for 20 years. I believe the Chinese Government or the Central Government must come to terms with this fact.

Here, I would like Members to see how Hong Kong promotes human rights and examine the powers of the HKBORO. President, Mr Albert HO and I have recently raised a number of questions in this Council, with a view to elaborating on the implications of the HKBORO. The Secretary cited some information provided by the Judiciary and said that a total of 1 000 judgments (excluding oral judgments) had included references to the HKBORO, and that in some cases, the Court held that the relevant deeds of the Government were inconsistent with the HKBORO and made rulings against the Government, causing the latter to revert some of its decisions. According to the information provided by the Secretary (which I believe is not exhaustive), there are 20 such cases.

President, four of the cases were related to the challenge against the Government initiated by our respectable colleague in this Council, Mr LEUNG Kwok-hung. One of the cases was about voting by imprisoned persons, and the Government just could do nothing after the Court had passed its judgment. Actually, the imprisoned persons in some other countries do not enjoy such right, and that is why some democratic countries overseas were amazed to learn that our Government granted this right to the imprisoned persons. We were very happy at that time and commended the Government. In addition to commending the Government, we also commended Mr LEUNG Kwok-hung and other persons concerned for their courage to challenge the Government. Another challenge initiated by Mr LEUNG Kwok-hung against the Government was of course the Telecommunications Ordinance, which is a well-known case. Apart from that, Mr LEUNG Kwok-hung has also raised some issues in relation to public order. Hence, there were altogether 20 cases.

However, President, I believe many more items have to be added to this list very soon. A large number of similar cases have emerged recently, and the Court is busy dealing with the Government every day. This is because the public are initiating challenges against the Government in respect of environmental impact assessment reports and many other issues. Certainly, not every case would include references to the HKBORO, but many did, and each case brought before the Court would be a challenge to the Government. President, the Government has included references to the HKBORO in many laws and regulations, which means that the Government also considers that it is

necessary to comply with the HKBORO. While the HKBORO is not an overriding piece of legislation, it has to include in it the provisions of the International Covenant on Human Rights, which is also referred to in Article 39 of the Basic Law. Taking into account all these factors, the laws of Hong Kong should also be compliant with the HKBORO.

President, let us not talk about things far back in history. In the Communications Authority Bill we passed two hours ago, the Administration has included a provision to require the Administration to act in a manner consistent with the provisions of the HKBORO. Actually, many ordinances also contain such a provision. As such, the HKBORO is very useful and important to us. This year marks the 20th anniversary of implementing the HKBORO, why are the authorities so unwilling to put in more promotional efforts to make the public learn that we have in place such an important tool to safeguard the human rights of the people of Hong Kong? I hope Secretary LAM will explain that to us shortly.

President, in his reply to a question raised by Mr Albert HO on 18 May, Secretary Stephen LAM mentioned many other things and said no other actions were required. Actually, Mr HO had already mentioned in his question that the British-Hong Kong Government had established the Human Rights Education Working Group under the Committee on the Promotion of Civic Education to educate the public on the various rights guaranteed under the HKBORO, raise public awareness of the rule of law and human rights protection, and enhance the effectiveness of the HKBORO; and that the SAR Government had re-established this human rights working group in 2005, only to disband it in two years' time. President, at that time the working group claimed that it was going to undertake three tasks (I am afraid you have heard us talk about that too many times and found it very boring). These tasks are, namely, to conduct a territory-wide survey on human rights awareness; to see if there is any need to update our teaching materials on human rights; and to organize international seminars on human rights. However, even though the University of Hong Kong had already completed the majority of the commissioned work at that time, the Government would rather pay compensation to the University to have the work stopped. The Government requested the University to abandon the work and cease pursuing it any further. President, it could actually cost a great deal of resources to conduct a survey on human rights awareness, but all the efforts put into this were in vain. As such, we asked the Government what it was going to do, and how it was going to implement human rights education.

The Government then told us that it had established a Publicity Sub-committee under the Committee on the Promotion of Civic Education. President, the Government told us that issues of human rights would be handled by this Sub-committee. As such, I did searches on the Internet to find out what responsibilities and functions this Sub-committee was vested with. Its first task was to produce a "Develop a Positive Attitude towards Life, Build Happy Families" Calendar, which was followed by a "Great Achievements" sharing session. Then, it produced a "Great Achievements" Calendar-Web Version and distributed free "Great Achievements" Calendars to the public. In addition, it has also published two magazines, namely, *The Clay Family* and *Kidults* (not adults but kids and adults). Some exhibitions have also been held, such as the "Enrich your Life, Serve the Community" Exhibition, the "Living in Harmony" Exhibition, the "Olympic Spirit in a Harmonious Society" Exhibition, and the Exhibition on "Living Harmony". No wonder people say we have been "harmonized". President, in view of such actions taken by the Government, how can it convince people that it will really beef up the said tasks.

On top of that, President, the Secretary has again alluded to those three components of the troika, namely, the Equal Opportunities Commission, the Office of the Privacy Commissioner for Personal Data, and the Office of The Ombudsman. Added to these is the Legal Aid Department. It is claimed that these agencies can uphold our human rights. But then, President, as we have pointed out many times, the heads of these agencies are all former senior government officials, how can the people in the United Nations Human Rights Council be convinced that these agencies are really independent agencies. Given that these are all former senior government officials, the United Nations will certainly ask whether Hong Kong really does not have any independent persons well-versed in human right issues to chair such agencies, and how can anything be done by such agencies which have all turned into a club for retired senior officials.

In my motion, I request the Government to establish a dedicated committee for promoting human rights education. I believe this is a most fundamental and reasonable step to take; but then, Dr Philip WONG proposes to delete this request from the motion. President, I believe the entire territory is very infuriated when talking about human rights these days. Later on, some Members will elaborate on many incidents of infringement of human rights.

The presence of the HKBORO in these past 20 years has been very important to us. We must continue to defend it and to uphold the rule of law. The authorities have done so many things that are in contravention of human rights, and it seems that only the Court can put the authorities under control. However, many members of the public have pointed out that they cannot take everything to Court. As such, we are once again calling on the authorities to respect the law and the human rights of the public. We also urge that the Government should put in more resources to promote human rights to enable the public to gain a better understanding of the same.

With these remarks, I beg to move.

Ms Emily LAU moved the following motion: (Translation)

"That the fact that Hong Kong is a city in the People's Republic of China which has greater freedom as well as a higher respect for the rule of law and human rights is directly related to the implementation of the Hong Kong Bill of Rights Ordinance (HKBORO) for 20 years, because under HKBORO, most of the human rights safeguarded by the International Covenant on Civil and Political Rights are brought within the ambit of local legislation; in this connection, this Council urges the authorities to firmly uphold the principles of respecting the rule of law and protecting human rights, take the opportunity presented by the 20th anniversary of implementing HKBORO to promote human rights education and enhance the public's understanding of HKBORO, and to establish a dedicated committee for promoting human rights education, so as to enhance the effects that can be achieved by HKBORO."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Emily LAU be passed.

PRESIDENT (in Cantonese): Dr Philip WONG will move an amendment to this motion. This Council will now proceed to a joint debate on the motion and the amendment.

I now call upon Dr Philip WONG to speak and move the amendment to the motion.

DR PHILIP WONG (in Cantonese): President, I move that Ms Emily LAU's motion be amended.

The Hong Kong Special Administrative Region (SAR) is a free and open city which respects human rights and the rule of law. While the people of Hong Kong cherish and take pride in these attributes, the international community also approve of them highly. Every year, tens of millions of visitors will come to Hong Kong, and many of them are awed by this unique edge that Hong Kong possesses. Thanks to the provisions in the Basic Law, the principle of "one country, two systems", as well as the existing legal framework, the people of Hong Kong have all along been enjoying genuine human rights and real freedom.

Since the establishment of the SAR, the Central Government has been acting in compliance with the Basic Law and the principle of "one country, two systems" to give support to Hong Kong's efforts in pursuing economic development, enhancing the living standard of the public, promoting democratic development and facilitating the development of a harmonious community. In addition, the Central Government also supports the SAR Government in safeguarding the rights and freedoms of the residents of Hong Kong and of other persons in the SAR in accordance with law. The support rendered by the Central Government is obvious to all. Nevertheless, owing to the principle of "one country, two systems" and the different systems in the SAR and on the Mainland, it is natural that the political climate and social environment of the two places are not the same. As such, I consider it inappropriate to make a direct comparison of the human rights situations of both places.

I have participated in the advisory and drafting process of the Basic Law. The Basic Law is the mini-constitution of the SAR. In Chapter I of the Basic Law, Article 4 stipulates that the SAR shall safeguard the rights and freedoms of the residents of Hong Kong and of other persons in the SAR in accordance with law. Chapter III is about the fundamental rights and duties of the residents of Hong Kong. The rights enjoyed by the residents of Hong Kong include equality before the law; freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; freedom to travel and to enter or leave the SAR; freedom of movement within Hong Kong; freedom of religious belief; freedom to engage in academic research, literary and artistic creation, and other cultural activities; and so on. Article 39 stipulates clearly that the provisions of the International Covenant on Civil and Political Rights

(ICCPR) as applied to Hong Kong shall remain in force and operate through the local legislation, namely, the Hong Kong Bill of Rights Ordinance (HKBORO), so that the provisions applicable to Hong Kong can be implemented in the SAR. In dealing with the relationship between international covenants and the local legislation, the Basic Law has adopted the wording "as applied to", and I believe this is a practical and forward-looking way to deal with the matter, focusing on the interest of Hong Kong as a whole. If the provisions fit in the practical situation of Hong Kong and are beneficial to Hong Kong, they will be included in the local legislation; otherwise, they will not be adopted.

The HKBORO enacted in 1991 safeguards the rights to life, freedom, fair trial, privacy, marriage, and so on, of the people of Hong Kong irrespective of their colour, race, sex, language, religion or social origin. In the course of its implementation, some of the provisions have been amended or repealed. In this connection, around 1 000 judgments of the Judiciary have included references to the HKBORO. In my view, it is necessary to point out that in the SAR, the constitutional origin of the protection for the rights and freedoms of the residents of Hong Kong is the Basic Law. As for the HKBORO, it is the local legislation that enables these rights and freedoms protected by the constitution to be implemented in the SAR, and it enjoys the same status as any other laws in force in the SAR. I have noticed that some of the provisions of the Hong Kong Bill of Rights under the HKBORO are very explicit. For instance, while the freedom of speech originated from Article 27 of the Basic Law, Article 16 of the Hong Kong Bill of Rights has imposed certain restrictions on such freedom, in other words, while everyone shall have the right to freedom of expression, the exercise of such right (and I quote) should "be subject to certain restrictions necessary for respect of the rights or reputations of others; and for the protection of national security or of public order, or of public health or morals". (End of quote) These days, certain colleagues in this Council have used freedom of expression as a pretext to stage in this Chamber various kinds of radical and rude struggles, and even infringed the rights or reputations of others. Actually, what they have done is in violation of the spirit of the HKBORO.

Given that the SAR is a local administrative region of our country and comes directly under the Central Government, and that the Basic Law is a constitutional instrument enacted and promulgated by the National People's Congress and the foundation of our legal framework upon the resumption of the

sovereignty over Hong Kong, the Basic Law obviously enjoys a higher status than the HKBORO. If any persons should ignore the fact that the HKBORO, the ICCPR and the safeguards for human rights in the SAR are all implemented on the basis of the Basic Law, and overlook the provisions in the Basic Law which are related to the protection of human rights and freedom, but mistakenly consider that the protection concerned originated from the HKBORO, thereby elevating the HKBORO to a position overriding the Basic Law, I consider it incorrect and inappropriate of them to do so.

Since the establishment of the SAR, the SAR Government has all along been protecting the various rights and freedoms of the people of Hong Kong in accordance with the Basic Law and the principle of "one country, two systems", and at the same time upholding the spirit of the rule of law. I hope that the SAR Government will hold fast to its good practice and continue with its work in accordance with the said principles, while giving even more regard to the protection of human rights in formulating and reviewing its policies.

In present-day Hong Kong, in terms of the constitution, local legislation or the institutional structure, the various rights of the people of Hong Kong are sufficiently protected. To cite a few examples, the Sex Discrimination Ordinance, Disability Discrimination Ordinance, Family Status Discrimination Ordinance and Race Discrimination Ordinance enforced by the Equal Opportunities Commission all contain provisions that protect human rights. As regards the Personal Data (Privacy) Ordinance enforced by the Office of the Privacy Commissioner for Personal Data, its purpose is to protect the privacy of individuals in relation to personal data. All of these agencies are independent statutory bodies operating in accordance with the relevant ordinances. If members of the public should have any complaints about some related issues, they may lodge complaints with the agencies concerned direct. The various Policy Bureaux and departments under the Government, including the Police Force and the Labour Department, have all formulated administrative guidelines and set up appeal channels to handle complaints lodged by the public. Besides, the Legislative Council also has in place a Redress System to handle complaints from members of the public who are aggrieved by government actions or policies. Furthermore, if members of the public believe that any of the legislative provisions or government policies and measures may have violated the HKBORO, they have the right to access legal advice, with a view to taking the

matter to Court to institute proceedings and selecting legal representatives to safeguard their legitimate rights and interests promptly.

At present, of the 15 international human rights covenants applicable to Hong Kong, seven require signatories to submit periodic reports to the United Nations. In the periodic reports, the SAR Government needs to give an account of its work in promoting and protecting human rights. Besides, the Legislative Council Panel on Constitutional Affairs will also discuss the outlines of Hong Kong's human rights reports to be submitted to the United Nations. In my view, the existing mechanism has been operating effectively, and I cannot see any need to establish a dedicated committee for human rights issues.

In order to enable the people of Hong Kong to gain a better understanding of the human rights protected under the Basic Law and the HKBORO, I urge the SAR Government to continue to put in more resources to promote human rights education and civic education. In addition, it should also promote the concept of human rights and the rule of law spirit through different channels, thereby encouraging members of the public to know their rights better, and understand fully their obligations and responsibilities as citizens of the SAR.

President, I so submit.

Dr Philip WONG moved the following amendment: (Translation)

"To delete "in the People's Republic of China" after "city"; to delete "greater" after "which has"; to delete "a higher" after "as well as"; to delete "directly related to the implementation of the Hong Kong Bill of Rights Ordinance (HKBORO) for 20 years, because under HKBORO, most of the human rights safeguarded by the International Covenant on Civil and Political Rights are brought within the ambit of local legislation" after "human rights is" and substitute with "attributable to the clear protection under the Basic Law and its stipulation that the provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong shall remain in force and shall be implemented through the Hong Kong Bill of Rights Ordinance (HKBORO)"; to delete "firmly uphold the principles of respecting" after "the authorities to" and

substitute with "continue to abide by the Basic Law and 'one country, two systems' and respect the principles of"; to add "and to" after "protecting human rights,"; to add "continue to" after "HKBORO to"; and to delete "and to establish a dedicated committee for promoting human rights education," after "understanding of HKBORO,","."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Dr Philip WONG to Ms Emily LAU's motion, be passed.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, the Hong Kong Special Administrative Region (SAR) is a free and open society which respects human rights and the rule of law. Since the establishment of the SAR, the SAR Government has all along been protecting Hong Kong people's rights and freedoms in accordance with the Basic Law, the principle of "one country two systems" and the spirit of respect for the rule of law. In the meantime, Hong Kong people have all along been enjoying a high degree of human rights and freedom.

The Basic Law protects various rights and freedoms of Hong Kong residents on the constitutional level, among which Article 39 provides that the provisions of the ICCPR, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the SAR. Article 4 of the Basic Law also stipulates that the SAR shall safeguard the rights and freedoms of the residents of the SAR and of other persons in the Region in accordance with law.

The Hong Kong Bills of Rights Ordinance (HKBORO), which was enacted in June 1991, facilitated the implementation of the provisions of the ICCPR as applied to Hong Kong through local laws. To this end, section 8 of the HKBORO contains a comprehensive Bill of Rights, the provisions of which are basically the same as those of the ICCPR.

Under various international covenants on human rights applicable to the SAR, the SAR is required to submit regular reports to the United Nations treaty monitoring bodies in accordance with the requirements set down in seven relevant articles. As far as the ICCPR is concerned, the Hong Kong SAR will submit a report on the covenant to the United Nations Human Rights Committee (UNHRC) in Geneva every five years. Apart from the Administration's measures and responses with regard to the recommendations made by the UNHRC in its concluding observations last time, the SAR's report will also cover various developments which the SAR has made since the last report, including the protection of human rights in Hong Kong. During the preparation of the report, related issues will be discussed in the relevant panels of the Legislative Council and relevant forums, while the public can also express their views. Through this mechanism, the SAR is subject to transparent and open scrutiny by the Legislative Council, non-governmental organizations (NGOs), members of the public and relevant United Nations organizations in protecting the people's rights and freedoms.

In order to promote the understanding and respect for human rights among the public, the SAR Government has all along been actively promoting the human rights protected by the Basic Law, the HKBORO and various international covenants on human rights applicable to the SAR over the years, including rights of the individual relating to personal privacy, equal opportunities for different genders, family status, races, people of different sexual orientation and transgendered persons, as well as rights of the child.

The relevant promotional work is carried out through various channels, and this includes sponsoring promotional activities organized by NGOs, education activities in schools, roadshows, media publicity such as Announcements of Public Interest (API) via television or radio stations, publication and distribution of bilingual comic strips depicting various international covenants on human rights applicable to the SAR, and provision of training to government personnel in order to enhance their understanding of human rights.

The Equal Opportunities Commission (EOC) and other relevant agencies will also conduct various educational and publicity campaigns with a view to enhancing and promoting the understanding of society of the relevant human rights. This is an ongoing effort and we will keep on doing it.

As to the resources, besides government resources allocated to implementing the abovementioned initiatives, the Constitutional and Mainland Affairs Bureau will promote the understanding of, respect for and protection of human rights through making provisions to the EOC and the Office of the Privacy Commissioner for Personal Data (PCO). In recent years, there has been a constant increase in the provisions for the promotion of human rights. In 2011-2012, the Bureau's expenditure estimate for rights of the individual and allocation to the two bodies is \$153,200,000, plus the funds re-allocated to the Home Affairs Department for providing support services for ethnic minorities, the total expenditure estimate for the promotion of human rights is \$179,500,000, which has increased from the total expenditure (\$178,600,000) on the relevant work in 2010-2011.

Regarding educational work on human rights, besides the work of the Bureau as I mentioned just now, other Policy Bureaux, including mainly the Education Bureau and the Home Affairs Bureau, have also assisted in the promotion of human rights education.

In respect of education in school, the Education Bureau has already included human rights education in the relevant Key Learning Areas (KLAs) and subjects of primary and secondary school education, such as primary school's General Studies, senior secondary school's Liberal Studies, and has proposed to introduce moral and civic education studies in primary and secondary schools, with a view to providing students a comprehensive curriculum covering knowledge, skills and values/attitude. Through KLAs and teaching/learning activities of subjects at various stages of learning, teachers may enable students to understand and discuss important concepts and values relating to human rights, including the right to live, freedoms (such as speech and religion freedoms), respect for all other people (such as different nationalities, culture and living habits), objectiveness and openness (such as different nationalities and culture, living habits, beliefs and views), dignity of the individual, equality (such as gender equality), the rule of law, non-discrimination and understanding the other sex (such as race and gender), and so on.

In respect of training for teachers, the Education Bureau also provides school principals and teachers professional development programmes, produces learning and teaching resources, provides students with learning activities, and

promotes human rights education in school in collaboration with other government departments and public bodies.

The SAR Government is also committed to promoting Basic Law education in schools, so as to enable students to understand how the Basic Law protects their freedom, democracy and human rights under the guiding principle and policy of "one country, two systems". I know that the Education Bureau, in order to enhance students' understanding of the Basic Law, has strengthened the teaching support relating to the Basic Law in the 2010-2011 school year, including the compilation and production of teaching kits, designing and production of instructional material and the development of the Basic Law item bank.

The Home Affairs Bureau collaborates with the Committee on the Promotion of Civic Education (CPCE) in the off-campus promotion of civic education which includes human rights education. The publicity sub-committee of the CPCE is now responsible for promoting civic education in all aspects, including the rule of law, social justice, human rights education, and so on. The CPCE also publishes articles relating to human rights education and the Basic Law via its publications, and articles related to human rights education are also uploaded onto the CPCE website. On top of the annual territory-wide promotional campaign on the Basic Law, the CPCE also funds community organizations in conducting promotional activities on human rights education under its Community Participation Scheme. The Civic Education Resource Centre of the CPCE also distributes human right education materials and information to the public.

Ms Emily LAU proposes in the original motion that a dedicated committee for promoting human rights education should be established. In Hong Kong, human rights are fully protected by the law. Just as I said earlier, the lawful protection of human rights is set out in the Basic Law, the HKBORO and other relevant provisions on the basis of the rule of law and judicial independence.

Under the existing system and structure, a number of bodies are assisting the promotion and protection of various rights and interests, including the EOC, PCO, Office of The Ombudsman and legal aid service. The performance of the Government in the promotion and protection of human rights is subject to open scrutiny through its regular reports submitted to the United Nations, and is constantly monitored by the Legislative Council, the media and various NGOs.

We consider that the existing mechanism is proven and there is no need to establish a dedicated human rights committee to duplicate or replace the existing mechanism.

Dr Philip WONG urges the SAR Government to continue to promote human rights education and enhance the public's understanding of the HKBORO in accordance with the Basic Law and "one country, two systems" and the principles of respecting the rule of law and protecting human rights. The Basic Law is the constitution of Hong Kong, while "one country, two systems" is the important principle we firmly uphold and the cornerstone of Hong Kong's prosperity and stability. The Basic Law explicitly stipulates that the provisions of the ICCPR as applied to Hong Kong shall remain in force. We will adhere to our consistent practice and act in accordance with the Basic Law and, under the principle of "one country, two systems" and the legal framework, ensure the public may keep on enjoying the various rights and freedoms assured by the constitution.

President, I will respond to matters in individual areas after listening to Members' views on this question.

MR ALBERT HO (in Cantonese): President, it has been 20 years since the enactment of the HKBORO. I always regard the HKBORO as a very important cornerstone of Hong Kong's constitutional development. As a matter of fact, the HKBORO provides significant protection for human rights and the rule of law in Hong Kong, and it is an indispensable component of our democratization and democratic system.

With respect to the significance of the HKBORO, I would say that first, the then legislature formally incorporated the ICCPR into the local legislation according to the principles underlying the relevant provisions of the Sino-British Joint Declaration and the Basic Law. Second, the then British-Hong Kong Government's amendments to the Letters Patent and Article 39 of the Basic Law have both enabled the HKBORO to enjoy an entrenched and overriding status in the legal system of Hong Kong. In other words, the HKBORO enjoys a higher status than any other ordinary laws. As a result, Hong Kong's Courts are

empowered to examine not only the executive's exercise of its executive powers through judicial reviews but also the legislative powers of the legislature. This is a most important point to note.

