

立法會
Legislative Council

LC Paper No. CB(2)1154/11-12

(These minutes have been
seen by the Administration)

Ref : CB2/PL/WS

Panel on Welfare Services

**Minutes of special meeting
held on Wednesday, 24 August 2011, at 9:00 am
in the Chamber of the Legislative Council Building**

Members present : Hon CHEUNG Kwok-che (Chairman)
Hon WONG Sing-chi (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, SBS, JP
Hon Ronny TONG Ka-wah, SC
Dr Hon PAN Pey-chyou
Dr Hon Samson TAM Wai-ho, JP
Hon Alan LEONG Kah-kit, SC

Members absent : Hon Frederick FUNG Kin-kee, SBS, JP
Hon Paul CHAN Mo-po, MH, JP
Dr Hon LEUNG Ka-lau
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon LEUNG Kwok-hung
Hon Albert CHAN Wai-yip

Public Officers attending : Item I

The Law Reform Commission of Hong Kong

Mr Bernard Charnwut CHAN
Chairman, Charities Sub-committee

Mrs Pamela CHAN
Member, Charities Sub-committee

Mr Godfrey LAM, SC
Member, Charities Sub-committee

Ms Kitty FUNG
Secretary, Charities Sub-committee

Ms Michelle Ainsworth
Deputy Secretary
Law Reform Commission

The Administration

Mr LAM Ka-tai
Assistant Director of Social Welfare (Subventions)
Social Welfare Department

Ms Florence WAI Ka-lai
Chief Executive Officer (Lotteries Fund)
Social Welfare Department

Mr FAN Yung-kai
Assistant Director (Operations) 2
Food and Environmental Hygiene Department

Mrs Sharon YIP LEE Hang-yee
Assistant Commissioner for Television &
Entertainment Licensing (Entertainment)
Television and Entertainment Licensing Authority

Miss Carmen HO Ka-man
Senior Licensing Officer (Miscellaneous)
Television and Entertainment Licensing Authority

**Attendance by : Item I
invitation**

Society for Community Organization

Mr HO Hei-wah
Director

Hong Kong Human Rights Commission

Mr WONG Chi-yuen
Member

Super Panda (Asia)

Mr WAN Pong-yin
Chairman

Hong Kong Human Rights Monitor

Mr CHONG Yiu-kwong
Chair

Greenpeace East Asia

Mr FUNG Ka-keung
Organisational Support and Regional Development
Director

Hong Kong Christian Institute

Mr SHUM Wai-nam
Programme Secretary

Sham Shui Po Community Association

Mr LAU Cheuk-kei
Director

Tai Hang Tung & Nam Shan Estate Residents' Committee

Ms CHOW Kit-yin
Member

The Association for the Advancement of Feminism

Miss Jodie HUI
Officer

Hong Kong Women Workers' Association

Ms WU Mei-lin
Coordinator

Hong Kong Federation of Women's Centres

Ms LIU Pui-shan
Director

Hong Kong Exit Social Service Centre

Mr Percy WONG

Family Dynamics Network

Mr Jimmy LAW

Christian City Mission Church

Mr LAU Chi-hung

Sex Culture Society

Mr Matthew MAK

Hong Kong Women Christian Council

Ms Katherine CHAN Man-yee
Executive Committee

Labour-welfare Group of Democratic Party

Mr Mark LI

Seanew Media Company Limited

Mr Peter LAW
Assistant Operations Manager

Hong Kong Unison Limited

Ms Fermi WONG Wai-fun
Executive Director

Amnesty International Hong Kong

Miss Raees Begum
Executive Committee member

The Hong Kong Council of Social Service

Mr Cliff CHOI
Business Director

The Forthright Caucus

Mr Fernando CHEUNG

iDonate

Miss Bonita WANG
Founder

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 4

Staff in attendance : Ms Yvonne YU
Senior Council Secretary (2) 4

Miss Maggie CHIU
Legislative Assistant (2) 4

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I. Consultation Paper on Charities released by The Law Reform Commission of Hong Kong

[LC Paper Nos. CB(2)2510/10-11(01) to (02), CB(2)2525/10-11, CB(2)2541/10-11(01) to (07), CB(2)2553/10-11(01) to (02), CB(2)2572/10-11(01) and CB(2)2604/10-11(01)]

At the invitation of the Chairman, Mr Bernard CHAN, Chairman of Charities Sub-committee ("the Sub-committee") briefed members on the work of the Sub-committee in the past four years in drawing up the preliminary recommendations set out in the Consultation Paper on Charities ("the consultation paper"). He stressed that the Sub-committee's preliminary recommendations were by no means representing the Government's stance on the subject. The Sub-committee would carefully consider and fully reflect all the views collected during the public consultation period when finalizing its recommendations for submission to the Law Reform Commission ("LRC"). The question of how the Government would take forward the LRC report was beyond the terms of

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reference of the Sub-committee.