Honestly, as a result of this development, the entire legal system of Hong Kong was already more progressive than that of the United Kingdom back in 1991. At that time, legal practitioners, including Judges, invariably opined that they would face great challenges as they would have to apply new jurisprudence principles and methodologies when invoking the HKBORO. Generally speaking, lawyers trained in British common law used to apply rule-based legal principles to specific cases. Admittedly, there had been instances in which they must apply certain principles, for instance, principles in constant legislation, but more often than not, such principles were applied to deal with specific facts of cases. In contrast, the jurisprudence principles underlying the HKBORO would require us to apply political principles under the HKBORO to examine whether certain legislative provisions accord with such principles. As Members all know, legislative provisions are embedded with principles. Therefore, scrutinizing principles with principles, as opposed to using principles to examine or scrutinize particular cases, would require us to apply a brand new mindset in jurisprudence and methodology as I mentioned just now.

In my recollection, many Judges invariably opined that they would face tall challenges. Some of them even queried whether the Judiciary would become more politicized in nature after the enactment of the HKBORO, and why the duty to determine whether a law passed by the then legislature was constitutional should rest with them as anything it passed would become law. They said that this should not rest with the Court. This is what they thought at that time. I can even remember a renowned Judge remark, in his own words, that the HKBORO "has opened a can of worms". This literally means that one opens a can only to find it crammed full of worms. In that case, what should he do?

Nevertheless, in my view, we can still assert with pride that the legal sector of Hong Kong progresses with the times. After the enactment of the HKBORO, everyone has striven to read cases in overseas countries with overriding human rights laws, with a view to understanding their underlying jurisprudence principles and methodologies. Subsequently, they have come to realize that the HKBORO does not only accord specific protection to us but also makes us bear

in mind when scrutinizing any legal principles that any restrictions on human rights must be materialized in the form of law. All restrictions must accord with the principles under the International Covenant on Human Rights. And, one of the five major principles covers such aspects as national security, public order, public health or morals, as well as freedom and rights of others. An even more important stipulation is that such restrictions must be reasonable and proportional. In other words, any restrictions imposed must be proportional. Over the past two decades, Hong Kong's legal sector, especially the Judiciary, has developed an abundance of local case laws from its various judgments and established a discipline of local jurisprudence marked by its own interpretation of the HKBORO through frequent exchanges with the international community. In my view, all this is indeed of pivotal importance to Hong Kong.

One of our greatest worries back in those days was whether the overriding status of the HKBORO could persist after the handover in 1997. As I can remember, several sections of the HKBORO were deleted shortly before the reunification for their alleged contravention of the Basic Law. Fortunately, the deleted sections were not crucial ones, so the overriding status of the HKBORO has not been undermined. Before and after the reunification, Hong Kong has seen an abundance of cases with profound and far-reaching implications. In some of those cases, challenges to the relevant laws, for example, those to the legislation on the national flag and the legislation on abolishing the two Municipal Councils, were to no avail. However, there have also been successful cases involving, for example, challenges to certain provisions under the Public Order Ordinance, challenges to the Government's attempt to replace the need for legislation by an executive order with respect to the interception of communications, challenges to the protection of homosexuals' rights and imprisoned persons' voting right, and so on. In this regard, Mr LEUNG Kwok-hung has made immense contributions to the development of the legal system by challenging the relevant laws. But I believe that the efforts of the entire legal sector have also played a significant part.

In the days to come, we must continue to uphold judicial independence and the rule of law. The efforts of the legal sector, especially its support for Judges to continuously uphold the HKBORO, are indeed vitally important.

MR IP KWOK-HIM (in Cantonese): President, thanks to the Basic Law which affords us protection, stipulations in the ICCPR that are applicable to Hong Kong

can remain in force in Hong Kong. Thanks also to the Basic Law, ICCPR-related stipulations under the HKBORO can remain in operation in Hong Kong. From this, we can see that it is the Basic Law that truly accords comprehensive human rights protection to the people.

The provisions of the Basic Law have ensured protection of our various human rights and freedom at the constitutional level, including equality before the law, freedom of speech and the press, freedom of marriage, freedom of religion, and so on. While the HKBORO is one of the ordinances that brings into force the human rights-related provisions in the Basic Law, there are also other ordinances that serve a similar purpose, including the Sex Discrimination Ordinance, Disability Discrimination Ordinance, Mental Health Ordinance, Family Status Discrimination Ordinance, Race Discrimination Ordinance, Personal Data (Privacy) Ordinance, and so on. All these Ordinances are formulated and implemented according to the Basic Law.

Hence, both from the angle of law and from the extensive protection, only the Basic Law can comprehensively safeguard at a higher and broader level the various rights enjoyed by Hong Kong people. For this reason, I opine that it may be worth Hong Kong people's while to respect, learn and get to understand the Basic Law, which was promulgated over 20 years ago. The fact that Hong Kong is regarded as a city with freedom as well as respect for the rule of law and human rights is directly attributable to the Basic Law as it provides Hong Kong people with explicit protection in terms of basic rights and obligations.

As to the question of whether or not a separate human rights committee should be set up, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) finds it unnecessary to do so. The existing framework is proven, and human rights-related issues are handled by various Policy Bureaux and departments in the light of different circumstances and their nature. For instance, the Constitutional and Mainland Affairs Bureau is duty-bound to co-ordinate and assess the work associated with the implementation of the International Covenant on Human Rights in Hong Kong, such as compiling human rights reports.

The receipt and handling of complaints about violation of human rights is a duty of various commissions or dedicated offices. For instance, the Equal

Opportunities Commission handles complaints about sex, disability, family status and race discrimination; the Office of the Privacy Commission for Personal Data handles complaints about personal privacy intrusion; and the Independent Police Complaints Council handles complaints against the infringement of people's personal safety by police officers, and so on.

With respect to the promotion of human rights education, various responsible commissions and dedicated offices shoulder the publicity and promotion of human rights education. The subject of Moral and National Education to be introduced will contain a primary curriculum on getting to know and understanding the Basic Law and the principle of "one country, two systems", as well as a secondary curriculum on learning and understanding the spirits of the rule of law and human rights.

All this indicates that the various interlocking segments of the existing framework, including the Basic Law, the various laws on human rights protection, the commissions responsible for promoting and publicizing human rights affairs as well as handling related complaints, and even the existing secondary and primary curricula, have comprehensively and effectively guaranteed and safeguarded Hong Kong people's human rights while educating our next generations on their understanding and knowledge of human rights. Therefore, the DAB considers it unnecessary to set up a separate dedicated committee as a replacement for the existing framework.

Honestly, given the numerous and diverse categories of human rights issues, it is utterly impossible to leave them to one single Policy Bureau, not to mention one single committee. Therefore, human rights issues are now properly handled. Leaving human rights work, which covers a multitude of contents and a wide range of areas, to one single committee will only serve to reduce the promotion and protection of human rights to a mere topic for discussion, thus making it difficult to finalize and implement the various human rights policies and measures.

The results of a public opinion survey undertaken by the University of Hong Kong indicate that most people were satisfied with the SAR Government's efforts in protecting human rights and various freedoms since the reunification, and their satisfaction levels were rated higher than their dissatisfaction levels in recent years, with the mean values occupying a comparatively high position since the reunification. This tells us that the Government has gained wide public

recognition for its respect for the rule of law, protection of human rights and active promotion and publicity of human rights education.

Based on the circumstances and reasons I mentioned just now, the DAB will support the amendment moved by Dr Philip WONG.

MR LEE CHEUK-YAN (in Cantonese): President, Mr IP Kwok-him just now advised us that we had better respect or sing praises of the Basic Law. However, speaking of "praise", he had better tell us to praise the Constitution of the People's Republic of China as its provisions are so pleasantly written.

However pleasantly they are written, LIU Xiaobo was nonetheless convicted of his political views, was he not? Although what he did was all permitted under the Constitution of the People's Republic of China, he was nevertheless sentenced to 11 years of imprisonment. Therefore, it is useless to just "write out" the law. The Basic Law is "written out" on paper, so is the HKBORO. There must be other complementary measures, otherwise all this will be useless.

Certainly, Hong Kong has put in place better complementary measures than the Mainland, and at least Hong Kong still upholds the rule of law for the time being. But we sometimes inevitably feel scared as Hong Kong's rule of law appears to be on the verge of peril. Despite all this, there is at least the Court to rectify the Administration's infringement of people's rights.

Regarding today's motion debate on "The 20th anniversary of implementing the Hong Kong Bill of Rights Ordinance" moved by Ms Emily LAU, I wish to raise one point. When we review the past 20 years of enforcing the HKBORO, we will notice a big problem: if the Government pays no respect for the relevant laws, all sorts of protection will turn passive.

What is meant by "passive"? The situation is like this every time: after the Government has infringed on people's rights, a case will be created, which will subsequently be taken to the Court. With the two parties to the lawsuit initiating an appeal in the interim one after the other, it may possibly take three or four years to resolve the case. Ultimately, the Court may find that "human

rights" wins the case and the Government loses it. Then, everyone will be delighted momentarily at this ruling.

However, during the three or four years when the Court is handling the case, or within the three or four years after the case has arisen, the Government invariably infringes on human rights, does it not? Therefore, the problem of passive protection does exist under the mechanism where all human rights cases are handled by the Court. Unless the Government is a democratic one willing to respect human rights, the protection accorded by one single law is bound to be very much restricted. When there exist restrictions on the human rights protection accorded by the Court, the Government itself must respect the basic human rights.

Unfortunately, however, we can see that Hong Kong is regressive in its efforts to safeguard human rights over the past year as the Government's infringement on human rights has aggravated. When we look back We always say that last year saw the most severe suppression of human rights activists on the Mainland, and many human rights lawyers and activists were arrested. Even after their release, they nonetheless become as silent as a cicada in cold weather, or are even subjected to further government suppression and encirclement by public security officers. They are even unable to go out to buy food. LIU Xia is now under house arrest.

Nevertheless, today, we are not debating human rights problems on the Mainland. I merely wish to point out that while the Mainland's suppression of human rights has escalated during the past year, the SAR Government has actually acted in unison with the Mainland's suppression and escalated its own suppression. This is the biggest problem now confronting Hong Kong.

We can see that over the past year, the Government has acted in unison with the Mainland's suppression by introducing additional restrictions on human rights as well as demonstrations and processions. I dare say police powers have now turned infinite whereas "human rights" has been sold down the river. What we fear is whether this indicates any changes in government policies.

We can see that the incumbent police chief dances to the tune of the Central Government after assuming office as if he had wished to bare his heart to it. He has even progressively constricted human rights protection and the

freedom of demonstration in Hong Kong, seeking to turn the Hong Kong Police Force into a public security force. This makes my heart ache as he seeks to turn the Hong Kong Police Force into the Hong Kong branch of China's stability preservation force, so to speak. Should this continue, there is bound to be government infringement on people's human rights at any time, for our human rights protection is most vulnerable already.

There is an abundance of past examples in contrast to the circumstances just depicted by me. I am afraid I will be rebuked for badmouthing Hong Kong's human rights situation. But actually I am not because what I have mentioned is supported by ironclad proofs.

What is the first piece of such proof? Well, it is a pity that no representative from the Security Bureau is present here. And, Stephen LAM rarely goes to demonstrations, so he has no knowledge of the situation. Or, the truth may well be that he is very clear about the situation, or that he is actually the mastermind behind all this.

Let me come back to what I have to say. What sort of ironclad proof is there? First, the authorities have imposed a restriction on demonstrations, one that we describe as a mere ploy of manipulating the demonstration areas. What does it mean? It means that the Government will tell protestors that certain demonstration areas have been set up and tell them to go those areas. This is comparable to asking them to go into "cages".

During WANG Guangya's visit to Hong Kong, we organized protests. The Government designated a remote area, a place near the Wan Chai Fire Station and the Hong Kong Convention and Exhibition Centre, as a demonstration area and asked protestors to remain in that area. Since I was unwilling to do so, I went to a small demonstration area on the opposite side of the road, and a place in its vicinity was closer to the road with vehicular traffic. But I was told by the police that I must not protest there. What kind of freedom of expression was it? Our protest was not within sight of anyone. In that case, the authorities had better tell us to protest on Lantau Island.

The Government adopts the same practice every time but not only once. When we protested off the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (LOCPG), a demonstration area

was set up in the vicinity. It was cordoned off by a line of mills barriers, a line of police officers, yet another line of mills barriers and a "political flowerbed" (a flowerbed in essence). Only a narrow passageway (as narrow as the distance between the bench behind me and this bench in front of me) was left for people to stage protests. The police even urged us to leave as soon as possible, saying that no more than 30 people were allowed to protest off the LOCPG; there could at most be less than 30 people. The authorities have always resorted to similar ploys.

With such conduct of the authorities, our freedom of demonstration and expression has already been restricted, for the Government disallowed people to protest in places where the conduct of protests and expression of views are allowed. This is actually a restriction.

The second ploy is to provoke protestors and then charge them for misconduct. How did the police provoke protestors? Just now, Dr Philip WONG described protestors as uncouth, but I must make it a point that it was police officers who behaved rudely. It was the police who first restricted protestors by setting up demonstration areas and erecting mills barriers. It was the police who first provoked protestors and then accused them of behaving uncouthly and misconducting themselves.

The third ploy is to abuse the Public Order Ordinance and calumniate protestors for unlawful assembly. The authorities charged me for unlawful assembly during my protest off the LOCPG. Should there have been three protestors, the police would have charged us for unlawful assembly on the ground that public order had been affected. Certainly, this matter is now undergoing litigation following our appeal.

Fourth, the police are now acting in excess of its powers. In the past, licensed places of public entertainment were not within the police's purview, but now the police "suddenly assist in enforcing" the absurd Places of Public Entertainment Ordinance, saying that no dancing is allowed during protests. The No Objection Letter issued recently even contained an additional condition that no playing of musical instruments would be allowed during a protest.

Given the police's constriction of people's freedom of expression with various administrative means, I strongly support Ms Emily LAU's proposal that a

human rights committee must be set up in Hong Kong, so as to monitor any new measures introduced by the police and the Government for restricting the freedom of demonstration.

Thank you, President.

MR LEE WING-TAT (in Cantonese): President, one of the most important rights enshrined in the HKBORO is the right to stand in elections and to be elected. Over the past 20 years or so since the promulgation of the Basic Law and the reunification in 1997, Hong Kong people have been unable to enjoy to the fullest extent the internationally recognized and comprehensive right to stand in elections, to be nominated and to be elected. Ordinary people cannot stand in the Chief Executive elections and nominate any candidates for the office of Chief Executive. Even in Legislative Council elections, the principles of fairness and each vote carrying comparable weight are not followed in every sector. At present, these principles are not followed in half of the functional constituencies (FCs). Although FCs are discriminating against women, to my utter surprise, trade unions are so very supportive of FCs. While FCs are discriminating against such economically inactive people as women and the elderly, they are discriminating against the wage earners most badly. Ordinary grass-roots wage earners differ from the salaried workers in professional fields or bosses. I am surprised that the Hong Kong Federation of Trade Unions (FTU) supports FCs. How is it supposed to explain itself to the wage earners under its protection? The reason is that most of these wage earners do not enjoy the right to a second vote.

President, certainly, what is even more outrageous is the recent proposed amendment to the election law, that is, the replacement mechanism proposal. Maybe we really have to hold discussions on an even more important right under the HKBORO — the right to be consulted. I wonder whether the pan-democratic camp really has to consider advancing a proposal on making the right to be consulted a requirement in law, just the same as the environmental impact assessment prescribed under the Environmental Impact Assessment Ordinance. In the days to come, we must explore whether we should legislate on people's right to be consulted, so as to make this right part of the law and prevent Secretary Stephen LAM from playing with straw arguments with repeated reference to last year's election outcome as an indication of people's

views. How can he possibly get away with this? It can by no means be regarded as consultation, right?

Certainly, President, I am no supporter of the five geographical constituencies referendum, but I nonetheless recognize that it was their right to trigger the by-elections. They had the right to do so. To do or not to do was a decision of theirs. And, whether the public supported their action or not would naturally be reflected in their voting decisions. The Secretary needs not work his fingers to the bone for making the decision for them. Dr Priscilla LEUNG is now back in the Chamber. Sometimes, I just cannot help wondering how she read her statute books, how she could possibly come up with her arguments, and how she could possibly decide for the public if any by-elections are necessary. I frankly do not understand. Why does she perceive Hong Kong people as so unwise? She has highlighted the necessity of curbing people's right to this mere ploy, but I frankly find this remark of hers so very absurd. Anyone who says anything like that utterly does not believe that people know how to make a choice in political elections. If people do not welcome the resignation of any groupings or individuals in such a manner, or if they do not welcome any other voting methods, they will naturally indicate their choices with their votes. Secretary Stephen LAM needs not work his fingers to the bone, and Dr Priscilla LEUNG needs not keep on saying that their moves should be curbed. What is there to be curbed anyway? In other places, no one has ever talked about curb such course of action. It is by no means a loophole. In the century-old British Parliament, there have been Members of Parliament who similarly resorted to resignation as a means to state their political demands. But England has not seen the need to curb such course of action. It is only in Hong Kong that everything is under the control of the Central Authorities; and it is likewise only Hong Kong that takes everything to heart for its master. While those from high above have yet to make a decision, those at the bottom have already hastened to draw up a support proposal and undertake work for them to undermine people's right in the political system in a manner very much similar to political lackeys.

Secretary Stephen LAM, you are really something. Honestly, I will support whatever work you undertake in future. What can be better than you as a single cause for people's resentment? The Hong Kong Bar Association has issued four letters one after another, and in the press conference it hosted last evening, it joined hands with The Law Society of Hong Kong in rebuking you

and demanding your withdrawal of the relevant bill. I think that you should be invited to join the democratic camp, Secretary. I also think that you had better do such things once every two months. I will all the more welcome you to do so. I welcome you to do such things again, and you had better do so in late October, as I wish to see the voting decisions of the DAB and the FTU. Then, you had better do such things yet and again in July or August next year, as I wish to see Dr Priscilla LEUNG's voting decision. According to today's *Ming Pao*, Dr Priscilla LEUNG has indicated her support for the relevant bill. May I ask her to clarify whether she has been inconsistent in her stance? She has said "curbing such course of action" for one year, as reported by the *Ming Pao*. I hope she will not tail away or nag.

President, to strive for the popularization of the right to election is already an indisputable right of people in modern-day societies. Making the major constitutional change of depriving people of their voting right in the absence of consultation will actually plunge the Secretary into condemnation. The reason is that he utterly cannot base his justifications for so doing on last year's voting outcome, nor can he regard the several rounds of discussion at meetings of the relevant panel as consultation. His so doing is tantamount to calling a stag a horse and playing with straw arguments.

President, now that the HKBORO has been enforced in Hong Kong for quite some time, has it served its purposes? Honestly, I think that the Government is progressively and forcibly depriving most people of their rights in certain aspects through the tyranny of the majority in the legislature. In the absence of any consultation whatsoever, the replacement mechanism will deprive people of their right. Have the people been consulted on it?

For these reasons, President, I hope that Secretary Stephen LAM can consider the whole matter thoroughly. Otherwise, I believe that on this matter, the people will put up more vigorous resistance on 13 July. Thank you, President.

MS AUDREY EU (in Cantonese): President, I rise to speak on behalf of the Civic Party in support of Ms Emily LAU's original motion and in opposition to Dr Philip WONG's amendment. President, the most important reason is that Dr Philip WONG has deleted the wording "to establish a dedicated committee for promoting human rights education" from Ms Emily LAU's original motion.

Actually, this part constitutes the crux of Ms Emily LAU's original motion, that is, how human rights should be promoted. In particular, we have recently noted the findings of some surveys, which reflect Liberal Studies teachers' levels of understanding of human rights and the rule of law. We find it indeed necessary to set up a dedicated committee to promote human rights education in Hong Kong.

President, I must take this opportunity to extend special thanks to Ms Emily LAU for moving this motion at this critical moment. On the one hand, she reminds us that 20 years ago in June, the HKBORO was enacted in the then Legislative Council. On the other, she properly Speaking of the HKBORO, Hong Kong has now reached a critical moment. President, I think you know very well that I am referring to the Government's unprecedented sneaky, expeditious and forcible introduction of this replacement mechanism in the absence of any consultation.

In its several statements, the Hong Kong Bar Association (Bar Association) highlighted Article 68 of the Basic Law and the HKBORO, with specific reference to section 8 therein. Section 8 of the HKBORO carrying the title "Hong Kong Bill of Rights" incorporates articles of the ICCPR, and its article 21 is entitled "Right to participate in public life". Article 21(a) provides that "Every permanent resident shall have the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives". Article 21(b) stipulates that "Every permanent resident shall have the right and the opportunity to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage". Therefore, even without referring to the International Covenant on Human Rights, the locally formulated HKBORO alone can already enable us to know clearly that our right to vote shall be universal, equal and free. In fact, all this is the core component of any election.

For these reasons, the Bar Association and even The Law Society of Hong Kong (Law Society) invariably made some mention of this replacement mechanism proposal. The Bar Association has even referred specifically to the need of examining the crux of the whole matter, that is, elections serve to manifest the choices made by people or electors of their own accord. However, this replacement mechanism proposed by the Government will deprive people of their right to vote when there is any vacancy in the Legislative Council, and under

the proposed mechanism, a losing candidate will be regarded in law as an elected Legislative Council Member filling a vacancy. This is the thrust of the entire matter.

Nonetheless, the Government has stated that this does not matter as he is returned by elections anyway, adding that the Basic Law has not provided for the conduct of by-elections to fill any vacancies in the Legislative Council. In my view, while the Basic Law says that lives must be protected, it has not said that we must sustain our lives by way of breathing. In that case, the Government can by no means enact any laws specifying that artificial resuscitation can replace natural breathing, right? We are now talking about the issue of choices made of one's own accord. Secretary for Justice WONG Yan-lung offered an explanation yesterday, but upon hearing it, I felt greatly disappointed as he merely repeated what Secretary Stephen LAM had said.

I wish to raise three points for discussion with him. The first point is about his view that the proposed replacement mechanism will not deprive people of their right to vote. This is absolutely incorrect. Even the representative of the DAB attending the City Forum last Sunday also admitted that this proposed replacement mechanism would deprive people of their right to vote. Therefore, we have to tell people the truth and refrain from whitewashing anything.

Second, the whole matter is evidently about procedural justice. Even though Law Society has not raised any law points, it also holds that a public consultation exercise should be conducted in the interest of procedural justice. However, on this point, it is a pity that the Government tried to seek the expeditious passage of its proposal. As rightly pointed out by the Bar Association, even if there is genuine urgency, the Government only has itself to blame for such urgency. I honestly cannot see the urgency of the whole matter, though.

Third, in his explanation yesterday, the Secretary highlighted the need for plugging the loophole enabling any Member to resign at will. In fact, what is meant by "to resign at will"? Some people may find resignation a very important and meaningful move. But others may probably disapprove of this course of action. Nevertheless, the solution lies not in the Government or the Legislative Council depriving people of their choices. Rather, the determination of whether a particular resignation or by-election is meaningful should be left to

the public. It is the course of action that accords the greatest respect to the people.

President, even if we take 10 000 steps backward, so to speak, and agree to the Government's view that there indeed exists a loophole, we hold that the public should at least be consulted first and discussions be held on how this loophole should be plugged. The public should be asked how this loophole should be dealt with and how it should be remedied. The Government should not deprive people of their choices on this matter at its own will or through Legislative Council Members in the absence of consultation.

President, colleagues have invariably spoken a lot on the present enforcement situation of the HKBORO in their earlier speeches while citing an abundance of examples. I wish to tell Hong Kong people that there are so many examples that it is impossible to mention all of them in just seven minutes. Many people have said that we are fortunate enough to have the Court. But I hope that people will not cling to this thought: "Everything can be taken to Court. As you are well-versed in law, perhaps you should petition for a judicial review." I do not think this is something that a citizen with a sense of responsibility should do.

Unless we have reached a critical moment, we should not resort to judicial review as a means to defend our rights. On our part, first we need to bring our work to satisfactory completion. Therefore, I urge the public to air their opposition to this replacement mechanism and to any proposals that will deprive people of their right to make choices of their own accord at 3 pm tomorrow in the Victoria Park. Thank you, President.

DR MARGARET NG (in Cantonese): President, I speak in support of Ms Emily LAU's original motion and in opposition to Dr Philip WONG's amendment. This is the second time Dr Philip WONG has sought to amend a motion relating to human rights in such a manner. On the first occasion, he said that we must abide by the Basic Law. I then thought that he was right in saying so, for we all uphold the Basic Law greatly. The second time around, however, we have come to learn his real intention. Dr Philip WONG actually intends to state that all human rights can be protected only when the Basic Law, instead of the ICCPR, is followed. I must advise Dr Philip WONG to refrain from doing so, for his

amendment merely serves to brutally segregate the Basic Law and the ICCPR. This is not in the interest of the country and contravenes national policies, lagging far behind policies rolled out by the Central Government.

President, China and Britain started negotiations in 1980, when China's situation was very different from its situation now. At that time, there was a big problem, which made Hong Kong people feel very concerned, namely China's terrible human rights situation. In view of this, in the course of the Sino-British negotiations, some said that it would be desirable if it could be stipulated in the Sino-British Joint Declaration that China would protect human rights in accordance with the provisions of the ICCPR, so that people would be relieved.

In this context, when I worked with the *Ming Pao*, its former president, Mr Louis CHA, specifically published a book, which not only mentions the Sino-British Joint Declaration and Director JI Pengfei, but also reproduces the original text of the ICCPR. Why? The reason is that, as for the protection of human rights by China under the ICCPR at that time, first, it was an international undertaking; second, China pointed out that this is a universal value and it is not a simple question about the laws and stance of China which accepts universal values. So far, apart from making international undertakings, China also claims that it respects universal values. Premier WEN Jiabao stressed this point on several occasions when he visited foreign countries. However, Dr Philip WONG is now backtracking by stating that universal values should be relegated to a lower status when it comes to China's human rights situation and that we must rely on a national law for protection. I earnestly urge him to stop saying so, for such words contradict the Central Government's position.

President, the second point I wish to make concerns the two principles mentioned by Ms Emily LAU in her original motion, namely, respecting the rule of law and protecting human rights. President, respecting the rule of law and protecting human rights can be combined into one thing. Why must we have the rule of law? Because the Government must abide by the laws and shall not trample on people's personal rights by abusing powers. In this sense, the meaning of the rule of law falls beyond the ambit of "the law" as championed by China's Fajia school, which we briefly mentioned this morning. When China talks about the rule of law, it means governing the country according to law. China interprets the rule of law as managing public affairs and running the

country according to laws formulated by it. However, the genuine rule of law actually goes far beyond this.

Under the principle of running the country and managing public affairs according to law, even if the legislature has passed a draconian law, the rule of law is exercised as long as the draconian law is enforced. However, as far as the rule of law is concerned, there is actually a most important and fundamental principle, namely, procedural justice as mentioned by Ms Audrey EU just now. Procedural justice constitutes part of a legal framework and the rule of law, and its essence is that people that may be affected must be consulted. Why did I say that it constitutes part of a legal framework? It is because if we lodge a judicial review, the Court can only judge whether the Government has breached the law; but, if the Government has violated procedural justice in the very first place, it has already breached the law.

President, civil servants, in Hong Kong and even the United Kingdom, are increasingly scared of judicial reviews. Therefore, the British Government has told its civil servants how to cope with the challenge of judicial reviews, and that is, they must abide by the laws. The British Government has published a manual titled *The Judge Over Your Shoulder*, which means that the judge is watching over the civil servants, and that teaches them what to be mindful of.

As far as I understand it, the Department of Justice has published the Hong Kong version of *The Judge Over Your Shoulder*, but I cannot find the relevant part set out therein. I note that in the British manual, one of the items is consultation. As for consultation, what requirements are there? Consultation must be conducted before decisions are made, and it must be conducted properly. Only when consultation is conducted properly can procedural justice be upheld. The manual points out that four prerequisites must be fulfilled in the conduct of consultation: first, consultation must be held when policies are still at a formative stage and decisions are yet to be made; second, the proposal concerned must be fully explained to those people who may be affected, so that they can get a full picture and offer feedback; third, sufficient time must be allowed, so that consultation can proceed; fourth, views collected from the consultation targets must be fairly and impartially considered — the wording of the manual is "conscientiously taken into account".

The so-called replacement mechanism proposed by the Government has never gone through any consultation. The Government has violated procedural justice and is in breach of the law as a result. If even the Government can breach the law, how can we talk about the rule of law and respecting human rights? The passage of the draconian law will only highlight the fact that the Government is undermining the rule of law in the name of the rule of law.

Thank you, President.

MS MIRIAM LAU (in Cantonese): President, respect for human rights and freedom is a universal value of the international community. The success of Hong Kong is exactly built on the foundation of this respect for human rights and freedom in society. Therefore, we have all along attached great importance to the due rights of everyone.

In particular, as this year marks the 20th anniversary of the implementation of the HKBORO in Hong Kong, we agree that the Government should take the opportunity to step up publicity among the public, remind people of the importance of human rights and raise their awareness of human rights.

As a matter of fact, human rights enjoy various safeguards in Hong Kong. For example, in the HKBORO under debate today, the rights stipulated to be enjoyed by individuals by the ICCPR are incorporated into local legislation.

More importantly, Article 39 of the Basic Law stipulates that the provisions of the ICCPR as applied to Hong Kong shall remain in force, and Articles 25, 26 and 27 in Chapter III of the Basic Law explicitly stipulate that all Hong Kong residents shall be equal before the law, shall have the right to vote and the right to stand for election in accordance with law, and shall have freedom of speech, of the press and of publication, freedom of association, of assembly, of procession and of demonstration, and so on.

The HKBORO also clearly points out that every human being shall have an equal right to the enjoyment of all civil and political rights, without distinction of

any kind, such as race, colour, sex, language, religion, opinion, national or social origin. In order to safeguard these fundamental human rights, Hong Kong has, since the implementation of the HKBORO, progressively formulated the Personal Data (Privacy) Ordinance, Sex Discrimination Ordinance, Disability Discrimination Ordinance, Family Status Discrimination Ordinance and Race Discrimination Ordinance, for the protection of personal rights and interests from the various angles.

What is more, since the reunification, Hong Kong people can always freely participate in assemblies of various scales, regardless of whether they are political in nature or merely related to livelihood issues. As a result, Hong Kong has even been named "the city of demonstrations". All this reflects that Hong Kong is a place where people can fully enjoy the freedom of speech and assembly.

Apart from the explicit protection offered by laws, several bodies in Hong Kong's existing framework, such as the Equal Opportunities Commission, the Office of the Privacy Commissioner for Personal Data and the Office of The Ombudsman, are responsible for protecting the relevant rights and interests of Hong Kong people.

Hong Kong's independent Judiciary also plays an important gatekeeping role. Many cases relating to human rights in recent years prompted the Government to amend rules and regulations, so as to further protect the due rights of Hong Kong people. For example, in 2008, the Court made a judgment concerning the voting right of imprisoned persons, pointing out that it is unconstitutional to forbid them to exercise this right. This judgment prompted the Government to subsequently submit the Voting by Imprisoned Persons Bill, with a view to allowing imprisoned persons to vote in prisons.

The Court also ruled in 2006 that the provisions of the Telecommunications Ordinance, which allow law-enforcement agencies to intercept communications, were unconstitutional. This also prompted the Government to draft and implement the Interception of Communications and Surveillance Bill, so as to regulate the interception of communications and covert surveillance by law-enforcement agencies.

All examples show that Hong Kong's independent Judiciary and the rule of law serve as the cornerstone that protects human rights against any harm. We hope that the SAR Government can maintain this fine tradition under the Basic Law and "one country, two systems".

For example, when approving applications for demonstrations, the law-enforcement authorities should adopt a sensible and reasonable approach. The authorities should definitely not give people an incorrect impression that they are restricting the freedom of speech or assembly, while participants themselves should carry out demonstrations in a peaceful, rational and non-violent manner, so as to treasure the right to expression that we must endeavour to uphold.

In addition, although the authorities often claim that they have publicized the message of respecting human rights through various channels, and that they have included elements of human rights education into Liberal Studies, it seems that work in this regard still has room for further improvement.

For example, a survey conducted earlier by The Hong Kong Institute of Education reveals that teachers in Liberal Studies have very limited understanding of human rights. Some 46.8% of the teachers believe that citizens must honour their obligations before they can enjoy human rights, and 47.5% of the teachers even think that judges should take into account public opinion when adjudicating cases. Since even teachers in Liberal Studies can give wrong answers to most of the basic questions, the effectiveness of our overall human rights education, I think, is clearly evident. Therefore, we also agree that it is necessary for the Government to vigorously step up human rights education. However, as for the establishment of a dedicated committee as proposed in the original motion, we believe that this is overlapping and we have some reservations about it.

We believe a more pragmatic approach is to increase the resources for the existing framework, so as to step up the promotion of human rights education in the various sectors, instead of casually advocating the establishment of an additional framework.

President, I so submit.

MR WONG YUK-MAN (in Cantonese): President, national education overrides human rights education. The Government resorts to every means to launch ideological education, but this will be to no avail, for one person, Stephen LAM, has sabotaged the entire plan.

Secretary, you have become very popular recently. I remember that around one week ago in the Ante-Chamber, I warned you not to be so smug, and I said that you would surely get an unhappy ending this time around. This took place around 10 days ago. Can you still recall it? You left immediately after hearing what I said. Usually, you and I would talk and smile in the Ante-Chamber. What I told you that day is a benign reminder. You can see now that you are rapidly losing out, while we are on a steady rise. This reflects public opinion.

Now, professional organizations and academics have come forth to jointly sign a statement one after another, and some of them even lodged protests. However, you are still in your dream, and you are even getting "Yan Lung Chai" into trouble. His image used to be not bad but, thanks to you, his image has turned bad.

Recently, I saw several photos online, and one of them shows a person who looks like Stephen LAM eating faeces — I am merely stating the particulars — the person in another photo looks like WONG Yan-lung he could have been spared. Secretary, please wake up. Both questions today are related to you, and I do not know what replies you will make. I think that you will probably become a "human tape-recorder" again. Please examine your conscience. If you continue to do so, what good will it do to you and the Government? I will not be scolding you today. Who charged at you that day? WONG Yuk-man. Who was the first to be evicted by the Chairman of the Panel on Constitutional Affairs? WONG Yuk-man. Why did I do all these? I did that because of this absurd replacement mechanism. Many people want to chide you now, so I need not take it upon myself. You have slapped yourself. Those who have slapped themselves include some Honourable Members, like, for example, the one sitting beside me who spoke of the hereditary system. The Government will actually be implementing a hereditary system in the sense that in 2012 four candidates may run in the election and each of them can serve for one year. There will be serious repercussions, buddy. When there is a by-election system in place, we should hold by-elections. If the Government intends to punish people like us, it may do so through the media and people's ballots. However, the Government

can only offer one reason in its argument: an unpopular by-election with a voter turnout of 17% has wasted public money. Does this make sense? President, if this makes sense, the selection of the Chief Executive is also a waste of public money.

PRESIDENT (in Cantonese): Mr WONG, please speak to the question.

MR WONG YUK-MAN (in Cantonese): Is this not related to human rights? President, please do not refute me

PRESIDENT (in Cantonese): Please address the Chair when you speak.

MR WONG YUK-MAN (in Cantonese): President, have you read two poems? One is *Some Reflections after Reading* by ZHU Xi, and it is as follows: "The vernal flood rose to the bund last night; a colossal vessel moves light as a feather. It was in vain to move it before, but it sails effortlessly in midstream right now." Does the Secretary know what it means? The river water is so powerful that it can move even colossal vessel like a feather. By "it was in vain to move it", it is meant that although totalitarian rulers want to suppress public opinion and people's freedom, they can only end up in vain. As long as "the vernal flood rises to the bund", "colossal vessels will move as a feather" and "sails effortlessly in midstream". Everyone can see this.

The other poem I want to quote is also written by a person in the Song Dynasty, and it is *Gui Yuan Pu* by YANG Wanli: "Folds of mountains allow no passage of a brook; the brook babbles loudly as it strives forward day and night. Until at the foot of the mountains, the brook flows happily toward the village." Secretary, have you ever read the poem? Water longs for freedom, so do human beings. "All human beings are born free and equal in dignity and rights." This is quoted from *The Universal Declaration of Human Rights* proclaimed in 1948.

The Universal Declaration of Human Rights of the United Nations and the two poets of the Song Dynasty, who used water to depict people's aspiration to

freedom and stated that no power can stop such aspiration, happened to coincide. Today, under such circumstances in Hong Kong, where the Government is in a hopeless position, the Secretary is adding troubles instead of offering a helping hand. If I were a leader of the Central Government, I would surely kick him out.

Secretary, let me tell you that more people will take to the streets tomorrow than the previous year. Thanks to you. You cannot shirk the responsibility for all of this, but we are nonetheless grateful to you. For no reason at all, a person named Stephen LAM put forward such a mechanism for passage, no earlier and no later, on the last day of this Session. However, the Government has so far not secured a sufficient number of votes, so I urge the Secretary to earnestly canvass votes. I told Mr LAU Kong-wah just now that the Secretary has to earnestly canvass votes, regardless of how excellent a "hatchet man" he is. It will be game over for him any minute.

Mr CHAN Kin-por, I appeal to you to put the interests of your sector first. Secretary, please lobby for his vote, but he will likely cast a negative vote. I am merely giving an example for illustration. It turns out that Mr Paul TSE will also cast a negative vote. I will love him from now on.

President, I know that I am supposed to be talking about human rights, but I have only seven minutes to speak. Even if you do not allow me to put over my own ideas on this subject, I will continue to speak, although there is only one minute left. I am giving the Secretary a benign reminder. I dare not teach him how to behave, although I am older than him. These issues have arisen all because of him. He might say that this has nothing to do with him, that he has done this at the bidding of "Grandpa". But, please don't. He must say that he has done all this on his own. If the Secretary can talk about plugging a loophole, can I talk about how to besiege such a "dog official"? He, a "dog official", must not do evil and commit crimes and perverse acts here. Never mind, President. Since you people often say that justice is in the hearts of the people, I am considerate enough to have prepared two poems for him to reflect on back home. The Secretary and I are both brothers in Christ, are we not? I urge him to please consider and, when praying at night, ask God if his deeds make him qualified as a child of God. Thank you, President.

MS CYD HO (in Cantonese): President, I speak in support of the original motion moved by Ms Emily LAU. Just as on the last occasion, I oppose the amendment moved by Dr Philip WONG, who proposes putting the safeguards enshrined in the covenants on human rights into practice under the frameworks of the Basic Law and "one country, two systems".

President, the safeguards enshrined in several international covenants on human rights are mentioned in Article 39 of the Basic Law. In 1991, the British-Hong Kong Government enacted the HKBORO, the content of which is more or less the same as that of the ICCPR.

Nevertheless, a condition is attached to Article 39 of the Basic Law, which provides that the protection accorded to Hong Kong through those covenants will be implemented through local legislation. Contradictorily, which organization or agency is in charge of the passage of local laws? They are passed by this Council, of which half of the incumbent Members represent small-circle interests, and which falls short of universal suffrage as defined in the covenants on human rights.

Intrinsically and structurally speaking, these laws fail to protect human rights in Hong Kong in a proper manner. On the contrary, this Council, which cannot represent fairly the aspirations of Hong Kong people, would resort to the process of enacting or not enacting legislation to violate human rights. Hence, if the covenants on human rights are implemented under the frameworks of the Basic Law and "one country, two systems", our safeguards will be gravely compromised, and our rights will also be betrayed.

On the other hand, after the passage of the HKBORO in 1991, the then British-Hong Kong Government promised an overhaul of the existing legislation at that time to facilitate the repeal or amendment of provisions contravening the HKBORO, if any. But regrettably, the job has remained unfinished all along, with progress being made only when amendment of the existing legislation is required.

We can see that there is an archaic ordinance, namely the Places of Public Entertainment Ordinance, which completely violates the protection accorded to us through the HKBORO, and is now being abused by the Food and Environmental

Hygiene Department. The Ordinance sets out restrictions on exhibitions and stipulates that exhibitions have to be held under a licence. What objects are being exhibited? They include publications, manuscripts, photos or other objects. Should the Ordinance be abused, a Member exhibiting himself on the street would have to apply for a licence from the authorities.

No work has ever been done to amend existing legislation in Hong Kong in the light of the protection accorded to us through the HKBORO. On the contrary, after 1997, a provision has been added to the Public Order Ordinance stipulating that processions and assemblies have to be held upon filing to the police an application for a "notice of no objection". This is a regress in human rights, and serves as a strong indicator that there will not be full protection if, based on Article 39 of the Basic Law, the safeguards enshrined in the covenants on human rights are available only through the implementation of local legislation.

At that time, the Government stated that the requirement of a seven-day notice was reasonable, and that given the simple conditions attached, the Government would act sanely and reasonably. However, let us take a look at the conditions attached by our new Commissioner of Police to the march to be held on 1 July this year: no musical instruments are allowed on the street. The incumbent Commissioner of Police has already gone into a state of anomaly and insanity. Therefore, the Government is unreliable. In such a short span between 1997 and now, we can see that the Government has kept on telling lies.

As for human rights education, it is fruitless to count on the Government, as it even fails to finish its own survey on human rights. In fact, to Hong Kong as a whole, the most effective and impressive form of human rights education is very often materialized through the stringent policies of the authorities, the abuse of power by the police as well as real life situations, such that members of the public may better understand them. Let me take the 15 youths who took part in the Wedding Card Street demonstrations and assemblies as an example. When taken into custody at the North Point Police Station, they were strip-searched without any reason, justification or legal ground given. Some of them were even told to posture in ways unimaginable. With coverage by the media and the follow-up effort by this Council, there has been an improvement in the way people are strip-searched in police stations. With the follow-up effort by

different parties, the monthly tally of strip-search has dropped from 300 to 19, bearing testimony to how seriously power was abused previously.

President, after the passage of the HKBORO, there have been both progress and regress in respect of human rights in Hong Kong in these two decades. I heard from Mr LEUNG Kwok-hung that when he had been taken to a police station before 1997, handcuffed to a chair, with no one attending to him for 11 hours or coming forward to ask whether he requested to be released on bail or whether he needed to go to the toilet. People having been maltreated in such ways will understand most clearly the abusive nature of police power, and why monitoring by members of the public is necessary.

In 1996, Ms Emily LAU and I staged a protest by lying on the street, and were taken to a police station. At that time, the practice was more civilized, for statements were taken as usual and we were released four hours later.

Nevertheless, the current situation has spun out of control again. Some who are taken to police stations are beaten by police officers. The officers involved beat them on the one hand, and accuse them of assault on police officers on the other. Yet, citizens of every generation are able to come up with extraordinary tactics challenging the abuse of power by the police.

Therefore, those of the new generation have recently resorted to the tactic of refusing to sign any agreement for release on bail, instead of threatening the police by requesting release on recognizance, so as to force the police to give an account of what legislation has been breached right away. This strategy is irresistibly devised as a result of the stringent government policies and the abuse of power by the police.

I would hereby warn the Government that if it takes the lead in breaking the law and, on the strength of its power, introduces legislation which contravenes the protection due to Hong Kong people under the Basic Law by securing enough votes in this Council of injustice, members of the public will disdain to abide by its law, and a full-scale non-co-operation movement will begin.

MR RONNY TONG (in Cantonese): President, what are human rights? Human rights cannot simply be enshrined grandly or decently in the constitution.

They represent the most fundamental interpersonal mutual respect. How do we promote human rights? We cannot promote human rights by winning a lawsuit, nor can human rights be sacrificed as a result of losing a lawsuit. In my opinion, nurturing society's culture is pivotal to the promotion of human rights.

One of the most important parts of this motion moved by Ms Emily LAU today is how to remind — not to educate — every member of society to really understand what human rights are. I said just now that we cannot have human rights by simply enshrining them beautifully in the constitution — the constitution of our nation is also quite nice and presentable — nor can we ask for them to be spelt out in detail. Ms Audrey EU made a very good analogy. She said the constitution has made no mention of us being allowed to breathe, then, does it mean that we are not allowed to do so? Human rights have nothing to do with playing with words. The focus is not on how they are enshrined in the constitution. Human rights will not be non-existent if they have not been enshrined in any law; nor will they only apply to what have been enshrined.

I thought for a good while on what example I can cite to present my views in this regard more forcefully. The first example I will discard is the one on the so-called "replacement mechanism" since too many colleagues have quoted it and too much has been said on this. Thus, I will use Article 37 of the Basic Law as an example. Article 37 prescribes that the freedom of marriage of Hong Kong residents and their right to raise a family freely shall be protected by law. Why should I mention the right to raise a family by Hong Kong residents? As men cannot give birth, does it mean that Article 37 only protects the right of Hong Kong women to give birth? Should we so interpret this provision pertaining to basic human rights? Of course we should not.

Let us take a look at Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCS). This Article points out that the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society. What is said here is about what human rights are. What Article 23 of the ICCPR says is the same as what I said earlier of the ICESCS, that is, having the family as the fundamental group unit in society is a very basic right. That said, how do we interpret Article 37 of the Basic Law? If Hong Kong people are protected by the Basic Law, when a man marries an expatriate woman as his spouse, what will the situation become? Will she lose her right to give birth? Definitely not. This is because we need

to infer. Since the family is society's most important unit, it should be protected and those women should have the right to give birth. If Hong Kong men have married Mainland women as wives, why can they not receive medical care and services in Hong Kong? Can it simply be due to resources?

Are human rights inferior to resources? If the situation in Hong Kong is similar to that in countries in Africa and South America, I still can put up with that — I can put up with, but not accept — but we have in our possession trillions of dollars, how difficult is it for us to enhance medical services? Why do we have to incite the different groups in society to point fingers at one another and sow hatred because of inadequate or a lack of resources? Why, for the sake of competing for resources which are so limited, are Hong Kong people made to think that since even Hong Kong residents cannot enjoy maternity medical services, the Mainland wives of Hong Kong husbands should not either? Worse still, the Government also comes out in all righteousness to say, "Right, because they are not Hong Kong residents."

President, ours is a miserable society because we have such a Government which gives short shrift to basic human rights. It looks at everything from a political point of view, rather than from that of mutual respect. In this society, even if the Basic Law is beautifully designed and even if numerous bills are passed into law grandly, there is no way that we will realize the ideal of having genuine respect for human rights. Of course, it is possible that such an ideal may never be realized but at least, we have to make a start. There must be a mechanism to promote the basic core values — not about Eastern or Western core values, but about the core values for men.