2. Chairman of the Sub-committee advised that the Sub-committee had organized consultation session and attended different forums to explain and gauge views on the recommendations in the consultation paper. He was given to understand that the majority of respondents to the consultation paper considered that the direction for enhancing higher transparency for charities was generally agreeable, although the specific views were not the same. Noting that some organisations had raised several issues of mutual concern, he would like to address these concerns from the outset of the meeting.

3. On the concern about the Sub-committee's recommendations in relation to establishing a charity commission in Hong Kong, and in particular its composition and appointment mechanism, Chairman of the Sub-committee elaborated on the rationale for putting forward the proposal. He pointed out that under the existing regulatory framework for charitable fundraising activities, different measures were used to regulate the fundraising activities. Notably, charitable organisations were established under a number of different legal structures, and they were subject to different legislative requirements at the time of the organisation's formation and throughout its operations. Prior approval from the relevant authorities was required before fundraising activities could be carried out. As for some other charitable activities involving appeals to the public, they did not require a permit or licence. Chairman of the Sub-committee further said that he was fully aware of the grave concern as to whether the future charity commission was vested with over extensive powers in the governance and control of charities. The Sub-committee would endeavour to balance the views between over-regulation of charities and enhancing the transparency and public confidence in charitable fundraising activities. Chairman of the Sub-committee added that any views on improving the regulation of fundraising activities were welcome.

4. Chairman of the Sub-committee noted that concerns were also raised as to whether the advancement of human rights should be one of the heads included in the list of charitable purposes under the definition of charity. He advised that the Sub-committee had no difficulty with the proposition that the advancement of human rights could be charitable. He, however, drew the attention of members to the view that there was a need to distinguish charitable purpose from political purpose and that there was the difficulty of defining the distinction as revealed from overseas experience. Chairman of the Sub-committee stressed that the Sub-committee was open-minded on this and invited comments specifically on whether this particular category should be included in the list of charitable purposes and

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how it should be defined.

5. Regarding the views as to whether the promotion of policy advocacy should be regarded as charitable purpose, Chairman of the Sub-committee said that the Sub-committee considered that charitable purposes rather than charitable activities would be the subject matter under review. Having regard to some concerns about including the promotion of religion in the list of charitable purposes would give rise to control of religious bodies, Chairman of the Sub-committee stressed that the Sub-committee had no such intention at all. He added that the Sub-committee had discussed at length the charity legislation in eight overseas jurisdictions, and the study had not touched upon the charity legislation of the Mainland.

6. In relation to the proposal on the establishment of a charity commission in Hong Kong, Chairman of the Sub-committee advised that as the current monitoring arrangements for charities and their fundraising activities involved split responsibilities across different government departments, the Sub-committee considered that there was a need for a "one-stop shop" which served as a centralised body and took over the functions of the various government authorities responsible for monitoring charitable organisations. Lastly, Chairman of the Sub-committee reiterated that all the views and concerns on the consultation paper would be fully reflected in the Sub-committee's report to LRC.

7. At the invitation of the Chairman, 23 deputations presented views on the subject of consultation paper. The major concerns of the deputations were broadly categorized as follows -

- (a) the advancement of human rights and promotion of policy advocacy should be included in the list of charitable purposes;
- (b) the formation and appointment mechanism of the proposed charity commission should be open and transparent;
- (c) the proposed charity commission was vested with too extensive powers in the governance and control of charities; and
- (d) making appeals to the Court of First Instance against the decisions of the proposed charity commission was too costly for small charitable organizations.

A summary of the deputations' views is in the **Appendix**.

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Discussions

8. Responding to the views and concerns of the depositions, Chairman of the Sub-committee stressed that as he had stated earlier, the Sub-committee comprised seven individual members who did not represent the Administration or LRC. The Sub-committee would take into full account the views gauged during the public consultation and finalise its report for submission to LRC. Chairman of the Sub-committee said that the Sub-committee was fully aware of the public concern about the increasing on-street fundraising activities. Noting that the Inland Revenue Department ("IRD") was only responsible for the tax exemption aspects of charitable organisations, and was not responsible for registering charities, nor for monitoring their conduct, the Sub-committee believed that the introduction of a registration system would facilitate easy identification of bona fide charitable organisations.

9. As regards the establishment of the proposed charity commission, Chairman of the Sub-committee said that this would be a matter for the Government to decide on the composition and appointment of members to the future charity commission if it adopted the recommendation. The preliminary thinking was that the future charity commission would have the power to investigate alleged mismanagement and misconduct of a charitable organisation in respect of a particular charity under investigation. The Sub-committee was inviting public views on whether and under what circumstances should the future charity commission be vested with the powers to, among others, appoint additional trustees or directors of the charity.

10. As to whether the advancement of human rights should be regarded as one of the heads included in the list of charitable purposes, Chairman of the Sub-committee advised that as he had pointed out earlier, the Sub-committee had no difficulty with the proposition that the advancement of human rights could be charitable. In view of the controversy of the issue, the Sub-committee had specifically invited the public to give views on it.

11. Chairman of the Sub-committee reiterated that in the course of its deliberations, the Sub-committee had endeavoured to formulate proposals to improve the current system of regulating charitable fundraising in Hong Kong. It was conscious that any future regulatory measures should on the one hand seek to enhance the conduct of charitable activities in a more transparent and accountable manner, and not to introduce unnecessary control on the other hand. Chairman of the Sub-committee added that the consultation paper sought to elicit public response and comments on the

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Sub-committee's preliminary recommendations.

12. Mr LEE Cheuk-yan opined that the intention of the Sub-committee's study was good, but the implementation of the recommendations would be difficult when there was a lack of public confidence in the Administration. Moreover, the impact of the establishment of the proposed charity commission on charities would be similar to the enactment of a piece of legislation to implement Article 23 of the Basic Law. He was concerned that the exclusion of the promotion of human rights from the list of charitable purposes would tighten the scope of charitable activities, and the future charity commission was perceived to have super powers to take over charities as deemed necessary. All in all, to address the public concern on the proper use of the donations, the proposed regulatory regime should seek to enhance the transparency and accountability of the fundraising activities, but not introducing too much control on the operation of the charitable organisations.

13. Chairman of the Sub-committee advised that the Sub-committee fully agreed that the purpose of the regulation of charities should aim to, among others, enhance transparency and accountability to donors. Given that charitable organisations were currently established under a number of legal structures and each of these types of organisations involved different legislative requirements, the Sub-committee considered that there was a need to introduce a regulatory regime in this respect.

14. Mr WONG Sing-chi said that he and the Democratic Party did not consider it necessary to introduce a piece of charity law to regulate charitable activities. He shared the views of deputations that the proposals would stifle the development and efficient operation of charitable organisations. Specifically, the proposed regulatory regime would pose great difficulties to smaller non-governmental organisations ("NGOs") which relied heavily on donations whereas the operating expenses of larger NGOs were funded by Government subventions. Mr WONG took the view that consideration should be given to strengthening the manpower of the existing regulatory bodies to enhance the monitoring work and enhancing public education to enable donors to verify the organisations which they might wish to make donations to were in fact valid charities and not bogus operations. Mr WONG sought information from the Administration on the number of complaint cases relating to charitable fundraising activities and the number of substantiated cases.

15. Chairman of the Sub-committee said that several departments were involved in the regulation of charitable activities, and deficiencies in the regulatory framework for supervision of charities were perceived in the

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course of the deliberations of the Sub-committee. In the light of this, the Sub-committee considered that there was a need for a registration system in Hong Kong, particularly to cover charitable organisations which made charitable appeals to the public and those allowed to claim tax exemption.