Thus, I am very sorry for not being able to accept the move by the colleague who intends to delete the part of Ms Emily LAU's original motion on the establishment of a dedicated committee for promoting human rights as this will turn the original intent into a focus only on *(The buzzer sounded)*

PRESIDENT (in Cantonese): Speaking time is up.

MR RONNY TONG (in Cantonese): what is enshrined in the constitution rather than the spirit underlying it.

DR PAN PEY-CHYOU (in Cantonese): President, during the Second World War, there were numerous incidents of violence and persecution against civilians and war prisoners around the world. Following a thorough review by countries after the War, a decision was made to draw up some criteria to protect human rights, with a view to preventing a repeat of such tragedies.

The Universal Declaration of Human Rights, as adopted by the United Nations General Assembly in 1948, was introduced against this background. To flesh out the ideas stated in the declaration with a view to facilitating compliance and implementation by various governments, the United Nations passed two related covenants on human rights, namely the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966. The two Covenants set out a variety of human rights, and provide that state parties are duty-bound to take all appropriate measures to put these rights into effect.

The two Covenants took effect on 1976. After making some reservation declarations regarding the two Covenants at that time, the United Kingdom Government approved their implementation in its own territory and dependent territories, including Hong Kong. According to Article 39 of the Basic Law, the two Covenants remain in force in Hong Kong after the reunification.

To give effect to the rights stated in the Covenants in local legislation, the then colonial government drafted a Bill of Rights by incorporating into it some provisions of the ICCPR applicable to Hong Kong. The ICESCR was not included in the bill in view of the difficulties in implementing it through legislation.

The Hong Kong Bill of Rights Ordinance (HKBORO) was implemented in 1991. Throughout the two decades since then, the authorities have made much effort on the implementation of the HKBORO, such as amending administrative procedures and other laws contravening the HKBORO, enhancing the awareness of human rights among Hong Kong people through inculcating and advocating the importance of human rights via multifarious channels, and setting up statutory

organizations to implement work dedicated to the protection of human rights. More importantly, a large number of community groups have also proactively taken up the role of promoting the cause of human rights to protect the interests of different groups and the underprivileged (such as grass-root workers, women, new arrivals, single-parent families, ethnic minorities, and so on) in society. Overall speaking, I consider the achievement satisfactory.

President, by recounting this piece of history at length here, I would like to illustrate several points.

First, in the history of human beings as a whole, the promotion of human rights is a continuous and evolutionary process. Be it in China or other countries, the primary notion of human rights has existed since the ancient times. However, the idea of human rights in its modern incarnation is the result of the evolution over these 300 years, and with the passage of time, the essence of human rights has become increasingly rich. The stronger the awareness of human rights among people, the greater the momentum in promoting the cause of human rights.

Second, without doubt, the development of human rights hinges on the determination of the people and society as a whole, but a number of objective criteria are also required. They include: (1) a people having attained a certain level of education; (2) an impartial legal system; and (3) effective administration and management as well as an affluent society. I have made special reference to resources and wealth, because many friends who aspire to promoting human rights have not considered the social cost of their lobby. It is true that Members hope to see further progress in the cause of human rights, but there is a price in realizing an ideal. For example, to improve the level of convenience for the daily life of the disabled, a certain amount of money has to be spent on the development and building of barrier-free facilities. For another example, to protect the voting right of imprisoned persons, the authorities would need to make arrangements for them to receive election-related information and vote at designated polling stations, and these involve extra manpower and resources. These conditions may not be readily available in an impoverished society.

We in Hong Kong are blessed, for most of these conditions are already here. Hence, we are certainly in a better position in putting into practice the work of protecting human rights. As a matter of fact, regions which are more

advanced in the cause of human rights are mostly more affluent. Yet, there are many places in the world that are less well-off than us. Their starting point is behind ours, and they may not have the capability to do what we are now doing.

The third point is on how criticisms should be taken. It is solemn for a society to have the determination to promote the cause of human rights. For example, as we have been through over the years, what Hong Kong has achieved today is built upon the continuous effort by the Government and the public to encourage and interact with each other, as well as their endeavour to move forward. This is not easy to come by. We should take criticisms as a means that presses us to reflect on ourselves and explore the way forward continuously. But in view of some of the criticisms which have exaggerated or even distorted the facts at times, I cannot help but ask whether people making such criticisms are genuine critical friends, or they are just seeking political advantages with a hidden agenda?

Part of the lyrics of an English song I heard reads as follows, "If you point your finger at your neighbour, there are three pointing back at you." The message is self-explanatory. In fact, the place most critical of the human rights record of Hong Kong is also quite disappointing in respect of its relevant record, and it has always been named for criticism by Amnesty International. Between 1986 and 2000, Amnesty International has held 136 press conferences for that place, the largest number in the world.

Therefore, we should take criticisms with an ordinary state of mind, and embrace them with ease with the attitude that "if the criticism is justifiable, correction will be made; if this is not, it will be taken as an advice." In the final analysis, the cause of human rights is our own business, and it has nothing to do with other places.

The promotion of human rights is an important cause, and it involves the well-being of our 7 million people. We should strive for progress with a pragmatic attitude on the basis of the existing foundation.

I so submit.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): President, the topic of human rights has been discussed for many years in this Chamber. This motion moved by Ms Emily LAU today stirred up my feelings and emotions. The "bogus constitutional reform package" passed last year was basically one which stripped Hong Kong people of their right to equal and universal suffrage. Yet, the Member and the political party moving this motion today supported this constitutional reform package which stripped the Hong Kong public of their political rights last year. Anyway, regardless of whether they have drawn a lesson from the bitter experience or whether they have righted their wrong, so long as the motion touches on human rights, the People Power will surely lend it our full support.

Another irony is, talking about human rights, all political theories and political organizations particularly during the days before the founding of the nation, in order to fight for human rights, the leaders of all confrontational political parties led the masses in protest campaigns to topple the former reactionary government, so to speak, and set up new governments. The majority of them were disciples of communism. However, unfortunately, upon becoming the ruling party, the used-to-be stern political party which led the masses to fight for human rights very often turned into one which exploited the people of their rights most harshly. This is a mockery of history.

If we take a look at the nature, original intent, spirit and philosophy of communism and Marxism, the basis of the entire Marxist theory is to liberate people from oppression, including from materials, social classification and personal shackles, and practice selfhood, that is, to get rid of all oppression and exploitation in order to become one's true self. Nonetheless, when disciples of this kind of religion and thinking come into power, in particular when they have the support of the army, they very often will capitalize on the controlling power of the regime to keep on exploiting and oppressing the people. It can be said that the theory of the Communist Party of China when it was first founded differed greatly from its policy after it had come to power, and with the support of the army, tens of millions of people were massacred. Especially during the Cultural Revolution, there were numerous such cases in the struggles against "the three evils" and "the five evils". Even it has now become a major economy, the bullying and exploitation of the people cases of people being oppressed because of corruption are also countless.

Furthermore, utter ironies also exist in this Chamber and in Hong Kong. A so-called bureau responsible for human rights issues turns out to be one which exploits the rights of Hong Kong people most badly. Currently, it has been circulating on the Internet that some Christians are calling on the bureau directors to, in the light of their religion does the option they are now implementing to exploit human rights contradict with their religious faith? They are calling on these bureau directors to resign so as to adhere to their faith, especially those who believe in Christianity. This is the appeal from those people concerned because no matter how you see it, this replacement mechanism cannot be interpreted as promoting and helping human rights in any way.

To really practise and support human rights, we actually have to go back to the debate and discussion on the thinking of Dr SUN Yat-sen pertaining to "easier to know than act". This is because when we talk about a concept, many people will think that they have a thorough understanding. They sound nice in words but their decision and behaviour are very often contradictory and opposing. This reflects that their knowledge of the genuine spirit, contents and principles of human rights is paradoxical, or that there is a substitution of concept. People in this Chamber always behave in this way, citing concepts randomly but more often than not, their behaviour and decision run counter to or contradict the concepts advanced by them. In the last few years, this Chamber has seen countless examples of these. In the human rights issue alone, if they really have knowledge of human rights, they would not have come up with the replacement mechanism to exploit people of their right to by-election; if they really have knowledge of human rights, they all the more would not have supported last year's "bogus constitutional reform package", enabling the perpetual existence of the functional constituency election system, thereby pushing the people's right to universal suffrage into the distant future. Thus, some people have described these so-called democrats who claim to support democracy as "bogus democrats" because while they say they support human rights and strive for dual universal suffrage on the one hand, their behaviour is very much self-contradictory and self-defeating on the other. Looking back at last year's "bogus constitutional reform package", which part of it promotes human rights?

Therefore, President, I hope that today's debate can further expose the ferocious and ugly face of some people. I also hope that through such discussion and introspection, both the Christians and those self-proclaimed democrats can see clearly the spirit, contents and principles of the provisions

concerned. And they should review their past behaviour and decisions to see what they have done to promote, defend and protect human rights, and what they have done to betray their conscience, the people and their human rights.

MR JEFFREY LAM (in Cantonese): President, it has been almost 14 years since Hong Kong's reunification with the Motherland. During these 14 years, Hong Kong residents have been able to fully enjoy and exercise various rights as protected by the Basic Law. Under the unique principle of "one country, two systems", our Motherland has given us a high degree of autonomy, enabling Hong Kong people to thoroughly exercise various rights and enjoy freedom.

Under the authorization by the Basic Law, various pieces of legislation protecting the human rights and freedom of Hong Kong residents, such as the Hong Kong Bill of Rights Ordinance, Race Discrimination Ordinance, Sex Discrimination Ordinance and the Personal Data (Privacy) Ordinance are gradually implemented through local legislation to further protect people's legitimate rights. It can be said that there are more legislation and statutes to protect people's rights and freedom after the reunification, and they are more effective. All these are not only accepted by the majority of the people, but are also evident to the Chinese nationals and the international community.

President, it is with this protection offered by the Basic Law which serves as the mini constitution of Hong Kong that in these 14 years after the reunification, Hong Kong can sail smoothly through the various challenges and crises, for society to be harmonious and stable by and large, and for the economy to move forward steadily. The Basic Law is the basis upon which Hong Kong's legislation is enacted, and the Legislative Council is also formed in accordance with the stipulation of the Basic Law and its mandate to enact and scrutinize different laws and statutes. All local legislation is based on the Basic Law; none can run afoul of the Basic Law nor violate its spirit.

Within the framework of the Basic Law, the various rights of Hong Kong people are practicable, and the various systems and bodies protecting the rights of Hong Kong people are also proven. Under the General Principles of the Basic Law, Article 4 prescribes that the Hong Kong Special Administrative Region (SAR) shall safeguard the rights and freedoms of the SAR residents. This broad sense of rights and freedoms is spelt out in detail in Chapter III of the Basic Law on the Fundamental Rights and Duties of the Residents. For example, different

rights, including the freedom of the person, of speech, of the press, of assembly, of publication, of association, of procession, of demonstration, of strike, of religion, of employment, of election, and so on, are protected.

Article 39 of the Basic Law also stipulates that the provisions of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the SAR.

Yet, if taken literally, the content of the conventions concerned are not fully applicable to Hong Kong. Rather, with the endorsement of the Basic Law, those requirements and provisions originally applied to Hong Kong will remain effective. In fact, among the countries in the world which have ratified the ICCPR and the ICESCR, instead of an indiscriminate application, many have enacted legislation to implement the contents of the conventions in the light of their actual situation.

President, Hong Kong is a special administrative region of the People's Republic of China. Under the broad principle of "one country, two systems", "one country" is the major premise which must be respected. On this premise, we proceed according to the actual situation of Hong Kong, respect Hong Kong's spirit and core values, continue to abide by the principle of the rule of law and the protection of human rights, so that Hong Kong residents can live in peace and work with contentment here, thus bringing harmony and progress to Hong Kong society.

President, I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): President, when Karl MARX talked about socialism and communism, he defined them as a unity of free people, and there is certainly respect for freedom. Just now I heard Dr PAN Pey-chyou say that human rights are necessary, but they carry a price tag. Does he mean that if the cost is too expensive, then we do not need human rights? This is really an issue. Given that he has put forth such a view, we have to make a comparison. To which level should the cost reach before it is considered unacceptable?

According to the current requirements of the United Nations, how much is the cost for establishing a human rights commission? This is computable. Here I have a book entitled "U.N. Covenant on Civil and Political Rights: CCPR Commentary", written by an Austrian. The author has given a clear account of the methods and conditions for forming a commission in section 28 to 31 of the book.

According to him, members of the commission should be local citizens, the commission should be comprised of 18 members, nominations should be made by secret ballot, signatory states can nominate two more members, and so on. Are these conditions really so difficult to meet? This is where the key lies. Is the establishment of a human rights commission for the implementation of something good in the Hong Kong Bill of Rights Ordinance or the ICCPR or the ICESCR, say, for example, the implementation of minimum wage in Hong Kong, that really so difficult?

Donald TSANG has mentioned that he will officiate at the ribbon-cutting ceremony of the new Central Government Offices. The workers of that project are now crazily busy every day as they have to race against time to complete the works. Just now I met a few workers working on the project site, they said they have to work even on Sunday. Fortunately, there are no residential buildings nearby, hence no one would lodge a complaint. They are going to have a party there. Donald TSANG will officiate at the ribbon-cutting ceremony there, since he has failed to become the Vice-Chairman of the National Committee of the Chinese People's Political Consultative Conference. They have to pay for all these, but they are unwilling to pay for the establishment of a human rights commission.

I would like to ask Dr PAN Pey-chyou this question. Have you ever computed the cost for establishing a human rights commission? If not, please do not talk any nonsense. Do you know what the international human rights covenants of the United Nations are about? Some work should be done, but if you do not want to do it, that is fine. For instance, the former British-Hong Kong Government was well aware of its deficiency, since they had no provision on universal suffrage, they had made no mention of these things and let the trouble to pass onto our times now. The communist party now makes use of this point and argues that the former government had acted in the same way. The communist party always likes to compare its deficiencies against others' deficiencies — all hooligans are like that. I also have neighbours like that.

One of them beat his wife, and when we criticized him for treating his wife so bad, he said he had a neighbour who even beat his mother, so what was wrong with him beating his wife? He even suggested that I should first settle with the guy who beat his mother and wife. This is exactly the logic for some people. Our discussion is about whether there is protection for human rights in Hong Kong now. I should not say too much, since I have proposed another motion today.

Right now, I only wish to ask a simple question. Why can we not establish a human rights commission? How much cost would be incurred? Perhaps Stephen LAM should be promoted. If the current replacement system fails to get through, his dream of being appointed as the Chief Secretary for Administration will be shattered. His secondment to the human rights commission for accumulating good deeds will serve the same purpose.

President, I have sound justifications. Upon the establishment of a human rights commission, there will be a platform which serves the purpose of monitoring the Government, and we can monitor the work of the commission as well, all these are good things. Firstly, some say this would incur a cost, hence we should choose the best, but it has already been explained that a human rights commission can be established with the signatures, this is the first option; secondly, given that we can afford the cost, why do we not establish a human rights commission? Are we just talking nonsense right now?

If a human rights commission is established, the first thing that it would do is to comment on the replacement system — that replacement system for "the dead" — put forth by Stephen LAM. The commission is free from the Government's monitoring, hence it can voice its comments anytime. The Government would be in great chaos and troubles just for a comment or two made by the Hong Kong Bar Association, and The Law Society of Hong Kong has also voiced its comments afterwards, so the Government is now in great chaos and troubles, isn't it? Yesterday, it said no to something, but today, it has quickly changed its tone to yes. What kind of government is that?

Of course, a human rights commission is no saviour, but it is our servant. We can whip it, and it can whip other people as well. If it performs well, we would not whip it. This is how the mechanism works.

Here we are making general discussions. The SAR Government simply sought an interpretation of the Basic Law by itself, and it failed to follow some rules. How many human rights cases has the Government lost? We have told you to establish a human rights commission long ago, we have urged you to act on this promptly, so that you need not face this embarrassment, and the Chief Executive needs not come here and face this unblushingly. President (you had not been elected the President by then), he said, "My orders are the legislation". He spat on his hands, but forgot about the ink on his hands, hence, he blackened his face.

Members, please talk no more. Dr Priscilla LEUNG, do you agree to the establishment of a human rights commission? You are an associate professor, Dr PAN Pey-chyou is unlike you. If you agree to it, you simply say yes, and take actions to realize it. President, under your leadership, we can approve the funding for establishing this commission, right? If there should be a view that Dr Margaret NG must not be appointed the chairperson of the commission, then another Member can be appointed as the chairperson instead of her. The chairperson should be a capable person.

Our society should have this kind of credibility. According to the covenants of the United Nations, what should be done should indeed be done. Let us forget those already removed. Let us forget the right to universal suffrage that we do not have. Let us forget Hong Kong's failure to meet the requirements of the ICESCR. You have failed to do the things that should be done, then what are you sitting here for? You, formerly the Information Co-ordinator, was appointed the Secretary eventually. You was originally a lawyer, your development could be very limited indeed, and you might not be able to sort out today's matters even in your capacity as the Information Co-ordinator. You now try your luck and bet on the proposal on the replacement system and the position of the Chief Secretary for Administration. You say "thank you" to those who say "congratulations". Buddy, a human rights commission should be established first, otherwise there will be big troubles. You will leave a name in history, but it will be a notorious one forever.

Thank you, President.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Ms Emily LAU, you may now speak on Dr Philip WONG's amendment.

MS EMILY LAU (in Cantonese): President, Dr Philip WONG's amendment has deleted some of the contents of my original motion. I have pointed out that "Hong Kong is a city in the People's Republic of China which has greater freedom as well as a higher respect for the rule of law and human rights", but his view is that we should not make any comparison. Why should we not make any comparison?

President, I believe you may have noticed some news on competitiveness reported a few weeks ago. While we were discussing the Communications Authority Bill this morning, Mr LAU Kong-wah mentioned the information technology forum organized by Dr Samson TAM that he and I had attended. Dr Samson TAM had invited an officer of the Chinese Academy of Social Sciences to deliver a speech on competitiveness at the forum, that was about making comparisons, wasn't it? Also, as I have mentioned at a panel meeting, he indicated that Hong Kong's competitiveness has been declining, though we still rank first on certain fronts, and our ranking in some areas has already dropped to the bottom of the list. Comparisons have been conducted in the Mainland, and that officer even said that more comparisons should be conducted, what is the big deal about making comparisons?

Besides, I want to tell Members a joke. Mainlanders are naturally Putonghua speakers. There were almost a hundred attendees at the forum, most of them being information technology professionals, but they all spoke Cantonese. Subsequently, one of the attendees stood up and said, "We are talking about competitiveness, but all of us cannot speak Putonghua, how are we going to compete with others?" It was so ludicrous. On the whole, all attendees of the forum found it proper to make comparisons. Regarding human rights and freedom, the Mainland is certainly behind us, while we are not the best,

we are at least better than some other places. If this is the case, why can we not voice this?

In addition, whenever I meet with human rights lawyers, they always remind me to safeguard what we have in Hong Kong, since Hong Kong is a city with a high degree of freedom and which still has the rule of law in China; this is so important. Safeguarding Hong Kong's core values is crucial to Hong Kong as well as the whole nation's development — this is the message consistently conveyed to us by both the people inside and outside the Mainland. President, I think you also believe that if Hong Kong fails to maintain these important core values, we will not be benefited in anyway, moreover, many people in the Mainland will be very disappointed as they have been keeping an eye on us, hoping that we can hold on and would not fail. Hence, why can we not make comparisons?

In fact, this is a common subject for comparison. According to some overseas surveys on press freedom, the level of press freedom in Hong Kong has changed from "full freedom" to "semi-freedom", while in the Mainland, there is "no freedom". Hence, why can we not make comparisons? I hope Hong Kong will not become a city of "no freedom", thus this is a very important issue.

Dr Philip WONG has also deleted the part of my motion on establishing a dedicated committee for promoting human rights education. What is the reason for deleting this part? Just now Ms Miriam LAU has raised a very good point that I have not mentioned in my speech. She pointed out that the Hong Kong Institute of Education had conducted a survey in May last year, and questionnaires on human rights issues had been issued to the teachers teaching senior secondary curriculum of 460 secondary schools. A total of 791 teachers from 255 schools had responded to the questionnaires. Just now, Ms Miriam LAU has mentioned some of the results of the survey that she found most alarming.

What is the questionnaire about? As Ms Miriam LAU mentioned just now, 47.5% of the teachers agreed that "Judges should consider public opinions when making judgments", while those holding the opposite view accounts for 52.6%. In addition, 19% of the respondents agreed that "When judging important cases, judges should follow the opinions of the executive", while 80% of the respondents held the opposite view. Moreover, 35% of the respondents

agreed that "In some special circumstances, such as combating triad activities, the use of secret torture by the police in obtaining evidence is acceptable".

As for the idea that "Courts should admit illegally collected evidence to convict a person who is certainly guilty", 36% of the teachers found it acceptable. Also, 52% of the respondents approved of the idea that "When investigating crimes, law-enforcement agencies should have the power to intercept our communications", and "For the purpose of enhancing public order, the Government should have the power to install security cameras in public areas" is acceptable to 80% of the respondents.

All of them are the teachers of Hong Kong. The establishment of a dedicated committee for promoting human rights awareness will benefit you, me and our children, yet Dr Philip WONG has raised objection to this, while both the DAB and the Liberal Party have stated opposition. I wonder how we can face our own conscience, and how we can face our children.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I wish to thank Members for expressing important views on the motion of the 20th anniversary of implementing the Hong Kong Bill of Rights Ordinance (HKBORO). Members have raised different opinions and views to which I have carefully listened.

Just now, I have mentioned that ever since the founding of the SAR, the Basic Law has been protecting various rights and freedoms of Hong Kong residents at the constitutional level, and it has also stipulated explicitly that the provisions of the International Covenant on Civil and Political Rights (ICCPR) shall remain in force and shall be implemented in Hong Kong through the HKBORO. For that reason, the SAR Government agrees with the amendment of Dr Philip WONG. We should observe the principles prescribed in the Basic Law and the principle of "one country, two systems". Under the protection of the Basic Law and the HKBORO, each and every citizen shall enjoy all kinds of human rights and freedoms.

In fact, according to the Legal Reference System (LRS) of the Judiciary, we can see that since the enactment of the HKBORO, after discounting the oral decisions made, around 1 000 judgments have mentioned the HKBORO, which

shows that the rights of the individuals are protected by the law in Hong Kong. As to cases the Court has ruled that statutory provisions were in contravention of the HKBORO, the Administration has taken appropriate follow-up remedies, including the enactment or amendment of laws, or review of the relevant matter, and such practice was adopted before and after 1997.

President, I wish to respond to some of the views raised by some Members.

First of all, it is human rights education. Ms Emily LAU mentioned human rights education when she spoke for the second time and considered that inadequate. Just now, I have explained that the SAR Government will keep on promoting human rights which are protected by the Basic Law, the HKBORO and various international covenants on human rights applicable to Hong Kong through different channels. The Equal Opportunities Commission (EOC) and other relevant agencies will keep on carrying out various educational and publicity activities with a view to enhancing and promoting the understanding of society of the relevant human rights. For that reason, it is unnecessary for Members to worry about that.