16. Assistant Director of Social Welfare (Subventions) ("ADSW(S)") elaborated on the role of the Social Welfare Department ("SWD") in relation to the control of charitable fundraising activities. If a charity wished to raise funds through an activity held in a public place, such as a flag day, it had to obtain a Public Subscription Permit from SWD in accordance with section 4(17)(i) of the Summary Offences Ordinance (Cap. 228). The charitable organisations issued with Public Subscription Permits were required to submit audited reports of the fundraising activities to SWD within 90 days following the last event day approved in the permit. The audited reports should indicate the purpose of fundraising as well as the income and expenditure of the activities. For flag days as well as other general charitable fundraising activities in public places where the donations were to be spent outside Hong Kong, the audited reports should be published in at least one local Chinese language newspaper and one local English language newspaper within 90 days following the last event day approved in the permit, and copies of the newspaper cuttings should be forwarded to the Director of Social Welfare at the same time. If the donations raised from the event were less than \$50,000, the charity was not required to publish the audited reports in the newspapers, but to make public the information on the organisation's website or publication as appropriate. ADSW(S) added that SWD had reviewed from time to time the existing monitoring mechanism of charitable fundraising activities in public places. Following a review by a working group under the Lotteries Fund Advisory Committee in May 2011, SWD had since 1 August 2011 introduced additional measures to improve the monitoring and transparency of fundraising activities under its purview, including the boundary of moving around solicitation, the number of persons at each fundraising location and the provision of audited reports for public inspection.

17. ADSW(S) said that approval of the Public Subscription Permit was copied to the Police for reference, and such information was uploaded on SWD's website. There were 70 complaints in 2009 concerning charitable fundraising activities held in public places without permits, 57 in 2010, and 28 as at end of July 2011. The complaints were referred to the Police for investigation. ADSW(S) further said that two complaints were substantiated in 2008, and one in 2010. SWD attached great importance to enhancing public education on ways to become smart donors.

18. Assistant Director (Operations) 2 of the Food and Environmental

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Hygiene Department ("FEHD") said that any charitable fundraising activities which involved on-street selling of commodities would require advance application to FEHD for a temporary hawker licence under the Hawker Regulation (Cap. 132AI). In issuing temporary hawker licences for fundraising, FEHD was mainly responsible for monitoring hawking activities and environmental hygiene issues. Upon receipt of an application for a temporary hawker licence, FEHD would consult other relevant government departments. Once granted, the temporary hawker licensees were permitted to hawk at designated date, time and place as well as to sell commodities as specified in the licences. Information relating to the temporary hawker licences would be uploaded on FEHD's website. The district hawker control teams would monitor the compliance of the licensing conditions during their daily routine inspection. If issues under the purview of other departments were discovered, the hawker control teams would refer these cases to relevant departments for follow-up action. He added that FEHD did not keep separate statistic on complaints about on-street charitable selling carried out in public places without valid temporary hawker licences, and such complaints, if any, were grouped under the category of unlicensed hawking activities.

19. Assistant Commissioner for Television & Entertainment Licensing (Entertainment) said that if an organisation wished to sell lottery tickets on public streets to raise funds for charitable purpose, it had to obtain a licence and seek prior approval from the Television and Entertainment Licensing Authority ("TELA") under the Gambling Ordinance (Cap. 148). The applicant organisations could be bona fide non-profit making organisations or charitable institutions and trusts of a public character exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112) ("IRO"). In processing an application, TELA would consult relevant departments to ensure that there was not more than one fundraising event at the same location and that the event would not hinder the pedestrian flow in the vicinity. Licences would be granted with prescribed conditions, requiring lottery tickets be serially numbered and printed with the purpose of the monies raised, dates of lottery drawing and announcement of drawing result, collection of prizes, etc. The licensees were also required to each submit an audited income and expenditure statement of the lottery event to TELA within 90 days from the date of the draw of the lottery. The audited accounts should include the number of tickets sold and all the income and expenditure items, and the administrative cost for the event should be capped at 20% of the total proceeds. The auditors' reports and income and expenditure statements were kept for one year at TELA for public inspection. Upon receipt of complaints, TELA would issue warning letters to the licensees or refer the cases to the Police for follow-up as appropriate. From 2008 to July 2011, there were 12 complaints, mainly

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alleged cases of unapproved lottery activities or non-compliance with licensing conditions, and no prosecution had been instituted.

20. Noting the statistics provided by SWD and TELA, Ms LI Fung-ying considered that the numbers of complaints and prosecution were on the low side as compared with the number of charitable fundraising activities held each year. In her view, the concern about lack of co-ordinated oversight of charities could be addressed by improving the existing system and stepping up public education. Expressing concern about the powers of the future charity commission, Ms LI urged the Sub-committee to actively reconsider the need for establishing a charity commission.

21. Chairman of the Sub-committee advised that the guiding principle of the Sub-committee was that charitable activities should be conducted in future in a more transparent and accountable manner. The Sub-committee was also conscious that any future regulatory measures should be no more than was necessary to improve the system. Noting the concerns expressed by the stakeholders, Chairman of the Sub-committee advised that the Sub-committee would see how to refine its recommendations. On the future charity commission, Chairman of the Sub-committee said that the establishment of the charity commission would serve as a centralised body to monitor charitable organisations.

22. Mr Alan LEONG said that the major public concern on the consultation paper was whether the statutory regulatory regime would result in less room for public participation in civil activities and vest the regulatory body with unnecessarily extensive powers in governance and control of charities. Mr LEONG was also concerned that the operation of small charities would be impeded. Mr LEONG took the view that the public concerns could be addressed by enhancing the accountability and transparency in accessing the relevant information about the purpose of charitable activities and how the proceeds were used, such as enhancing public education on understanding donors' rights, providing accessible channel to verify information relating to such activities and increasing penalty for improper use of donations. Chairman of the Sub-committee said that the Sub-committee would take heed of the views in preparing its report.

23. Mr Ronny TONG considered that overseas experience cited in the consultation paper was not entirely applicable to the Hong Kong context. It was understandable that the advancement of human rights and promotion of political activities were not regarded as charitable activities, if such activities were regulated under a separate legislation on political parties. However, in the absence of full democracy and a regulatory regime for

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political bodies, it was not appropriate to exclude the advancement of human rights and promotion of political activities from the list of charitable objects. Should political parties be excluded from the meaning of charity, he cast doubt as to whether political parties were allowed to hold fundraising activities under the proposed regulatory regime. Having regard to the concerns about the list of charitable purposes and the composition and appointment of the proposed charity committee, Mr TONG expressed reservations about taking forward the recommendations at this juncture.

24. Chairman of the Sub-committee said that the Sub-committee considered that there was a need for a regulatory regime to be responsible for charitable activities, and that the composition of the future charity commission should be diversified but this would be a matter for the Government. In relation to the inclusion of the advancement of human rights, conflict resolution or reconciliation in the list of charitable purposes, public views were being invited on this. In the meantime, in granting tax exemption for the purpose of section 88 of IRO, IRD would assess whether the objects for which the institution/trust was formed were exclusively charitable and of a public character, and whether the activities of the institution/trust were compatible with its charitable objects.

25. Dr PAN Pey-chyou declared that he was Chairman of an organisation and Deputy Chairman of another organisation which were within the meaning of charitable organisations under section 88 of IRO. Dr PAN considered that while it was not easy to draw up an exhaustive list of charitable purposes under the definition of charity, he saw no reasons why the advancement of human rights, political participation and policy advocacy would be excluded from the list of charitable purposes. In most cases, it would be extremely difficult to distinguish political activities from charitable activities. To address the public concern over the growing number of charities operating fundraising activities and whether such activities were properly run and the donations responsibly used, the Sub-committee might consider studying ways to enhance the public's accessibility to the information relating to the purpose of the charitable activities and the use of the donations.

26. Chairman of the Sub-committee agreed that public confidence in charities was crucial to further development of charities, and that public education was part and parcel of the promotional work. The Sub-committee had taken note of views in this respect. He took the opportunity to appeal to various charitable and welfare organisations to make concerted efforts to enhance public education and public confidence in charities.

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27. Mr TAM Yiu-chung opined that a monitoring mechanism for charitable fundraising activities should be in place and the consultation paper had responded to the growing public concerns over charitable activities. He called on the Sub-committee to adopt an open mind in gauging public views on the matter, with a view to putting forward proposals to impose a reasonable degree of control to ensure that the fundraising activities were properly run and to enhance public confidence in charities.