As to the current consultation on moral and civic education studies which will be introduced in primary and secondary schools in 2012 and 2013, the studies will cover the life in individual families, social groups, nation and the world. The studies attach great importance to nurturing positive values and attitudes, and nurturing the character and noble thoughts and feelings, which will help students to build up identity recognition towards their families, social groups, nation and world citizenship. Civic education is a vital part of the studies; the learning target includes the importance of understanding the Basic Law, respect for the rule of the law, human rights, equality, democracy and the spirit of freedom. Through the adoption of relevant current affairs and matters in everyday life as the learning situation, the universal value of the students in respect of human rights, equality, democracy and freedom are nurtured. The Education Bureau also conducts relevant professional training for teachers, which includes the Basic Law and human rights concepts, as professional support provided to teachers.

As I mentioned in last month's motion debate on safeguarding freedom of the press and the right to expression, Hong Kong as a whole — of course it includes the operation of the legislature and the SAR Government — is the best

manifestation of the realization of human rights and a free society. Every day, commentators, experts, scholars and the public are freely expressing views and making comments on matters related to politics, society, economy and peoples' livelihood. The public may also voice their aspirations in thousands of processions, public meetings and demonstrations held every year. All of these are part of the specific off-campus human rights education in everyday contexts which can be obtained in society in our everyday life.

Secondly, it is about the human rights committee. Ms Emily LAU considers the SAR should establish such a committee in order to manifest our protection of human rights, including our responsibilities under ICCPR.

I wish to stress that the Administration has all along been attaching great importance to the recommendations of the oversight body of the relevant United Nations covenants, including the Human Rights Committee. In the reports submitted to the relevant United Nations committee, the SAR Government will explain the relevant reasons and situations, our measures and responses to the recommendations made in the previous concluding observations, as well as reasons why some of the recommendations cannot be implemented. We will carry on the work to promote the protection of human rights through the reporting and scrutinizing mechanism.

As to the proposal of establishing a human rights committee in Hong Kong, as I said in my opening speech, Hong Kong has a sound and comprehensive mechanism to promote and protect all kinds of interests and rights. Anyone may, if he considers his human rights have been infringed, seek redress from relevant independent statutory bodies, such as the EOC, PCO, Office of The Ombudsman, and so on. If necessary, the public may initiate court proceedings with the assistance of legal aid service. Therefore, in Hong Kong, we have a rather complete mechanism to protect the rights of the people.

Thirdly, Mr LEE Cheuk-yan specifically mentioned that in Hong Kong, when people resort to the Court to protect human rights, very often, the legal proceedings may take several years to complete. Certainly, under Hong Kong's judicial system, litigations on human rights protection need some time to complete, but this is part of our judicial system, and the legal aid scheme under the rule of law, to an open society, is rather wide in coverage.

I have also dealt with some cases. For example, a couple of years ago, some prisoners complained to the Court that they should be entitled to the right to vote. It only took less than two years from initiating the Court proceedings to winding up the lawsuit of protecting the voting rights of imprisoned persons and persons in custody, and we dealt with this matter in a rather expeditious manner. This demonstrates that the way SAR Government deals with human-rights-related cases and the decisions of the Court on these cases is very serious and the Government has a high regard for such cases.

Fourthly, it is also specifically mentioned by Mr LEE Cheuk-yan that he considered that there were negative impressions about the efforts in the protection of human rights by the Hong Kong police. This I cannot agree. Internationally, the Hong Kong Police Force is the most professional force in a free and open society, and over the decades, it has been upholding Hong Kong's law and discipline and maintaining Hong Kong's public order according to the law. The crime detection rate of the Police Force is also rather high, with almost half of the accepted cases being detected. Therefore, I believe Hong Kong people will keep on supporting the Police Force to uphold Hong Kong's law and order according to the laws of Hong Kong.

Fifthly, Mr LEE Wing-tat, Ms Audrey EU, Mr WONG Yuk-man and some other Members mentioned in their speeches our proposal on the replacement mechanism to fill vacancies in the Legislative Council.

President, we have reiterated the position of the Government on other occasions, so I will only speak briefly on three areas. Firstly, if we are to implement the replacement mechanism, we will only be making the replacement on the basis of the election result of the Legislative Council Election, and the filling is also made on the basis of the votes cast by electors during the Legislative Council Election. Therefore, the replacement mechanism conforms to Article 68 of the Basic Law, that is, the Legislative Council shall be constituted by election.

Secondly, the proposal is also compliant with Article 26 of the Basic Law, that is, the protection of the right to vote and the right to stand for election, because in future elections of the Legislative Council, the right to vote and the right to stand for election will remain. Under certain circumstances, such as

under the replacement mechanism, if the vacating Member's candidate list is exhausted, a by-election will still be held in accordance with the law.

Thirdly, according to the latest revised proposal of the Government, in the event that a vacancy arises in the seats of the Legislative Council Geographical Constituencies and the five new seats of the District Council Functional Constituency, the vacancy concerned will first be filled by the first candidate who was not elected on the same list as that of the vacating Member. This will ensure that the result of the election under the list proportional representation system can be maintained through out the four-year term, and it can ensure the will expressed by electors when they cast their votes in the election.

For that reason, President, to conclude, all forms of human rights and freedoms of the people of Hong Kong are adequately protected under the constitutional, legal and institutional frameworks. This is the cornerstone of the success of Hong Kong, and the key factor for the people of Hong Kong in making Hong Kong their home, living happily here and giving full play to their abilities. The SAR Government will carry on endeavouring to protect all kinds of basic human rights of the people of Hong Kong, and to maintain Hong Kong as an open metropolis which respects the rule of law and human rights in accordance with the Basic Law, the principle of "one country, two systems" as well as under the framework of the HKBORO and local laws.

President, I so submit.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment, moved by Dr Philip WONG to Ms Emily LAU's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Ms Emily LAU rose to claim a division.

PRESIDENT (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

(Mr LEUNG Kwok-hung did not press the voting button)

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, are you going to vote?

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Wong-fat, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou voted for the amendment.

Dr Margaret NG and Mr CHEUNG Man-kwong voted against the amendment.

Geographical Constituencies:

Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mr WONG Kwok-kin voted for the amendment.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted against the amendment.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 15 were present, 13 were in favour of the amendment and two against it; while among the Members returned by geographical constituencies through direct elections, 23 were present, eight were in favour of the amendment and 14 against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Ms Emily LAU, you may now reply and you have three minutes 11 seconds.

MS EMILY LAU (in Cantonese): President, we have this discussion on human rights issues right before the march on 1 July. We hope many Hong Kong people will reflect on the development in the last 20 years and identify the issues on which we should continue to make more efforts.

The authorities keep mentioning that not just the authorities, many Members have also mentioned our submission of reports to the United Nations and our attendance of the United Nations hearing. The United Nations has indeed made some recommendations, of which the establishment of a human rights commission has been proposed for some 20 years. Why do we still have to submit a report to the United Nations and attend the United Nations hearing? Why does the Hong Kong Government still ignore the United Nations' long-standing proposal? This is really exasperating.

Mr Albert CHAN said that last year the Democratic Party had deprived the people of their right. President, the Democratic Party is not going to take this blame. We have not said this means universal suffrage, but there is the "one person, two votes" option for the people. Next year, we will keep an eye on the level of acceptance. There is now this arrangement, so those who find it unacceptable can clearly indicate their stand, and nothing should be done to force

(Mr Albert CHAN rose)

MR ALBERT CHAN (in Cantonese): President.

MS EMILY LAU (in Cantonese): Dr PAN Pey-chyou

MR ALBERT CHAN (in Cantonese): Can Ms Emily LAU clarify how it will be possible for the people to say no? The bill has been passed.

MS EMILY LAU (in Cantonese): President, of course I can clarify, since the Government will send letters to all voters early next year

MR ALBERT CHAN (in Cantonese): You have betrayed the voters.

PRESIDENT (in Cantonese): Mr Albert CHAN.

(Mr Albert CHAN left his seat)

MS EMILY LAU (in Cantonese): President, this is ridiculous.

MR ALBERT CHAN (in Cantonese): Shame on you.

PRESIDENT (in Cantonese): Mr Albert CHAN, please leave the Chamber immediately.

(Mr Albert CHAN turned around and left the Chamber)

MS EMILY LAU (in Cantonese): The Democratic Party is not going to take your blame. I will tell the people that they will receive a letter next year, those who do not favour "one person, two votes" please reply to the letter.

Dr PAN Pey-chyou said the protection of human rights shall incur a social cost. He has mentioned barrier-free access and facilitating imprisoned persons in casting their votes. Given Hong Kong's Exchange Fund of over \$1,200 billion, we are absolutely able to do so. How come Hong Kong has performed so poorly in the provision of barrier-free access? President, some members of the public may wish to visit the Legislative Council, but barrier-free access is not available at the three MTR station exits near the Legislative Council Building.

President, Dr PAN Pey-chyou added that human rights are our own business, and it has nothing to do with others. How could that be? President, human rights are not confined by boundaries. Here in Hong Kong, we are concerned about the human rights conditions in the Mainland. This is the reason for our establishment of the China Human Rights Lawyers Concern Group, and this explains why we have the Hong Kong Alliance in Support of Patriotic Democratic Movements of China. We are all very much concerned about the conditions in Burma. Last year, I had the intention to visit Burma and give those people some support. The Burmese Government is very bad, and its expulsion of Michelle YEOH has become a piece of international news. President, all these things have something to do with the whole world, and everyone can express concern about human rights.

President, HU Jia has been released from the prison recently after more than three years of imprisonment. What on earth has he done wrong? He was wrong for protecting human rights. What did HU Jia say about this? He said it is difficult to choose between allegiance and justice, since his family and friends all persuaded him not to do that again, but he said he will keep up his work.

President, insofar as human rights in Hong Kong are concerned, we do not have to pay this cost yet. Nonetheless, if we fail to protect human rights, what happened in the Mainland will happen in Hong Kong very soon. We are not going to allow this government to deprive us of our human rights. It would be great if Members oppose my motion, so that it would become a "demon-spotting mirror" which enables the people to identify, right before the 1 July march, who will defend our human rights and who do not support that we can continue to enjoy human rights in Hong Kong.

Please cast your votes.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Emily LAU be passed. Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Ms Emily LAU rose to claim a division.

PRESIDENT (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for three minutes, after which the division will begin.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Margaret NG and Mr CHEUNG Man-kwong voted for the motion.

Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Wong-fat, Mr Abraham SHEK, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr IP Kwok-him voted against the motion.

Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr LEUNG Kwok-hung and Miss Tanya CHAN voted for the motion.

Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan and Dr Priscilla LEUNG voted against the motion.

Mr WONG Kwok-hing and Mr WONG Kwok-kin abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 16 were present, two were in favour of the motion, eight against it and six abstained; while among the Members returned by geographical constituencies through direct elections, 22 were present, 13 were in favour of the motion, six against it and two abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negated.

PRESIDENT (in Cantonese): Second motion: Proposal on the constitutional reform in Hong Kong.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Mr LEUNG Kwok-hung to speak and move the motion.

PROPOSAL ON THE CONSTITUTIONAL REFORM IN HONG KONG

MR LEUNG KWOK-HUNG (in Cantonese): President, the timing could not be better, and certainly our lives are dictated by someone up in the heavens.

Eight years ago on 30 June, "the city was on the verge of destruction when the dark overcast bore down on the city". People were suffering from the harsh policies of TUNG Chee-hwa; suffering from all the circumstances under the small-circle election; suffering from the collusion between the Government and business; and worse still, the Government only concentrated on bailing the market out instead of saving lives during the SARS attack. All of this combined triggered the so-called 500 000 people march. Why did I say "so-called"? The reason is, according to my experience in demonstration, that at least 800 000 people joined the march on that day.

Today, our respectable Secretary is playing the same trick Regina IP played in that very year by adopting a most arrogant attitude. He is even far worse than Regina IP by passing the so-called "scapegoat" replacement mechanism without conducting any consultation. I should warn that he will be judged tomorrow because of what he did today. I am sure the number of people taking to the streets this time around will not be 800 000, but it will definitely be large.

Allow me to quote a poem by the great German poet to the people of Hong Kong, as well as my comrades who keep fighting on despite repeated setbacks in the past eight years, in particular those who participated in the "five district referendum". What did GOETHE write in his poem? Secretary LAM, GOETHE wrote:

"Wiser make betimes thy breast
In Fate's balance as it sways,
Seldom is the cock at rest;
Thou must either mount, or fall,
Thou must either rule and win,
Or submissively give in,
Triumph, or else yield to clamour:
Be the anvil or the hammer.
Victory or defeat!
Be hammer or anvil"

I am not going to quote any further, or I will stray from the subject.

Today, the people of Hong Kong will do what they did eight years ago. They do not want to submissively give in; they want to rule and win. Secretary, be not afraid, the people are kindhearted. The so-called "to rule" is not to make you step down. All we ask for is to put in place a fair by-election mechanism and to have the thoroughly diabolical, evil and unreasonable replacement mechanism repealed and withdrawn.

President, I know that Secretary LAM is a most tactful player, so I am not going to speak anymore. I will respond later on. I am just providing a platform for colleagues to speak. Irrespective of your stance, I urge Members to speak up. I will have more than adequate time to give my reply.

PRESIDENT (in Cantonese): Mr LEUNG, you should move your motion now.

MR LEUNG KWOK-HUNG (in Cantonese): I move that the motion, as printed on the Agenda, be passed. Thank you, President.

Mr LEUNG Kwok-hung moved the following motion: (Translation)

"That on 1 July 2003, over 500 000 Hong Kong people took to the streets in protest, demanding the implementation of dual universal suffrage and opposing the enactment of legislation to implement Article 23 of the Basic Law; since then, the aforesaid public view has remained unchanged, and was manifested in the several Legislative Council elections held in the past; in this connection, this Council urges the Government to enact legislation on referendum and conduct a referendum on the proposal on constitutional reform in Hong Kong, so as to realize the principle of a high degree of autonomy for Hong Kong people, allow Hong Kong people to decide whether to enact legislation to implement Article 23 of the Basic Law and on the selection of the Chief Executive and the election of all Legislative Council Members by universal suffrage in 2012, fully comply with the relevant requirements of the International Covenant on Civil and Political Rights of the United Nations, and return the political power to the people."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LEUNG Kwok-hung be passed.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, here I would first respond to a number of issues relevant to the motion moved by Mr LEUNG Kwok Hung.

Firstly, regarding the enactment of legislation on referendum and conducting a referendum on the proposal on constitutional reform in Hong Kong advocated by Mr LEUNG, here I must reiterate that under the principle of "one country, two systems", the Hong Kong Special Administrative Region (SAR) shall comply with the requirements of the Basic Law, and no referendum system has been stipulated under the Basic Law. The SAR is a local administrative region of the People's Republic of China, so it has no power to decide or alter its constitutional system or create a referendum system by itself.

Any form of the so-called "referendum" conducted in Hong Kong has no legal basis and effect at all, and will not be recognized by the SAR Government.

In fact, according to the Basic Law and the Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex 1 and Article 3 of Annex 2 to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China issued by the Standing Committee of the National People's Congress (NPCSC) in April 2004, any amendment to the electoral methods for the Chief Executive and the Legislative Council shall go through five steps, they are:

Step one: The Chief Executive's submission of a report to the NPCSC for its decision on whether and amendment should be made to the two electoral methods;

Step two: The NPCSC's decision that allows amendment to the two electoral methods;

Step three: The putting forth of a motion containing the amendment (bill) to the two electoral methods by the SAR Government to the Legislative Council, and the endorsement of the motion by a two-thirds majority of the Legislative Council;

Step four: The consent of the Chief Executive to the amendment (bill); and

Step five: The report of the relevant amendment (bill) by the Chief Executive to the NPCSC for approval or for record.

The endorsement of the package of proposals on the methods for the two elections put forth by the SAR Government by over three-fourths majority of the Legislative Council in June last year indicates that this package of proposals on "one person, two votes" can fully represent Hong Kong's public opinion.

Secondly, Mr LEUNG Kwok Hung's motion has also mentioned the enactment of legislation to implement Article 23 of the Basic Law. In the Policy Address announced last year, the Chief Executive stated clearly that after repeated deliberations, the SAR Government had decided not to enact legislation on Article 23 of the Basic Law during the current term. In this regard, our position is clear.

Thirdly, Mr LEUNG's motion has mentioned dual universal suffrage in 2012. In this connection, we have repeatedly stated inside and outside the Council that this does not comply with the Decision of the Standing Committee of the National People's Congress on Issues Relating to the Methods for Selecting the Chief Executive and for Forming the Legislative Council in the Year 2012 and on Issues Relating to Universal Suffrage promulgated by the NPCSC in 2007.

The NPCSC decision on the timetable for implementing universal suffrage had given due regard to Hong Kong people's aspirations for universal suffrage. In July 2007, the SAR Government conducted extensive public consultation on the modes, roadmap and timetable of universal suffrage by publishing the Green Paper on Constitutional Development.

Subsequently, the Chief Executive faithfully reflected the opinions collected during the public consultation to the Central Government. The NPCSC came to this decision only after deliberations on the report submitted by the Chief Executive and giving due regard to various factors (including Hong Kong's public opinion and the actual situation). Moreover, this is a decision accepted by Hong Kong society.

Actually, we completed the five steps for constitutional reform last year. At this moment, any attempt to make the NPCSC change its constitutional decision and consent to the implementation of universal suffrage in 2012 is unrealistic.

The most pragmatic approach today is to consistently implement this consensus and package of proposals on "one person, two votes" which does not come by easily, so that 3.43 million registered voters will have two votes — one for geographical elections and one for functional constituency (FC) elections — in the 2012 Legislative Council Election. Under the new arrangement, there will be a newly created District Council FC of five seats, whereby five elected District Council members returned by 3.2 million registered voters will join the Legislative Council as representatives of the public. This will not only allow Hong Kong to achieve substantial progress in democratization in 2012, it will also give Hong Kong society greater confidence in the implementation of universal suffrage in the 2017 Chief Executive Election and the subsequent 2020 Legislative Council Election.

Lastly, Mr LEUNG's motion has also mentioned compliance with the relevant requirements of the ICCPR. Insofar as universal suffrage is concerned, I must reiterate that the concept of having universal suffrage in Hong Kong originates from the Basic Law rather than the ICCPR..

The reason is that when the ICCPR was extended to Hong Kong, the British Government had added a reservation which specified that Article 25(b) would not be applied to Hong Kong and the Executive Council and Legislative Council formed in Hong Kong. The notification given by the Central People's Government to the United Nations Secretary General in June 1997 states that this reservation continues to apply. While Article 39 of the Basic Law stipulates that the ICCPR remains applicable to Hong Kong, this reservation also remains in force.

In fact, the Sino-British Joint Declaration signed in 1984 made no mention of the concept of universal suffrage. It only specified that after the reunification, Hong Kong's legislature shall be constituted by election, and the Chief Executive shall be selected through consultation or by election.

During the period between 1985 and 1990, the Central Government conducted public consultations in Hong Kong with respect to the drafting of the

Basic Law. The ultimate aim of implementing universal suffrage was laid down by the Central Government in Articles 45 and 68 of the Basic Law in response to the aspirations of the Hong Kong community. Hence, the concept of universal suffrage in Hong Kong originates from the Basic Law rather than the ICCPR.

Nevertheless, I can tell Mr LEUNG and other Members clearly and categorically that the election of the Chief Executive by universal suffrage in 2017 and the election of all Legislative Council Members by universal suffrage in 2020 should comply with the Basic Law and adhere to the principle of universality and equality. In future, Hong Kong society still has ample time to discuss the methods for implementing universal suffrage.

President, I will make a further response after listening to Members' comments. Thank you, President.

MR TOMMY CHEUNG (in Cantonese): President, I believe the term "referendum" is rather familiar to us, because Members should remember well that in May last year, some political parties initiated the so-called "campaign of the five constituencies resignation as a *de facto* referendum on the fight for dual universal suffrage in 2012", and that five legislators resigned first and then participated in a so-called by-election to return to the legislature. The by-election ended up with a very low turnout rate of electors, being only 17%, which was a record-low turnout and it only reflected that the general masses are not interested in taking part in this farce and their disapproval of the by-election which wasted money and manpower.

Mr LEUNG Kwok-hung attempts to revisit referendum on the pretext of today's motion. This is also the third time that he has proposed a relevant motion debate in this Session. The only difference is that besides the dual universal suffrage in 2012, he further touches upon the issue of enactment of legislation on Article 23 of the Basic Law. However, we consider that it is the same as last year's campaign of *de facto* referendum in five geographical constituencies; it is the same farce, which does not worth our support.

As pointed out by the Liberal Party in the past concerning constitutional development, Annex I and Annex II to Basic Law have set out the procedural

requirements in principle, but they have not mentioned referendum. Whilst the decision made by the NPCSC in 2007 set out the five-step mechanism for constitutional reform, and the timetable set down for the ultimate universal suffrage under the framework of the Basic Law it, certainly did not include the procedure for any referendum.

Moreover, the constitutional reform package proposed by the Government in 2010 was passed by this Council with the endorsement of a two-thirds majority and reported to NPCSC, and the NPCSC passed the proposal with 99% supporting votes for it. At that time, the five-step amendment procedure for constitutional reform was completed, and a major step forward towards the ultimate universal suffrage was made. Furthermore, all the opinion polls conducted at that time revealed that the majority public was supportive of the 2012 constitutional reform package.

For that reason, if anyone attempts to reverse the previous conclusion made in relation to dual universal suffrage in 2012 by means of a referendum, that is not only a violation of the lawful procedure, but apparently also a show of obvious disrespect for the constitutional reform package passed by the Legislative Council and the NPCSC, and it goes against the claim of respecting public opinions. It will only give the public an impression of being a "bad loser".

Let us take a look at the content of the constitutional reform package endorsed. Half of the 70 Legislative Council seats in 2012, will be returned by direct elections, and five DC FC seats will be elected by more than 3 million voters in Hong Kong. In this way, 40 seats, that is, almost 60% of the seats will be returned by direct elections, which is even higher than the existing 50%. Besides the addition of 10 seats, a ladder is provided for people who are participating in politics or those who aspire to a career in politics, or the second echelon of political parties, so that more opportunities are provided to nurture political talents. In the case of the election of the Chief Executive, the number of Election Committee members will be increased from 800 to 1 200, with a rate of increase of 50%. In this way, it will sufficiently enhance the democratic element, and it can also meet the principle of making progress in a gradual and orderly manner. It can be seen that the two proposed election methods will only benefit the constitutional development of Hong Kong.

As for today's motion, it actually mentioned the issue of deciding whether or not to enact legislation on Article 23 of the Basic Law by way of referendum, which is apparently violating the stipulations of the Basic Law. According to the Basic Law, the SAR shall enact laws on its own to prohibit any act of treason, secession, sedition, and subversion against the Central People's Government. If the enactment of legislation to implement Article 23 of the Basic Law by the SAR Government is negated by way of a referendum, this is tantamount to amending or overriding the Basic Law, this is not in conformity with the relevant legal proceedings, or even unconstitutional. In addition, it will only create confrontation between the local government and the Central Government, doing every harm to Hong Kong.