28. The Chairman commended that the Sub-committee was open-minded in gauging public views on the consultation paper. The Chairman said that from the perspective of a social worker, the advancement of human rights and promotion of policy advocacy was the core business of many charitable organisations. If such activities were excluded from the definition of charity, it would inadvertently stifle the development of charities. The Chairman further said that the Sub-committee should spell out explicitly the composition and operation of the proposed charity commission. The Chairman added that as shown from SWD's statistics, the complaint cases about charitable fundraising activities held in public places without permits were some tens out of some 6 000 charitable organisations. The deficiencies in the existing monitoring mechanism could be addressed simply by stepping up the collaboration among departments involved in monitoring charitable organisations and fundraising activities. However, the Administration had yet to demonstrate its commitment in plugging the loopholes in the monitoring mechanism. For instance, after those charitable organisations issued with Public Subscription Permits had submitted audited reports for the fundraising activities to SWD within 90 days following the last event day approved in the permit, no follow-up action was taken as to whether the proceeds had been used according to the designated purposes. To enhance public confidence in making donations, consideration could be given to making public a list of black sheep organisations.

29. ADSW(S) said that as pointed out earlier, SWD had since 1 August 2011 introduced new measures to enhance the monitoring and transparency of charitable fundraising activities under its purview. For example, the public could check from the audited reports of the fundraising activities about their purpose as well as the income and expenditure of the activities.

30. Responding to the Chairman on the work plan of the Sub-committee Chairman of the Sub-committee said that the Sub-committee planned to finalize its recommendations for the consideration of LRC by end 2011/early 2012. Ms Pamela CHAN, member of the Sub-committee

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added that LRC would deliberate on the Sub-committee's recommendations, and then release a report on the subject for public reference.

31. At the invitation of the Chairman, three deputations made supplementary views as below -

- (a) Ms Fermi WONG of Hong Kong Unison Limited was concerned that under the proposed definition of charity, individual organisations such as Hong Kong Unison Limited would not be regarded as charitable organisation as it mainly engaged in the advancement of human rights and policy advocacy;
- (b) Mr FUNG Ka-keung of Greenpeace East Asia stressed that policy advocacy was the major work of small charitable organisations. Therefore, policy advocacy relating to environment protection and human rights should be regarded as charitable purposes; and
- (c) Mr CHONG Yiu-kwong of Hong Kong Human Rights Monitor was concerned that the meaning of "public benefits" referred to in paragraph 5.65 of the consultation paper was difficult to understand. The Sub-committee should consider extending the consultation period and explain clearly to the public and stakeholders the recommendations in the consultation paper. Expressing concern that the proposed charity commission would closely monitor the operation of charitable organizations, he sought more information on the comparison of the proposed definition of charity in the consultation paper and that adopted in the case law.

32. Responding to the concerns raised by Hong Kong Human Rights Monitor, Mr Godfrey LAM, member of the Sub-committee clarified that paragraphs 5.62 to 5.65 of the consultation paper were citations of the relevant provisions in the Charities and Trustee Investment (Scotland) Act 2005 on the charity test. In relation to the specific heads included in the list of charitable purposes, Mr LAM advised that the first three heads, which broadly corresponded to the first three heads of Lord Macnaghten's four categories of charitable purposes, were the consideration factors being taken into account by IRD in determining whether an organisation was established for charitable purposes. Having regard to the proposal of a more elaborate list of heads of charitable purposes, the Sub-committee had regard to the other consideration factor taken into account by IRD, i.e. any other purpose that was of benefit to the community and the relevant case

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law, and drew up a more elaborate list of charitable purposes.

33. Chairman of the Sub-committee said that the Sub-committee was fully aware of the concerns about the powers of the proposed charity commission relating to enforcement and remedies. It was against this background that the Sub-committee recommended that any person aggrieved with the decisions of the future charity commission could appeal to the Court of First Instance. During the consultation, the Sub-committee noted that some respondents had raised the concern about the financial implications of the appeal channel. This apart, the Sub-committee also noted the concerns on the need for establishing the proposed charity commission for enforcing and monitoring the regulatory regime. Chairman of the Sub-committee assured members that the Sub-committee would take into account all the views elicited during the consultation period in finalizing its recommendations to LRC. It would actively consider extending the consultation period, if so requested.