When WANG Guangya, Director of the Hong Kong and Macao Affairs Office (HKMAO) of the State Council, spoke on the timing of enacting legislation to implement Article 23 of the Basic Law during his recent visit to Hong Kong, he explicitly pointed out that Hong Kong should enact legislation on Article 23, and there would come a moment suitable for such enactment when society has reached a consensus. Deputy Director of the Basic Law Committee of the HKSAR Ms Elsie LEUNG also pointed out that Article 23 of the Basic Law seeks to protect and safeguard national security, and such legislation should be enacted by the Central Government. But in order to deal with the differences between Hong Kong and the Mainland when the Basic Law was formulated, it was stipulated that the SAR might exercise the power to legislate for such matter. It can be seen that as far as the legislation on Article 23 of the Basic Law is concerned, the only option for the SAR is to choose the timing of legislation, not the choice of not legislating for it.

According to experts on Chinese laws, Article 2 of the Constitution of China stipulates that all power in the People's Republic of China belongs to the people. According to the legal principle, referendum is the exercise of sovereignty, and China is a unitary state, not a confederate state, so if a unitary state were to implement a referendum, the referendum should be implemented all across the country. If Hong Kong, being a local administrative region, were to break new ground for conducting a referendum by allowing the people of a region to exercise the power of the people of the entire nation, this would violate the stipulations of the Constitution of China.

For this reason, we consider all along that we do not have any solid legal basis to conduct a referendum in Hong Kong, we do not have popular support,

and we lack the consent from the Central Government. It is virtually a "dead end". For this reason, the Liberal Party will vote against this motion.

President, I so submit.

MR IP KWOK-HIM (in Cantonese): President, the constitutional reform of Hong Kong and the legislation on Article 23 of the Basic Law are the keen concern of the people of Hong Kong, and at the same time, they are also the most controversial and difficult questions. Precisely because of this, they cannot be resolved within a short period of time. Moreover, more and more people believe that radical means and monkey tricks cannot help resolve the controversy, and the future way out can only be indentified through pragmatic and peaceful discussions.

The Decision of the Standing Committee of the National People's Congress on Issues Relating to 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 the Year 2012 and on Issues Relating to Universal Suffrage, which was passed by the NPCSC on 29 December 2007, has already clarified the timetable for implementing universal suffrage in Hong Kong and confirmed that in the year 2017, the Chief Executive might be elected by universal suffrage, and thereafter, all Members of the Legislative Council might be elected by universal suffrage by 2020 the earliest.

Since September in the year before last, society had been discussing the methods for selecting the Chief Executive and for forming the Legislative Council, and after difficult and circuitous discussions, the one-man-two-votes proposal was approved, and the details of local legislation relating to this were basically completed. This has driven the constitutional reform a step forward.

During the process, a small number of Members and political parties instigated a so-called referendum by resigning without any sound reason and taking part in the subsequent by-election, the force not only wasted a huge amount of public money being \$120 million, but also breached the Basic Law and undermined the rule of law in Hong Kong. This was largely opposed by the majority public and people of insight.

Insofar as the constitutional reform is concerned, the stance of the DAB is very clear. We consider that in order to create a stable, prosperous, fair and progressive society, a political system compatible with the state of social development is a prerequisite. The SAR should adopt the gradual and orderly approach in developing democratic politics in Hong Kong in accordance with the Basic Law.

As to the legislation on Article 23 of the Basic Law, the DAB considers that the greatest consensus should be achieved through in-depth exploration and rational discussions, and this shall form the foundation for the relevant legislation. This is the best solution to the issue.

With regard to a referendum act, the DAB considers that the Basic Law has not set down any provision for referendum, and Hong Kong is only an administrative region of the People's Republic of China, which is not vested with the powers to create a referendum system. Just now Mr Tommy CHEUNG has expressed the views of the Liberal Party and we very much agree with them. The DAB opposes the proposition of urging the Government to enact legislation on referendum in the original motion, as it does not conform with the Basic Law. Nor does it tally with the status of the SAR.

Moreover, I have to further explain that the constitutional reform of Hong Kong and the enactment of legislation or otherwise to implement Article 23 of the Basic Law involve solemn issues such as national sovereignty and the relationship between the Central Authorities and the SAR. China is a unitary state, and Hong Kong is just an administrative region not vested with the powers to make decisions on the abovementioned matters by way of referendum. With regard to this point, the view expressed by Mr Tommy CHEUNG just now is consistent with ours.

According to the "Interpretation by The Standing Committee of The National People's Congress of Article 7 of Annex I and Article III of Annex II to The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China" issued by the NPCSC on 6 April 2004, constitutional reform proposals must be taken forward according to the five-step mechanism involving the Legislative Council, the Chief Executive and the NPCSC. We have already undergone this with regard to the constitutional reform, and Article 23 of the Basic Law explicitly stipulates that Hong Kong should enact laws on its own. These are all very clear to us.

President, it is very likely that the issue concerning constitutional development and legislation on Article 23 of the Basic Law cannot be resolved within a short period of time, and it is not an urgent matter for the time being, thus the Government and all sectors of society should free themselves from the internal depletion of endless arguments. Let us focus instead on resolving the issues concerning the economy and livelihood of the people. At present, given the soaring property prices, skyrocketing inflation, and the public health issue of scarlet fever, the public expect the Government and the legislature to assume the responsibility of helping the people to tackle all kinds of difficulties, instead of keeping on debating these controversial issues. As to the act of instigating the conflict and the bone of contention, to set off social chaos and the attempts to paralyse the Government, they will only cause public resentment.

The DAB considers that in view of the public aspirations and numerous matters concerning the livelihood of the people and society awaiting quick solutions, the legislature should shelve the controversial issue which is not urgent and which cannot be resolved within a short period of time and leave it for the future when rational discussions in accordance with the Basic Law will resolve it. At the same time, political parties should forget party interests and political considerations to pragmatically tackle issues related to the livelihood of the people by pulling together and working hard as a team.

With these remarks, President, I oppose the original motion.

MR RONNY TONG (in Cantonese): President, the President of the United States, Theodore ROOSEVELT, once said "..... referendum, which should be used not to destroy representative government, but to correct it whenever it becomes misrepresentative."

President, so far, we do not have a perfect representative government, or a representative government which conforms to the principles of democracy, and there is little difference between it and a representative government which has become misrepresentative, and a referendum can correct it. President, my assistants and a number of interns have spent a lot of time on conducting a research on this topic and written for me a speech which is most academic, the

content of which is related to the relationship between a representative government and a referendum, as well as whether Hong Kong should make a law on referendum. However, after reading this speech, I think they have spent a lot of efforts to write it up, but what I want to say are some other things.

I believe Mr LEUNG Kwok-hung also does not mean to talk about that. Because his motion is very straightforward. He only says whether we should enact legislation on referendum to deal with two very important questions in society? He is not advocating that the representative system should be replaced by referendum. Honestly, there is no such system in the world.

Actually, the question is: Why are the people of Hong Kong or legislators thinking of the issue from that angle? It is not difficult to understand, President, because under the existing system, not only there is an imbalance of power, but we can also see or hear every day that the Government often uses biased statements or calls a stag a horse to whitewash its action of impeding the progress of democratization.

People's representatives in the legislature, who are fighting for the people's rights, are often powerless. Honestly, other than chiding Secretary Stephen LAM, sweeping officials' desks and throwing bananas, what else can they do? I consider that very important, and that is the major reason which drives those colleagues to fight for democratic progress through the "Five District Referendum". For that reason, the action that originated from such thinking does not represent the view or action which calls for a fundamental change in the system.

President, last year's "Five District Referendum" stirred up a great controversy, and personally, I do not approve of the tactic. Many voters told me that they disapproved of the campaign *de facto* "Five District Referendum", and as far as the laws are concerned, it has no effect of referendum at all. The so-called "Five District Referendum" is only a slogan of the participants; they of course wish to achieve some decisive results, such as the materialization of their slogan, but in the end, if we ask and look at the whole incident clearly, we will find last year's "Five District Referendum" was absolutely lawful and

constitutional, otherwise the Government should have applied for an injunction, or even sued them for an illegal act. But the Government could not do that.

For that reason, the most important point is whether or not the Government will prohibit people from claiming that it was a referendum? We can never eradicate such things, because it was just an expression of an idea, and amending the electoral law to plug the loophole of such actions and expressions are simply out of the question. Therefore, it has been most baffling that it should develop into such a big controversy nowadays.

President, a famous French writer, Voltaire, I do not know his name in Chinese, but I believe everyone knows his famous saying, and they can even recite it in reverse order. He said, "I do not agree with what you have to say, but I'll defend to the death your right to say it."

(Mr LEUNG Kwok-hung said it was Voltaire ("伏爾泰"))

Yes, Voltaire, I am sorry. Thanks, Mr Long hair. It is quite sure that his proficiency in Chinese is higher than mine.

President, this is where the crux of the matter lies. We are now talking about the freedom of expression, about curbing the freedom of speech, and it virtually boils down to the wish to rewrite the provisions in the Basic Law on the protection of the freedom of expression. President, I believe most Hong Kong people, regardless of their agreement or otherwise of the "Five District Referendum", they will defend to the death your right to vote in a by-election and the right to be elected.

President, on the eve of 1 July, looking back at 2003, why did so many Hong Kong people take to the streets? It was because they wanted to defend to the death their basic rights. In 2003, we were talking more rights, including freedom of speech, press freedom, and freedom of reading. The right to elect is by no means a lesser right, because the right to elect can decide the composition of our government, and who will represent the public in the legislature to debate on public policies. What we have now is not a perfect representative system, but at least it is better than none. If we were to narrow down the system so that the

public will have less choice in this respect, I believe no one in Hong Kong will accept it. Thank you, President.

MR ALBERT HO (in Cantonese): President, 14 years since the reunification, the SAR Government has been hit by one wave after another of political crisis and political impacts.

During the TUNG Chee-hwa era, since his beliefs in governance were too disorganized and there were too many policies from different departments, his governance failed. Moreover, under the pressure of the Central Authorities, he tried to enact legislation on Article 23 of the Basic Law by force, which instigated 500 000 people to take to the streets to directly voice their strong protest and demands. As we all know, TUNG Chee-hwa was forced to step down after that.

Nevertheless, the same problem emerged after Donald TSANG, who enjoyed a rather high degree of popularity, had assumed the office, and the reason is the policy imbalance in his governance and the injustice of the entire system, which has inevitably caused some institutional consequences, that is, collusion between the Government and business hegemony of property developers, impoverishment of the grassroots and the widening wealth gap. All of these are the "deep-rooted conflicts" cited by Premier WEN Jiabao. These "deep-rooted conflicts" came into being because of the imbalanced distribution of powers, which led to the tilting of the whole system to the business sector and large consortium, the whole Government lacking the authority and legitimacy underpinned by democratic participation, and officials failing to represent public opinions and legitimizing their administration on basis of public support.

Everybody can see the political reality. By way of objective votes, the support for the democratic camp has all along been over 60%, and very often, we can even obtain over 65% of the votes, but in the legislature, our seats only account for a little more than one third of the total seats. Hence it is evident that the whole representation is distorted. Some people say that there is a more direct way to express public opinions, that is, the once every four year election, but our election is distorted. As far as our representativeness is concerned, even though we are representatives with the major public opinions on our side — in many other places, political organizations which have secured so much public

opinion on their side can already become the ruling parties, undoubtedly the majority parties — but this cannot be achieved in Hong Kong. On the contrary, we are suppressed and become a minority. This unfairly designed system has aggravated the "deep-rooted conflicts". Over the years, there have controversies over the democratization of the political system (including the timetable and roadmap), and society is torn apart. It is still unknown whether or not we can have true democracy in 2017 and 2020, so great endeavours and efforts are still needed to achieve that.

Nevertheless, Members, what we are facing today is how the aspirations of the public can be best represented. For that purpose, last year, some of our colleagues initiated the "campaign of the five constituencies resignation as a *de facto* referendum". It was a campaign for an idea, and it aimed at enabling the public to have their aspirations fully represented by way of a by-election. Certainly, there are divergences in society, even within the democratic camp. The Democratic Party did not consider it an effective way of expression. And in that difficult position, I understand the rationale and sincerity of some colleagues who had the need to express the idea by that means. Anyway, what has been achieved now? It is nothing more than a referendum in disguise, but the Beijing Government considers that it has touched upon the State's prestige in governance, or even impacted on the manifestation of sovereignty. And it eventually led to suppression raised to the plane of political principle.

Today, the so-called replacement mechanism was launched hastily under high pressure and pushed through the legislature, without going through any reasonable consultation which is procedurally in order, and it has enraged the people of Hong Kong to the extreme. Therefore, we believe there will be another massive procession tomorrow to show the people's dissatisfaction. "Our worst misfortunes are those which never befall us", in fact, if some legislators wish to express their ideas by way of resignation and by-election, then we should let the public express that idea, why should they be considered impacting the sovereignty? Only a Central Government which lacks legitimacy and a democratic foundation will show such timid behaviour. If it is returned by election, why should it fear the people's power?

Now, I consider that if there is such a big controversy over the constitutional issue, we should actually draw up a law for referendum, so as to

allow the public to express themselves by "one man, one vote". This is really no big deal. Just now some colleagues said that it would breach certain principles of the Constitution, because China is a unitary state, therefore such a confederal measure is not applicable. All of these are really nonsense. Do Members know that referendum was mentioned in the draft of the Basic Law before 1989? Please do not assume that our Mainland law drafters know nothing about it. This is "one country, two systems", and the SAR Government can make arrangements in its own system to allow its people to express their aspirations. We could have this draft in the past, but why has someone now pointed out that it contravenes the principle of the Constitution?

For that reason, we think that we should consider that and I strongly urge the Government to enact legislation on referendum, at least we should allow Hong Kong people to make a choice according to the most basic rules of the game in our political system. If the Central Authorities point out that the manifestation of sovereignty is also required in this case, then, fine, please allow our public opinions to be expressed first before the Central Authorities decide whether or not it is acceptable. But Hong Kong people should at least be allowed to express their aspirations by this means, which, in my opinion, is perfectly justified.

Therefore, undoubtedly, we consider that we should support the motion moved by Mr LEUNG Kwok-hung today.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

MS AUDREY EU (in Cantonese): President, this is not the first time for Mr LEUNG Kwok-hung to move a motion on referendum. Reviewing the various related motions moved by him previously: in 2005, he moved a motion calling on the people to hold a referendum on universal suffrage in 2007 and 2008; in 2005, the referendum bill he submitted of course failed; and in 2009, he again moved a motion to urge for the enactment of a referendum law to decide on dual universal suffrage in 2012. I believe Mr LEUNG Kwok-hung not only embraces this dream for universal suffrage, but also, his pursuit of referendum is very likely more fervent than his aspiration for universal suffrage.

Nonetheless, referendum does not originate from Mr LEUNG Kwok-hung. In delivering his speech earlier, Mr Albert HO said the second draft of the Basic Law released in January 1989 had in fact spelt out that Hong Kong could hold a referendum on universal suffrage. When I last mentioned this, Secretary Stephen LAM said it was only a draft to solicit opinions. In fact, I would like to tell the Secretary, in his *Ming Pao* column captioned "法政隨筆", Mr Martin LEE has penned an article titled "Leather Lantern" ("牛皮燈籠"), describing Secretary Stephen LAM as highly stubborn in insisting on referring to the second draft of the Basic Law as a draft to solicit opinions. Let me quote his article, to this effect, "Actually, the second draft is already a prototype for the Basic Law, and members of the drafting committee scrutinized the Articles contained therein one by one. If any of the Articles failed to be passed by a two-thirds majority of the members, there would be clear specifications. This proves their degree of seriousness. Thus, the fact that the concept of referendum had been formally spelt out in the second draft proves that Beijing then had fully accepted to let Hong Kong people decide the democratic course for the SAR through referendum."

Talking about the second draft then, be it the election of the Chief Executive or the Legislative Council, the public could decide by way of polling, but a rather high threshold was set, that is, the support of more than 30% of legitimate voters was required for the election to be valid. However, why was it amended later? As we can all remember, I said earlier that it was the draft released in January 1989 but the 4 June incident took place in 1989. As a result, Hong Kong representatives wrote to express their wish for an earlier or quicker pace for universal suffrage because the Articles in the second draft mentioned only by 2012 could a decision on whether or not to implement universal suffrage be made through referendum. However, in order to put Hong Kong people at ease and expedite the pace for universal suffrage, after amendment, everyone (including the party to which you, the President, belong, as well as the then Liberal Party and Democratic Party) believed that there could be universal suffrage in 2007 and 2008, making it unnecessary for the establishment of the referendum system. I hope that by recapping this part of the history in particular, Hong Kong people will at least know that the Central Authorities did not regard referendum as scourges at that time.

I would also like to mention that in fact, at least 20 countries around the world have a referendum law. Apart from certain European and American democratic countries, our neighbouring Taiwan (of course, we cannot regard it as

a country), Brazil and Uruguay are inclusive. There are two types of referendum: some have legal effect, that is, once a decision is made through referendum, the decision can be implemented and is binding; some are non-binding and are only treated as public consultation. We all know that Taiwan has held various referenda, but since they impose a very high threshold, none has been successful. This also depends on how the referendum act is designed. The threshold desired is open to discussion.

For many major topics, decisions by legislators alone may not be enough, and this is why referenda have to be held for some major topics. We can see that recently, Britain held a referendum on its political system but failed to change its existing voting system. Moreover, such issues as whether or not the United Kingdom should join the European Union, whether to adopt the Euro or whether Panama should build a second canal were all decided by referendum. We can also see that some European countries resorted to referendum to decide whether or not nuclear energy should be used. These are all very good examples, showing that there actually is nothing to fear, and not every referendum will impact the independent autonomy or sovereignty of a country. However, it is an effective way to give vent to public opinion and show sympathy for the people in a more scientific way.

Today, Mr LEUNG Kwok-hung's motion has included the enactment of laws to implement Article 23 of the Basic Law and the issue of universal suffrage. I am of course aware that Article 23 of the Basic Law has given Hong Kong the constitutional duty to enact laws on Article 23. So long as we fulfil our responsibility under the Basic Law, we can also consult the public through referendum or any other very scientific means on how and when to make the enactment, or even consult them on the legislative procedure. These are what a responsible government can do.

Certainly, the NPCSC can decide on the timetable for universal suffrage, but issues like how universal suffrage is to be implemented, the roadmap for universal suffrage, and whether the enactment of the laws should be completed in one go are all critical constitutional issues. If we can gauge public opinion through a scientific means, this can also be a desirable option.

President, to be specific, we in the Civic Party support the motion moved by Mr LEUNG Kwok-hung today, and urge the public to understand more about

referendum. There is nothing to fear and it is not politically incorrect. We can employ a scientific and rational approach to handle public opinion.

Thank you, President.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

MISS TANYA CHAN (in Cantonese): I remember I was one of the Members who resigned last year to take part in the *de facto* referendum. I clearly remember that in the beginning, things were very difficult. The chilly weather and the rain came secondary to the pressure from the Government and all sides, leaving me gasping for breath.

I remember one morning, we went out to distribute the newspaper on referendum. We stood close to some people handing out newspapers hoping to boost the amount we could give out. Finally, an elderly took our newspaper. I thought he was just taking a copy casually. He asked, "What is this newspaper on referendum?" As I was about to say "take a copy and have a look", he again asked, "Referendum?" President, I thought he would scold me, but he continued to say, "Referendum? A vote by the people, right?" Then he smiled at me. I can still recall that scene now.

Of course, many details of the whole referendum campaign still remain in my memory, but what I fail to understand most is why it is so fearful to us. Actually, referendum is returning power to the people, and everyone is talking about peace, reason, non-violence. Nothing can be fairer, more rational and non-violent if people can cast their votes into the ballot box to express their wish about an issue, and if their wish can be heeded.

We can see that Secretary Stephen LAM and Secretary for Justice WONG Yan-lung are racking their brains every day to plug the loopholes in order to stamp out further by-elections triggered by resignations. The more they do, the clearer it is to the people and the more guilty they feel. What is meant by feeling more guilty? You can feel that they are very much in the way. What are they obstructing? This rightly reflects that referendum It is in fact the power of the people which they are most afraid of.

Referendum is allowing the public to vote. Simple as that. Holding a referendum is not to challenge the Central Authorities, nor is it advocating the independence of Hong Kong. We are talking about a "high degree of autonomy". We of course are not referring to absolute autonomy which is impossible. We are only talking about the realization of people's power. The harder the Government is clamping down on the people, the more dubious the people will be, doubting how determined the SAR Government is in implementing genuine universal suffrage. At the moment, some people even question the possibility of having genuine universal suffrage.

Some said the Government wants to penalize those frivolous Members. Penalize? First, what have we breached? What have we contravened? Have we violated the law? Have we violated the constitution? President, up till now, the Government has said nothing. If we have committed any offence, the Government can arrest and indict us in Court, but it has not done so. Since they cannot indict us, they throw a tantrum and strip the public of their right to election. They are not only taking away this right, but also the right to be elected; not only are they doing so in one go, but also "doing the utmost", having no regard for the consequences. This way of ridding us of our right to election is totally illegitimate, unconstitutional, irrational and shameless!

President, there is one more thing which is most anti-intellectual. If attention has been paid to the debates and arguments presented in the Bills Committee, I am afraid they may set bad examples for the children. They said the voter turnout was low, a mere 17.1%, and so they did not support by-elections. If this is the case, if it is like what CHENG Yiu-tong said the other day in the press conference, if only 10 000 people took part in the ceremony marking the reunification, does it mean that 6.9 million people do not support the reunification? President, this is impossible.

The enactment of legislation on Article 23 is even more intimidating. Why do I say so? Come to think about his. If Secretary Stephen LAM comes out one day to say that they have listened to all public opinions. He may say since some Members resigned last year, the public can already make known their opinions, and some time ago, a public hearing was held with eight groups attending and each person was given three minutes to speak. They have therefore listened to all opinions. President, in that case, should the enactment of legislation on Article 23 not have been in the making for nine years? President, it has been nine years from 2002 to 2011 now, and so the legislation

can be enacted now, without having to leave it to the next Chief Executive. We can make the enactment later.

President, such logic is simply "ultra anti-intellectual". They even have to deny and point their fingers at us. Secretary, you may notice that I did not say much in the Bills Committee because I am afraid once I speak, I will be very furious.

I have to be more gentle today. Secretary, you in fact have "lost". Why do I say so? Secretary, you are now implicating the pro-establishment Members who have to change their testimony and script with you every day. When you put forward the option earlier, that served as the first tier of illegal structure, and they have to say these things. However, you suddenly put up another illegal structure atop and they have to turn what they have already said around. It is fine for you to make a U-turn, but they have to rewrite the script which is not easy.

Moreover, why did I say you had "lost"? To start with, those who support us will surely oppose you but now, even those who do not support us are against you. Have you not "lost" helplessly?

I think the Government is leaving no leeway this time around. Secretary, I try to think anti-intellectually employing your logic. Since the Secretary has been sparing no effort, many people think that he must be seeking to climb up the ladder to become a Secretary of a Department. However, I doubt if he is "inviting" a resignation? He has thrown out such a rotten option which requires constant amendments for the worse, rendering it more and more twisted. I think to myself, does he want to follow the example of Mrs Regina IP, the former Secretary for Security who finally had to bow and step down for failing the convoy? She did not fail to do her best; she had done her best but failed. I am actually most puzzled.

Anyway, although this entire short discussion only lasted for a little more than a month, we can see clearly that so long as we do not have a law on referendum, the Government will continue to strip the people of their right to express public opinion through rational, peaceful, objective and non-violent means. I am really doubtful as to whether the Government has the intention of allowing us to realize universal suffrage in a gradual manner.

Before we have a law on referendum, the only way to demonstrate the people's power now is to use our feet. We did so once in 2003 and this opportunity comes again tomorrow. I wish every member of the public will take to the streets tomorrow to tell the Government: We have had enough. Thank you, President.

MR WONG YUK-MAN (in Cantonese): President, I believe you will also be victimized by the Secretary. I discussed the proposing of amendments with the Legal Adviser and the Secretary General of the Legislative Council Secretariat earlier. We will propose a thousand or so amendments. However, the Secretary now states that a new set of amendments will be tabled to this Council on Monday. If his amendments are passed, ours will all be scrapped. How unfair is it to us? He really has the upper hand in playing this political game.

The Bills Committee needs to convene another meeting on Monday. Its members have been manipulated by him over and over again, and he is really the worst of the worst. If the new amendments he submits on Monday carry drastic revisions, where will the original Blue Bill go? Our amendments are proposed in the light of the original Bill. Now, I cannot amend the amendments he may propose.

President, I would like to talk with you later to give you a challenge. He must be joking! There may not be enough time to initiate a judicial review. His tactics are really formidable and carefully calculated. He is downright despicable.

President, I will now come back to the topic. Let me tell you: you will also be in trouble.

Of course, in my rough calculation, it does not matter even though no voting is to take place, only if I can speak. I am prepared to bring along the quilt to put up here. As long as I can speak, given the speaking time limit of 15 minutes for each amendment, 1 000 amendments will translate into a speaking time of 15 000 minutes. I believe I must be the Member who speaks for the longest time in the history of this Council.

Originally, the President needed to seek the views of the Legal Adviser on each of my amendments. These amendments would first be reviewed by the Secretariat before being passed to the President for rulings. My current question for the President is: If the Secretary tables new amendments on Monday, but that is also the deadline for me to propose amendments, would you extend the deadline by two days for me?

PRESIDENT (in Cantonese): Mr WONG, this is not the time to discuss other matters.

MR WONG YUK-MAN (in Cantonese): No, the crux of this example is, President, do not stop me. I cited this example to show how ruthless, despicable, depraved, nasty and shameless this Government, especially the kind of person like Stephen LAM, who masterminds such tricks, can be in depriving me even of the right to propose amendments.

He may argue, "This is not the case. You may speak, and my amendments may not be passed. If my amendments are not passed, then yours will be examined." Is it too early for dreaming? Stop fooling me.

I cited the example only to keep Members apprised of the situation, thus saving my effort in explaining to the reporters later on. With such a level of trick-playing, does he think his amendments must be passed? Is it guaranteed that he will have enough votes?

PRESIDENT (in Cantonese): This is not the time to discuss what you are talking about.

MR WONG YUK-MAN (in Cantonese): President, direct democracy for the people means returning the political power to the people.

The earlier remark by Miss Tanya CHAN that referendum refers to the casting of votes by the people is utterly erroneous. The term "referendum" in English, OK, means direct democracy for the people. It was firstly conceived by

Jean-Jacque ROUSSEAU, a Frenchman. With direct democracy, people can take the initiative to enact laws for the making of decisions on major issues directly through plebiscites. This also constitutes the essence of the motion proposed by Mr LEUNG Kwok-hung today.

Therefore, Miss Tanya CHAN, you should not talk nonsense by saying that referendum refers to the casting of votes by the people. I really cannot help firing at you. This is plebiscite and direct democracy for the people. What we now have is indirect democracy. Representative government is a form of indirect democracy, where people elect their own representatives to monitor the government, enact laws or form the government. In view of the shortcomings of indirect democracy, there is a need to patch it up with direct democracy.

In small and scantily populated places, such as Switzerland, even though a traffic light is to be altered, there is a need to resort to a plebiscite because of the small population. Understand now? This is the exercise of direct democracy by the people.

Dr SUN Yat-sen said a century ago that people possess political power whereas the government possesses governing power. What constitutes political power? From the legal perspective, this comprises initiative and vetoing. People can not only initiate enactments but also veto them. As for the kind of person like the Secretary, there is a right to elect and dismiss. This is direct democracy for the people, which is certainly non-existent for the time being.

In view of the absence of a law on plebiscite in Hong Kong, we sacrificed ourselves by giving up our own seats so as to enlighten others. Was it sure that I would win? They did not dare to stand in the election with me only. Now, what is the most frustrating point? Some remarked that, "I was against the Five-District Referendum, but when those guys stood in the by-elections, I had to vote for Pamela PECK. You should let me have the freedom to vote for Pamela PECK, right? You even deprive me of the right to vote for Pamela PECK!"

Those against our approach also want to have the right to vote. Let us take a look at the number of votes we obtained in the Five-District Referendum last time. The by-elections registered a total turnout of 570 000, of which 60 000 to 70 000 went to our opponents instead of us. Were those who cast those votes not human beings? Even if the Government were totally right in

saying that we played with the mechanism, why are these people deprived of their right to vote? The Government repeats the same line, that is, a voter turnout rate of 17%, over and over again.

I like receiving students who visit the Legislative Council, and I serve as their tour guide every week. I must tell them there are several types of citizens in Hong Kong. One is first-class citizens, who have a total of three votes, one for the Chief Executive election — your goodself, President, also have this — one for the functional constituency (FC) election and one for the geographical constituency (GC) election. Some have two votes, one for the FC election and the other for the GC election. Yet, some have only one vote, and they are third-class citizens.

We obtained 37 000 or so votes in the GC direct elections, whereas your boss got more than 600 votes through the small-circle election with 800 voters. A tiny fraction of the votes I obtained is already larger than the total number of votes cast for him, but his power is formidably great. I asked students whether this was right, and they said not so, citing inequality in the value of the votes cast. If voters in the Chief Executive election are human beings, does it mean those who vote for us are ghosts? The reasoning is so simple that even students can understand when they learn of it. Hence, I like receiving students who visit the Legislative Council. You do your brainwashing, and I do mine. All students would say I am right. The reasoning is as simple and easy to understand as anything we can think of.

Direct democracy for the people and plebiscite as discussed today are not new. They are ubiquitous. Recently, a new country has arisen as a result of a plebiscite.

These dimwits of the Government are utterly shameless. I have to take this opportunity to condemn this heartless and unjust Government once again through the mass media on this occasion.

Thank you, President.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

DR PRISCILLA LEUNG (in Cantonese): President, I think the motion proposed by Mr LEUNG Kwok-hung today is really to the point. I believe he is being open and aboveboard instead. This is what he has been fighting for over the years, and we can all see it. On the contrary, we have been talking about the fight for referendum but the issue has given way to universal suffrage, which, in my opinion, has sidetracked the issue instead. Therefore, leaving it to discussion through this motion can really allow a more direct approach to the crux of the issue.

From my point of view, the issue itself lies in whether Members really accept the basic consensus currently reached or the one forged by China and the United Kingdom in formulating the policy of "one country, two systems", which is like a mustee. Therefore, the points raised by Members today would also reflect that many Hong Kong people are looking at the issue from a Hong Kong perspective, in the belief that Hong Kong can also bode well in this way.

However, as regards the institutions of Hong Kong as a whole, including the Basic Law as formulated back then, like it or not, China and the then colonial British Government have left many things to us which, like DNA, are reflected in the Basic Law in a *bona fide* manner all along. This is the political compromise. I believe that when the Basic Law was formulated, it was paramount for China and the colonial British Government to protect the interests of their own selves as sovereign states. Frankly, in negotiating with China at that time, the colonial British Government might not have particularly considered the interests of Hong Kong people.

When the Basic Law was drafted — as mentioned by several Honourable colleagues earlier and by me repeatedly — some members of the Drafting Committee had indeed mentioned the prospect of having a law on referendum. As no consensus could be reached at that time and there was no way to include it in the Basic Law, so, regarding the issue — from the information I have looked up — I can see that China at that time very much emphasized that referendum was under the purview of a sovereign state, and that it would not delegate or devolve such power to the SAR Government.

Referendum usually has to be conducted by a government. It involves financial resources, and its object should also be selected by the government. I

can see there are several areas, just several only, where the Basic Law has applied a firm grip; and as for other areas, I think the Drafting Committee at that time were of the view that should the strengths of Hong Kong be identified and a free hand be given, then they would let go. What do these several areas refer to? They are foreign affairs, national defence and referendum. In discussing these relevant issues, it also insisted that they could not be devolved to the SAR Government. Mr Albert HO said earlier that these areas are available in the federal systems of other countries. However, it did not agree to the adoption of a federal system in Hong Kong. Sometimes when we look at the issue, we seem to be seeing two persons of different nationalities tying the knot and bearing a mustee. Therefore, should Members look at the issue from a reverse perspective instead? You say this is taken for granted, but sometimes it may backfire precisely for the same reason.

What is sovereignty to China? To China, sovereignty is something painful. From the Eight-Nation Alliance to the Civil War, it has been very difficult for China to tell people that it now has its own sovereignty. Hence, whenever it comes to the issue of sovereignty, it will become very sensitive. Conversely, why does it say that the matter is no big deal? This may also be right. Any discussion on the matter in Hong Kong is no big deal, and Hong Kong people are also used to it. Yet, what if it is provoked? This will hurt the relationship between the Central Authorities and the authorities.

Why do I consistently oppose the resignation *en masse* of Members returned from five geographical constituencies, as well as the practice of calling it a *de facto* referendum on the one hand while calling it universal suffrage at the stage of funding application in this Council, especially in the absence of complementary government actions? We were one of those I actually opposed the funding, but we could not win at the vote. As far as I can recall, there were 14 votes, but it did not matter. The Government managed to solicit enough votes.

But we did not walk out, and we accepted the results. We strongly indicated our dislike of the granting of government funding for you to hold elections. We were really against it, and deemed it unconstitutional. At that time, some had suggested initiating a judicial review, but the matter was left to vanish into obscurity in view of the approval of funding by the Government.

Given the perspectives and stances of Members over these issues, there is no way to reach a consensus even after months or years of discussion. But from my point of view, Hong Kong is progressing. When will the coveted thing, as mentioned by Miss Tanya CHAN earlier, be realized? Why can it not be realized? I very much understand how Hong Kong people think given my years of residence here, but sometimes when we want to fight for something, is there a need know our own strengths as well as those of our rivals? That you criticize it sternly every time has made it unable to trust Hong Kong A discussion was needed in respect of foreign affairs. Back then, it remarked that, "Please hand over to me foreign affairs and the national flag, and it is fine for you not to practise socialism nor pay tax to the higher authorities." These are the areas where a free hand is allowed. Therefore, should we play this game more wisely?

Hence, why can I not agree to Mr LEUNG Kwok-hung? I think China is evolving. I believe there may be a day when China would embrace a law on referendum. This is interaction, but can we make it more positive such that we can get what we fight for, rather than stabbing each other and then make it a mess as what we see now?

In addition, regarding the question raised by Mr LEE Wing-tat earlier, I would like to put a question to him in return. I can see that on 20 June last year, the Government made a U-turn again by accepting the proposal of the Democratic Party, and then the voting seemed to take place on 23 June. At that time, they did neither walk out nor request a consultation. Our question was: Why did they accept it? They replied that no alternative was available as there were not enough votes. However, why did they not walk out then? This is why I find it very strange. I accept that Members in support of referendum can walk out, but he remarked on your behalf that it was unacceptable, citing the lack of consultation.

I have been a Legislative Council Member for one term, and I have repeatedly consulted other Members earlier. During my years of work in this Council, I can see the bare truth last year. The change involving the introduction of mega-constituencies in the District Council Elections should have significant implications and bring about a sea change to Hong Kong, but there have neither been calls for a consultation nor walk-outs. This is especially the

case for the Democratic Party, which fires scathing criticisms at us and says today that a consultation must be conducted (*The buzzer sounded*)

PRESIDENT (in Cantonese): Dr LEUNG, your speaking time is up.

DR PRISCILLA LEUNG (in Cantonese): President, I so submit.

(Ms Audrey EU rose)

MS AUDREY EU (in Cantonese): I cannot but have to clarify one point. Dr Priscilla LEUNG said earlier on that nobody had proposed that consultations be conducted on the constitutional reform package introduced last year. However, the Civic Party had made such a request, and I need to clarify this point.

PRESIDENT (in Cantonese): Ms EU, this is not the situation where Members are allowed to speak again under the Rules of Procedure.

MS AUDREY EU (in Cantonese): But she is wrong.

PRESIDENT (in Cantonese): You have already made your point.

MS AUDREY EU (in Cantonese): Thank you, President.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR LEE WING-TAT (in Cantonese): President, I will always listen to other Members' speeches very attentively, but I find Dr Priscilla LEUNG's speech quite difficult to decipher. So, sometimes when she asks supplementary questions to

oral questions, I usually see you listening in a way that your eyebrows are almost lifted, but still not comprehending them.

Why do we have to mention the incident that occurred a year ago? Everyone knows that is the constitutional reform package introduced to the Legislative Council by the Government. As a political party, we managed to propose an amendment. The amendment was actually proposed in early May or the middle of May, and it was also debated by every sector of the community. As to the question of whether the Government would accept it or not, it was beyond our control. As a political party, we just do as our duties require us to do. As to Dr Priscilla LEUNG's later allusion to issues like whether to walk out or some other things, I really do not quite understand what she meant. As such, sometimes listening to Dr Priscilla LEUNG's speeches is quite hard work.

Let me first talk about the views of Mr LEUNG Kwok-hung. As we all know, there is referendum in many countries and regions and this is actually not something new. So please do not say that only a unitary sovereign state has such an arrangement. Sorry, Dr Priscilla LEUNG, I always do not know where you acquired your legal knowledge. In the United States, there is referendum in many states and regions, and California has also enacted a law on referendum, which is its local law. California has conducted a referendum on the issue of homosexual love, and the state has conducted more referenda than any other states in the United States. So, we should not take that referendum is implemented just in a country, which is a wrong concept. Go back and have a good study in the ABCs of politics and it would be helpful in grasping more knowledge.

The so-called "direct democracy for the people" or enacting legislation or amending the constitution through the people is adopted in countries as well as in regions. However, I wish to say that it is not the practice that can be implemented very often even if I agree to it. Even in some very democratic countries and regions, their discussions on direct democracy are sometimes too romantic. In Australia, they had conducted a research on deliberative democracy a few years ago, which is a topic that I came across many years after my graduation from the university. What is deliberative democracy? They carried out an experiment in the research, which was to propose a motion and then put it to the vote to see the results. After that, they invited about 100 persons to a camp, provided them with information to read and debate, and then

put it to the vote again a few days later, and the result obtained might be different from that of the first voting. By "deliberative", it means that an issue is debated and decided on the basis of the information you have read. So it is not surprising that it may provide a more sound basis for the making of a decision of better quality.

As such, could that be as what Mr LEUNG Kwok-hung has said? And he did not say that actually. Only some friends, who are very infatuated by direct democracy, are fond of taking this approach. However, I hold that such an approach can only be adopted incidentally at unusual times. Honestly, how can a modern society practice direct democracy every day? Though some people may say that with the advancement in science and technology we may use IT to implement it, actually another form of democracy, that is, deliberative democracy is also a subject thoroughly researched in modern political science, and there are lots of debates on whether there are some better methods. Of course, I do not oppose what Mr LEUNG Kwok-hung has said, and also he himself would not wish to practice direct democracy every day because he is a very busy person. How can he go for a referendum every day? We can do that only when there are important matters.

President, I would like to come back to an issue to which Dr Priscilla LEUNG has not responded. As the bill introduced by the Government relating to the replacement mechanism for filling vacant seats in the Legislative Council simply deprives voters of their rights, I wish that she, being a directly-elected Member representing the voters in Kowloon West, could issue leaflets to voters in Kowloon West explaining whether or not she agrees to the deprivation of the rights of voters by the Government. She needs not respond now. Just go and deliver the leaflets in the constituency so as not to interrupt my speech. She had the opportunity to respond earlier on, but she chose not to. And now she speaks all sorts of nonsense again.

(Dr Priscilla LEUNG interrupted)

President, I am speaking now.

PRESIDENT (in Cantonese): Will Members please speak in accordance with the provisions of the Rules of Procedure.

MR LEE WING-TAT (in Cantonese): President, fair as I am, I raised the issue in the first debate just to let her respond in the second debate. She had seven minutes to speak, but she made no response. So now I can only raise it again. The existing middle class, in general, may not necessarily agree to the "*de facto* referendum" campaign launched last year. Yesterday, I listened to a radio programme on RTHK, in which four listeners called up the host and said in unison that they did not cast their votes last year. However, they could not agree to the deprivation of their voting rights by the Government because of that. Since I have received university education, why does it need the Government to bother with whether or not and to whom I will cast my vote? The votes are in the hands of the voters, who will decide to vote or not to vote, and they may also choose to cast "blank votes" at polling stations, or even decide to select a candidate with their votes.

Dr Priscilla LEUNG has now joined the "Depriving Voters of their Rights Chorus" aiming to deprive the voters who have cast their votes for her to become a directly-elected Member of their rights. I really wonder how she can explain this to them. She still has a lot of opportunities to express her views before 13 July as there will still be many debates. Why do I have to mention all this? It is because a report carried by the *Ming Pao* today revealed that she seemed to have some alternative views on the Government's proposal, and so I cannot help but feel baffled. I cannot remember whether it was this Monday or last Friday, she proclaimed on a RTHK radio programme that there were loopholes and someone was laying a ploy, and she sounded quite excitedly. With a view to plugging these electoral loopholes, she spoke vehemently in the RTHK radio programme in respect of this bill that seeks to deprive voters of their rights. Today, she had the opportunity to respond, but she did not respond in her seven-minute speaking time. Why? The report carried in the *Ming Pao* said she had doubts as to whether she would cast a supporting vote. Is she wavering? President, any way, I have expressed my views. From now to 13 July, she would still have opportunities to respond to this issue. Thank you, President.

MS CYD HO (in Cantonese): President, about 10 days ago, Italy conducted a referendum on the question of whether to cease the use of nuclear power for good. The Italians are really blessed for they can use direct democracy to allow all people in the country to express their views on its future economic

development and on the safety of people through a referendum. The results of the referendum showed that they supported the cessation of the use of nuclear power. Of course, if a new government comes to power in future, they can start the discussion again to consider if there is a need to resume the use of nuclear power. Only when such a mechanism is in place will the people have the opportunity to make their decision. This is the evolution of democracy.

Actually, I have to respond to Mr LEE Wing-tat's speech as he mentioned deliberative democracy earlier on, which he said is in conflict with direct democracy or referendum. However, there is actually and absolutely no conflict between the two, and the deliberative approach is also a necessary element of direct democracy, or else direct democracy will be degenerated into polling violence. Just as in this Chamber, any person who by all means acquires a higher number of supporting votes may introduce a bill for voting without regard to the circumstances or causes and procedural justice, thereby depriving the people of their rights.

In direct democracy, the deliberative process is even more important as the ordinary people, unlike members of a parliament, have no opportunity to access the information on public policies, and they can only have a "second-hand" understanding of an issue through media reports, which is far from being adequate. As media reports are limited in the length of coverage and restricted by the code of ethics and operation needs, they will usually concentrate on the most eye-catching part that can draw the most attention only. The media may not report the details and the many devils in such details worthy of our understanding and discussion. So, before the launch of a referendum, it is necessary to provide the people with all information to facilitate their grasp and understanding of the issue and to allow enough time to engage the public in discussions so that they will know the pros and cons of both sides and come to a mutual understanding. Members of the public may change their minds during this discussion process. There will be no problem if people change their original views not as a result of political pressure but through the process of rational understanding of the issue concerned.

Secretaries of Departments and Directors of Bureaux may change their minds, too. It was initially said there would be no room for fine-tuning of the budget, but it ended up in handing out \$6,000. The same happens to the precedence list. The Administration said initially that it was absolutely

impossible to make any change, but now it said that was feasible. It is all right to change our minds, but we hope that we are changing for the better and we are changing for a thorough implementation of democracy, instead of using deceitful words and randomly resorting to analogies to conceal the nature of this deprivation of the public of their rights. So, we really need to provide the public with adequate information for discussions so that there will be enough time for the issue to "be fermented" in the media and in society. In 2007, we held a community referendum in which I had to explain the process to some 460 student volunteers on how to make responsible decisions through discussions and to express the collective decision of the public through direct democracy and referendum. This is not the entirety of the process. We also need to follow up after an election as the minority may actually be affected upon losing the election. We need to follow up what losses they suffer and remedy their losses as far as possible. Only through this can we have a genuinely democratic society. It will not be regarded as a genuine democratic process if polling violence is used to let the majority gain an upper hand and deprive the minority of their rights.

I know the Government has all along taken the position that the Basic Law does not provide for the conduct of a referendum. However, Secretary Stephen LAM said a few days ago that it is not provided in the Basic Law that the use of replacement mechanism is not allowed, and therefore the proposal is feasible. He has actually made us perplexed about when we should apply these principles. In governance, one cannot act like this, and one must maintain consistent principles and stances. One must act within the powers conferred by the constitution and cannot make unpredictable changes in policy.

Moreover, plebiscite is in fact a truth-seeking process, using a most precise and scientific method to gauge public opinions. What difficulty will there be in seeking the truth? However, it so happens that it is actually quite difficult to seek the truth in Hong Kong. For example, in the proposal on abolishing by-election, it clearly states that it only needs a declaration when a vacancy of membership arises. It is also expressly provided in the law that all that is required is a declaration when a seat is vacated, and it is stipulated in clauses 1 and 2 of the Bill that a person becomes a Member upon the declaration, and the English word used is "declaration". However, in the latter part of the same Bill it is provided that he is to be regarded as a Member elected. If the Secretary is bold enough, he may as well change the word "declaration" in the earlier part of the Bill to "election", and change the Chinese words "宣布 (making a

declaration)" to "進行投票(having an election)" so that he could really be acting lawlessly and distorting the truth. But in this regard, the authorities still lack the power to do so for the time being.

President, so it is indeed very difficult to seek the truth in the existing political situation in Hong Kong, and we can see that the meanings of certain words can be distorted to such an extent. Though clearly no election has been held, someone can claim that there has been one; though a person has obviously lost in an election, someone can declare that he is elected. In these circumstances, I know very well why the Government rejects the conduct of a referendum. However, even though there is no voting, we can still have another form of referendum, that is, to vote with our legs. When a lot of people take to the streets, we will know by then what the common aspirations of the people are.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I thank Members very much for showing concern over this rather controversial subject and giving their views frankly. I would like to respond to the views expressed by several Members first.

Stressing the need for Hong Kong to act in accordance with the Basic Law, Mr Tommy CHEUNG said that we could handle the constitutional issues of Hong Kong in accordance with the Basic Law. Last year, we completed the "five-step process" and the 2012 constitutional reform package was passed. As we can see, 40 seats will be returned with an electorate base of over 3 million people. Among these 40 seats, 35 will be returned by Geographical Constituencies through direct elections and five by the new District Council Functional Constituency through elections among elected District Council members. These "five steps" are in fact very important because it is only through these "five steps" that we are able to amend the two electoral methods in accordance with the law and our constitution.

Mr Ronny TONG did not take part in the so-called referendum campaign last year. Yet, he considers it worthwhile to enact legislation on referendum today. I would like to point out that there is no referendum system in Hong Kong. Both Ms Audrey EU and Mr Albert HO particularly mentioned the inclusion of the referendum system in the second draft of the Basic Law which had been drafted between 1985 and 1990. Of course, I am aware that Mr Martin LEE has written an article about the history of that period.

President, the fact is that there was such a proposal originally and it was indeed considered by the Basic Law Drafting Committee. Yet, after scrutiny, it was not adopted ultimately. As a result, in April 1990 when the Basic Law of the Hong Kong Special Administrative Region (HKSAR) was promulgated, the SAR Government was not authorized by the Central Authorities to establish and implement a referendum system in Hong Kong.

Concerning the procedure of making decisions on major issues (such as constitutional issues) in Hong Kong, the SAR Government is to introduce a proposal to the Legislative Council on the basis of the consensus reached among the people of the SAR. With the endorsement by a two-thirds majority of all the Members of the Legislative Council and the consent of the Chief Executive, the proposal can be submitted to the Standing Committee of the National People's Congress for consideration in Beijing.

While Beijing has the power to decide on constitutional issues, Hong Kong has an active and important role to play in the process. In dealing with our electoral systems, we now have greater involvement and a bigger say compared with the situation in the colonial era (that is, before the reunification in 1997).

As regards the decisions to gradually introduce elected seats into the legislature of Hong Kong, where were such decisions made? Those decisions were made in London. For this purpose, the British Government made amendments to the Letters Patent, followed by the enactment of local legislation in Hong Kong. Hong Kong could not take part in making and amending the Letters Patent and the legislature in Hong Kong could not vote on such matters. Now, we have set out the "five steps" for taking forward the constitutional arrangements. To complete these "five steps", we need to have the consensus between the SAR Government and the Legislative Council of Hong Kong and the

consensus between the SAR and the Standing Committee of the National People's Congress in Beijing. This is the present system. We cannot add a referendum system on top of the present system. However, I respect your views. I understand all of us hope Hong Kong can change for the better. However, the legislative power of Hong Kong can be considered extensive. In passing, I would like to respond to Mr WONG Yuk-man who specifically mentioned his intention to introduce some amendments to the Legislative Council (Amendment) Bill 2011. President, I would like to clarify here that the whole set of Committee stage amendments to be moved by the Administration has been forwarded to the Legislative Council Secretariat for Members' reference and consideration.

Before coming to the conclusion, I would like say that Dr Priscilla LEUNG has made a rather important speech. Being the first two Members to sound the alarm last year, she and Mr WONG Kwok-hing pointed out that Members should not be allowed to resign arbitrarily for the purpose of holding a so-called "referendum". Dr Priscilla LEUNG did explain very enthusiastically that there was no referendum system under the Basic Law. The SAR Government shares the same view with Dr LEUNG and a number of other Members in this respect. The Basic Law prescribes many very good arrangements for Hong Kong. We are in fact short of nothing. Under the principle of a high degree of autonomy, we are entitled to handling our internal social, economic, livelihood, budget and fiscal reserve matters. In addition, we have extensive power to handle external affairs. We can join the World Trade Organization and sign free trade agreements and air services agreement with overseas governments, and so on.

Internally, the executive, legislative and judicial powers enjoyed by Hong Kong are quite extensive. I lived abroad while I was working in the Hong Kong Economic and Trade Office overseas. The powers exercisable by Hong Kong as a special administrative region surpass those exercisable by a state of the United States of America and a province of Canada. While there is no court of final appeal in any state or province of those countries, we have the Court of Final Appeal. Therefore, we really have to treasure the powers vested in us. We have freedom, human rights and the rule of law. What is more, we can move towards democracy. With the timetable for implementing universal suffrage in place, we will implement the "one-person-two-votes" proposal in 2012. We may implement the selection of the Chief Executive through "one person, one

vote" in 2017 and we may implement universal suffrage consistent with the principle of "universality and equality" and the Basic Law for electing all Members of the Legislative Council in 2020.

On the economic front, our co-operation with the Mainland is getting closer and closer. We have launched the Individual Visit Scheme and signed the Mainland and Hong Kong Closer Economic Partnership Arrangement. In addition, under the Twelfth Five-Year Plan, the Central Authorities have given support to Hong Kong to offer more Renminbi services and develop into an offshore Renminbi centre.

President, by highlighting these main points, I would like to point out that the scope for us to implement "one country, two systems" in Hong Kong is wide. However, as Hong Kong is a special administrative region, we after all have to act within the scope of the powers vested under the Basic Law and make the best use of the room available under the constitutional system to do the best for Hong Kong. As for the issue of referendum, we are not authorized to establish a referendum system, so we cannot conduct any referendum. If we are to make some important decisions such as those relating to constitutional reform, we have to make good use of the powers vested in us under the Basic Law and take the "five-step" approach.

President, I so submit. I find it difficult to support the original motion.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, you may now give your response and you still have 11 minutes and 34 seconds.

MR LEUNG KWOK-HUNG (in Cantonese): President, the term "公投" should mean plebiscite, which is a direct vote by the people on issues involving the sovereignty, jurisdiction or official name of a country. The one we had last year was a referendum; we just went with the flow and referred to it as "公投". What we are talking about in Hong Kong now should be a referendum, and it has nothing to do with national sovereignty. As regards the statement that the people of Hong Kong enjoy no powers of initiative and referendum, this is but some nonsense made by a member of the Basic Law Committee. What we do

not have is the power of initiative. Should we enact legislation to implement Article 23 of the Basic Law? When should such legislation be enacted? How should we proceed with the enactment process? When are we going to implement universal suffrage? What are the practical issues encompassed under the notion of universal suffrage? None of these subjects mentioned involves plebiscite. Referendum is a vote on issues relating to major public policies or constitutional matters. A referendum is just a referendum.

Now that we have made clear the difference, do you think the people of Hong Kong have any power of referendum? Do people understand that? Certainly, plebiscite is out of the question. But then, I am not advocating changing the official name of the country, nor am I advocating separating Hong Kong from the Central Government. All I am asking about is when universal suffrage will be implemented. What I have asked is but the question of whether legislation will be enacted to implement Article 23 of the Basic Law. If we are to enact such legislation, how should the enactment process be proceeded with? Those who have criticized me are in fact over-worried. It is already stipulated in Article 17 of the Basic Law that if any law enacted by the Legislative Council of Hong Kong is not in order, the Basic Law Committee may request the Central Government to invalidate the law in question. I am urging the Government to enact legislation on referendum, and such a request does not contradict with the existing mechanism. This request is indeed supported by the mechanism. Article 17 of the Basic Law has clearly provided for the relationship between the Central Government and the Special Administrative Region, but instead of making good use of this article, the Government has chosen to request an interpretation of the Basic Law.

According to the Government, since the Basic Law does not guarantee any by-elections, it can refuse the people of Hong Kong the right to by-elections. By the same token, which part of the Basic Law says that we cannot enjoy any power of referendum? The Basic Law does not say anything against the right to plebiscite either. Chapter II of the Basic Law which encompasses Article 12 to Article 23 (the Article which is the greatest concern to us) does not make any reference to this. So, this is one point. This is indeed complete ignorance on the part of the Government; they should hurry to Beijing to seek advice from the stubborn old men there.

The second point I am going to make is not fabricated by me. President, this is the editorial of the *Xinhua Daily* (the official mouthpiece of the Communist Party of China (CPC)) on 2 February 1944, and it was written at the time when our country was at war with imperialistic Japan. This editorial reads, to this effect, "The power to elect is the basic and essential political power enjoyed by the people of a democratic country. In a democratic country, sovereignty resides in the people; the people are the masters of the country, and government officials are civil servants. As for the elected representatives, they are the representatives of the people and function as a butler supervising and managing the servants. If the people do not have the power to elect, they cannot elect their government officials or representatives. Should that be the case, the country concerned is definitely not a democratic country, and is definitely not a country by the people." In addition, "if the people are to directly manage the government, it is necessary for them to implement the four powers of the people."

What are the four powers of the people? The CPC cited a quote from Dr SUN Yat-sen, which reads, to this effect, "The so-called four powers of the people refer to the people's powers to elect and recall the government, and also their powers of initiative and referendum." The preamble of the editorial cited some ideas of Dr SUN Yat-sen, which reads, to this effect, "According to Dr SUN Yat-sen, "in the past when the people were not fully vested with such powers, the people did not have any say after they had elected the government officials and councillors. Such kind of power is the indirect power of the people, which is exercised by way of a representative political system. The people have no powers to supervise the government directly, the government is supervised by their elected representatives. If the people are to supervise the government directly, they must be vested with the four powers of the people."" As I mentioned just now, the four powers of the people comprise the power to recall the government, the power of initiative, the power of referendum, and the power to elect the government.

Doubtless, this is a solemn undertaking made by the Central Commission of the CPC to the people of the entire nation through its official mouthpiece. Can such an undertaking be bogus? Buddy, go read some books. Do you want me to give you a copy of this book? I have already advised you to take some time to buy the book *Heralds of History — Solemn Promises Over Half a Century Ago*, but you just refuse to buy it. President, what is wrong with my proposal? Whether it is viewed from the international perspective, the

perspective of the nation or the basic rights of the people of Hong Kong, what is wrong with advocating a referendum system. They say that we enjoy no powers of initiative and referendum I really have no idea what they are talking about. What power of initiative do they think we have? The proposals carried in my motion are in fact within the framework of the Basic Law. What are they trying to say? I really have no idea.

Thanks to these muddleheaded people, we have to deal with this so-called "plug-the-loophole" thing. They have plugged nothing but clogged their brains. Dr Priscilla LEUNG, I did not know that elections were held for the sake of the candidates rather than the people casting the votes. I had not heard about such kind of thing before. In our great Motherland which practises socialism and implements the people's democratic dictatorship, exercising the power to elect the government is no more than performing a ritual. Is the process similar to the election of Deputies to the National People's Congress? Given that the power to elect is to enable the people to express their latest intention as some of the elected seats subsequently became vacant after the people had picked their choices in the previous election, it is necessary for the people to have another election to appoint a trustworthy candidate by majority votes. If the people are to exercise this right, a by-election is essential.

The rationale is indeed very simple — having spoken for quite a while, I really did not expect to have so much speaking time left — the rationale is indeed this simple. The Government must explain to me why it does not allow the public to enjoy their right to by-elections. I am not speaking for my own interest. It really does not matter if I run as a candidate or not. It is fine with me even if I have to give up my seat in this Council. When Dr Priscilla LEUNG talked about "plugging the loophole" she was indeed praising Stephen LAM. Gogol was really right in saying that "it is better to get killed by pigs than being praised by them."

What kind of loophole is the Government going to plug? Is the people's right to vote a loophole that the Government has to plug? President, I really do not want to say too much. I will just keep on fighting even though I am defeated every time. Before I joined this Council (in the year 2000), I had already mentioned that once I got elected to this Council, I would advocate that issues such as the implementation of dual universal suffrage in 2007 and 2008 and the enactment of legislation to implement Article 23 of the Basic be resolved by way

of a referendum. I have no regrets today. It is no big deal if my motion is negated. What I am doing today is but the minimal effort I can put in for my fellow countrymen. My country is a great country accounting for a quarter of the world's population and implementing a system of democracy by the people. The absence of a referendum mechanism is indeed a fly in the ointment.

I never changed my stance even when I was sentenced to imprisonment by the Judge. At that time, I cited a poem which Members should have heard of before, for I have protested against old Mr TUNG many times in striving for the implementation of dual universal suffrages. The poem reads, to this effect, "Once there was a bird of woe, burdened by an earnest goal. Bringing gravels from the hills, hoping that the sea be filled. Little could she bring to pass, yet her frail life did not last. Scorned as reckless though she was, her great resolve I adore. Weary was she all her days, t'was a noble quest embraced. Not remembered though her name, never was it cause of shame." It really does not matter if I have a seat in this Council or not. Perhaps I will resign in protest very soon and advocate a "One District Referendum". Resignation is indeed no big deal to me. You had better stop laughing, for I am a ghost and I will come back to get your lives.

What is more, as I keep on striving for the people's right to by-elections and protesting against the indiscriminate enactment of legislation to implement Article 23 of the Basic Law, I would like to cite a quote from Nelson MANDELA to support the "Five District Referendum". Nelson MANDELA said, "I have walked that long road to freedom (he was just released from prison at that time). I have tried not to falter; I have made missteps along the way (just like the way we were being betrayed in the "Five District Referendum"). But I have discovered the secret that after climbing a great hill, one only finds that there are many more hills to climb. I have taken a moment here to rest, to steal a view of the glorious vista that surrounds me, to look back on the distance I have come. But I can rest only for a moment, for with freedom come responsibilities, and I dare not linger, for my long walk is not yet ended." President, this indeed echoes the voice in my heart.

What we have now is but the freedom to struggle for freedom. This is, again, a quote from Nelson MANDELA. President, we will take to the streets tomorrow to condemn three sinners. The first sinner is Stephen LAM and we will crush him; the second one is Henry TANG who has pre-ordained Stephen

LAM as the next Chief Secretary for Administration, we will also crush him; and the third one is Donald TSANG who does nothing but allow other people to engage in cunning manipulation of powers. We will take to the streets tomorrow to condemn these three persons. LEUNG Chun-ying, do not think that I support you, I just do not have enough time to make a cardboard of you.
(Laughter)

President, I have made a mask for "Best Actor" WEN Jiabao. I will throw this thing at him when he gives empty talks about the people of China enjoying human rights, and this thing can make a noise. Today, Stephen LAM, you do not have to come over here, I will throw this mask at you.*(Mr LEUNG Kwok-Hung threw the mask in his hand to the front)*

President, you do not have to get mad, because this is the way I express myself. You may order me to leave this Chamber, or you may choose not to do so. It really does not matter even if you order me to leave, because I have made my best effort. Stephen LAM, bear this in mind, you cannot afford to arouse the anger of the public *(The buzzer sounded)*

PRESIDENT (in Cantonese): Mr LEUNG, please sit down.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LEUNG Kwok-hung be passed.

PRESIDENT (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr LEUNG Kwok-hung rose to claim a division.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop. The result will now be displayed.

Functional Constituencies:

Mr CHEUNG Man-kwong voted for the motion.

Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr CHAN Kin-por, Mr IP Wai-ming and Mr IP Kwok-him voted against the motion.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr LEUNG Kwok-hung, Miss Tanya CHAN and Mr WONG Yuk-man voted for the motion.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Ms Starry LEE, Dr Priscilla LEUNG and Mr WONG Kwok-kin voted against the motion.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 16 were present, one was in favour of the motion and 15 against it; while among the Members returned by geographical constituencies through direct elections, 23 were present, 14 were in favour of the motion and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11 am on Wednesday 6 July 2011.

Adjourned accordingly at twenty minutes past Five o'clock.

Annex III

COMMUNICATIONS AUTHORITY BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce and Economic Development

<u>Clause</u>	<u>Amendment Proposed</u>
2	In the Chinese text, in the definition of “營運基金”, by adding “辦公室” after “管理局”.
4	By adding – <p>“(4) Without limiting any other matters to which the Authority may have regard, in performing its functions, the Authority must have regard to such of the following as appear to it to be relevant in the circumstances –</p> <ul style="list-style-type: none">(a) the fostering of an environment that supports a vibrant communications sector to enhance Hong Kong’s position as a communications hub in the region;(b) the encouragement of innovation and investment in the communications market;(c) the promotion of competition and adoption of best practices in the communications market for the benefit of the industry and consumers; and(d) acting in a manner consistent with the provisions of the Hong Kong Bill of

Rights Ordinance (Cap. 383).”.

- 8(1)(a) By deleting “who are not public officers and who are ordinarily resident in Hong Kong and have been so resident for at least 7 years”.
- 8 By adding –
- “(1A) The Chief Executive may appoint a person under subsection (1)(a) only if the person –
- (a) is not a public officer;
 - (b) is ordinarily resident in Hong Kong and has been so resident for at least 7 years; and
 - (c) is, in the opinion of the Chief Executive, a person having –
 - (i) extensive knowledge of, experience in or exposure to, communications services; or
 - (ii) knowledge of or experience in management, accounting, finance, education, law or community service, or such professional or other experience as would render the person suitable for the appointment.”.
- 8(4) (a) In paragraph (d), by deleting “or”.
- (b) By adding –
- “(da) fails to comply with section 12A or 13; or”.

- 8 By deleting subclause (5) and substituting –
- “(5) The office of a member of the Authority appointed under subsection (1)(a) becomes vacant if the member becomes a public officer.”.
- 8 By adding –
- “(9) The Chief Executive may determine the remuneration and the terms and conditions of any appointment under this section.”.
- 9 By deleting subclause (2) and substituting –
- “(2) The Chief Executive may revoke any appointment made under subsection (1) if the Chief Executive is of the opinion that the chairperson or vice-chairperson is unable or unfit to perform the functions of chairperson or vice-chairperson due to any reason referred to in section 8(4) or other sufficient cause.”.
- 10(5)
- (a) By deleting “may” and substituting “is to”.
 - (b) In paragraph (a), by deleting “and”.
 - (c) In paragraph (b), by deleting the full stop and substituting a semicolon.
 - (d) By adding –
 - “(c) the conduct of any meeting to which subsection (6) applies, in order to ensure that the confidentiality of the meeting, if any, is not compromised; and
 - (d) the supply of any documents or information relating to

any matter to a member who has or may have an interest in the matter.”.

10(6) By adding “compliance with standing orders made under” before “subsection (5)”.

New By adding –

“12A. Register of interests

(1) A member of the Authority, a member of the Broadcast Complaints Committee or a member of a committee appointed under section 16 must disclose to the Authority any interest that the member has which is of a class or description determined by the Authority under subsection (2) –

- (a) on the member’s first appointment;
- (b) at the beginning of each calendar year after the appointment;
- (c) on becoming aware of the existence of an interest not previously disclosed under this subsection; and
- (d) after the occurrence of any change to an interest previously disclosed under this subsection.

(2) The Authority may, for the purposes of this section –

- (a) determine the class or description of the interest required to be disclosed;
- (b) determine the details of the interest required to be disclosed and the manner in

which such interest is to be disclosed; and

- (c) from time to time change any matter determined under paragraph (a) or (b).

(3) The Authority is to establish and maintain a register relating to any disclosure required to be made under subsection (1) (“the register”) at the principal office of OFCA.

(4) If a person makes a disclosure as required by subsection (1), the Authority must cause the person’s name and the particulars of the disclosure to be recorded in the register, and if a further disclosure is made, the Authority must cause the particulars of the further disclosure to be recorded in the register.

(5) For the purpose of enabling any member of the public to ascertain the particulars of any disclosure required to be made under subsection (1), the Authority must, by such means as it considers appropriate, make available the register for inspection by the public at any reasonable time.”.

13(1) By deleting “the Broadcast Complaints Committee or any committee appointed under section 16,”.

13(2)(c) By deleting “member presiding” (wherever appearing) and substituting “majority of the other members present”.

13 By adding –

“(8) Subsections (1), (2) and (7) apply to a member of the Broadcast Complaints Committee or a committee appointed under section 16, as if any reference to the Authority in

subsections (1) and (7) were a reference to the Broadcast Complaints Committee or the committee appointed under section 16, as the case may be.”.

- 16(1) By deleting “The” and substituting “Without prejudice to the appointment of the Broadcast Complaints Committee, the”.
- 16(2) By adding “a member of the Authority who is also” after “and may appoint”.
- 17(3)
- (a) In paragraph (b), in the English text –
 - (i) by deleting “submit” and substituting “submission of”;
 - (ii) by deleting “section 16 (appoint” and substituting “16 (appointment of”.
 - (b) In paragraph (c), by deleting “13C, 13CA or 13E” and substituting “13C (grant of licence), 13CA (issue of guidelines) or 13E (renewal of licence)”.
 - (c) In paragraph (e), by deleting “10(1), 19, 21 or 24” and substituting “10(1) (appointment of Broadcast Complaints Committee), 19 (issue of Codes of Practice), 21 (inquiry by Authority) or 24 (imposition of financial penalties)”.
 - (d) In paragraph (f), by deleting “3, 4, 8, 9, 10, 11, 28, 31, 32 or 33” and substituting “3 (approval of codes of practice), 4 (publication of guidelines), 8 (to whom licence may be granted), 9 (recommendations on licence applications), 10 (grant of licence), 11 (extension or renewal of licence), 28 (licensee to pay financial penalty), 31 (suspension of licence), 32 (revocation of licence) or 33 (inquiry by Authority)”.

- 19(1) In the Chinese text, by deleting “須繳付或已繳付” and substituting “繳付或須繳付”.
- 19(2) In the Chinese text, by deleting “須繳付或已繳付” and substituting “繳付或須繳付”.
- 19(3) In the Chinese text, by deleting “須繳付或已繳付” and substituting “繳付或須繳付”.
- New By adding –
- “19A. Payment out from trading fund**
- Despite any provisions in the Trading Funds Ordinance (Cap. 430), any sums payable by the Authority as a result of anything properly done or omitted to be done by the Authority in connection with the performance or purported performance of functions conferred on the Authority are to be paid out of the trading fund.”.
- 21(2)(g) (a) By deleting “prevent” and substituting “ensure that no”.
- (b) In the English text, by deleting “the trading” and substituting “trading”.
- (c) In the English text, by deleting “from being” and substituting “may be”.
- 23(1) In the Chinese text, by adding “辦公室” after “通訊事務管理局”.
- 23(2) In section 2 of the proposed Schedule 3, in the Chinese text, by adding “辦公室” after “管理局”.

Schedule,
section 30(16)

In the Chinese text, by deleting everything after “廢除” and substituting ““電訊管理局”而代以“通訊事務管理局辦公室”。

Schedule,
section 138(3)

In the Chinese text, by deleting everything after “廢除” and substituting ““電訊管理局”而代以“通訊事務管理局辦公室”。

COMMUNICATIONS AUTHORITY BILL

COMMITTEE STAGEAmendments to be moved by Dr. the Honourable Margaret NGClauseAmendment ProposedLong titleNOT PROCEEDED
WITH

By deleting “Establish the” and substituting “Establish an independent”.

4

NEGATIVED

By adding—

“(1A) The Authority shall carry out its functions under this Ordinance without interference from the Government.”.

COMMUNICATIONS AUTHORITY BILL

COMMITTEE STAGE

Amendment to be moved by the Honourable Emily LAU Wai-hing, J.P.

Clause

Amendment Proposed

New

{NEGATIVED}

By adding –

“3A. Objects of Authority

The objects of the Authority shall be-

- (a) to promote and uphold freedom of expression and freedom of the press;
- (b) to promote the long term development and fair competition of the communications market;
- (c) to further the interests of consumers in the communications market.”.