II. Any other business

34. There being no other business, the meeting ended at 12:30 pm.

Council Business Division 2
Legislative Council Secretariat
22 February 2012

Panel on Welfare Services

Special meeting on Wednesday, 24 August 2011

Consultation Paper on Charities released by The Law Reform Commission of Hong Kong

Summary of views and concerns expressed by deputations

No.	Name of deputation	Major views and concerns
1.	Society for Community Organization [LC Paper No. CB(2)2541/10-11(01)]	<ul style="list-style-type: none"> ● the consultation paper released by the Charities Sub-committee ("the Sub-committee") of the Law Reform Commission had yet to deal with the problems of inadequate monitoring of increasing on-street fundraising activities ● the scope and extent of monitoring and control of charitable organisations should not infringe their daily operation ● instead of drawing reference from overseas jurisdictions with full democratic political structure, the consultation paper had not taken into consideration the socio-political situation of Hong Kong, i.e. there remained a lot of work for non-governmental organisations ("NGOs") relating to the promotion of political development ● the proposal to establish a charity commission and to vest it with the powers to investigate any mismanagement and misconduct by charitable organisations, and to de-register a charity would stifle the development and operation of NGOs, especially small ones
2.	Hong Kong Human Rights Commission	<ul style="list-style-type: none"> ● the advancement of human rights, conflict resolution or reconciliation the scope of charitable activities should be included in the definition of what constituted charitable purposes, given that such activities were important to the development of the community. Policy advocacy and political activities to protect human rights should also be recognized as charitable purposes ● opposed to drawing up an exhaustive list of charitable purposes, as this would narrow the scope of the definition of charity

No.	Name of deputation	Major views and concerns
		<ul style="list-style-type: none"> ● instead of introducing a new charity legislation, the Administration should consider amending the Inland Revenue Ordinance (Cap. 112) with a view to spelling out explicitly the statutory definition of charitable organisations and extending the meaning to cover the charitable purposes set out in the consultation paper
3.	Super Panda (Asia)	<ul style="list-style-type: none"> ● raised no objection to the need for stepping up monitoring of charitable organizations ● the consultation paper failed to address the problem of limited control of on-street fundraising activities by unidentified charities which did not require prior approval. Such unregulated activities had stifled the development of bona fide but small charitable organisations and their ability in fund raising ● it was concerned that the proposed charity commission would control the operation of charities since it was vested with the powers to refuse registration of charities. It was more appropriate for the Inland Revenue Department ("IRD") to be responsible for the vetting applications in relation to fundraising activities
4.	Hong Kong Human Rights Monitor [LC Paper No. CB(2)2541/10-11(02)]	<ul style="list-style-type: none"> ● given that the heads of charitable purposes (except the advancement of animal welfare) were by and large related to human rights issues, therefore the advancement of human rights should also be regarded as a charitable purpose ● the proposal of not including the advancement of human rights in the list of charitable purposes was premised on a misconception of political purpose and political activities. Activities held by charities relating to human rights issues should be regarded as charitable activities ● the proposed regulatory regime was modelled on outdated overseas charities legislation. The review by the Sub-committee should aim at enhancing charitable purposes and social development
5.	Greenpeace East Asia [LC Paper No. CB(2)2541/10-11(03)]	<ul style="list-style-type: none"> ● concerned that carrying out campaigning activities on environmental protection and political activities by NGOs were not regarded as charitable purposes. This was retrogressive and would stifle the work of NGOs in undertaking policy advocacy ● the advancement of human rights and policy advocacy should be regarded as charitable

No.	Name of deputation	Major views and concerns
		purposes
6.	Hong Kong Christian Institute [LC Paper No. CB(2)2553/10-11(01)]	<ul style="list-style-type: none"> ● the advancement of human rights and promotion of policy advocacy should be regarded as charity purposes ● concerned that the proposed charity commission was vested with super powers to investigate and control welfare organisations. The intent was similar to the legislative proposal to implement Article 23 of the Basic Law. It urged the Sub-committee to shelve the proposal
7.	Sham Shui Po Community Association	<ul style="list-style-type: none"> ● concerned about the proposed charity commission was vested with too much powers. In the absence of details of the appointment and operation of the proposed charity commission, the Association could not express support for the setting up of a charity commission ● it was irony to include the advancement of animal welfare, but not advancement of human rights in the list of charitable purposes ● the statutory definition of charitable purposes was too vague and unclear ● according to the code of practice for registered social workers, they should perform duties including the advancement of human rights and policy advocacy, the exclusion of such in the definition of charity would have great impact on professional work practice of social workers
8.	Tai Hang Tung & Nam Shan Estate Residents' Committee	<ul style="list-style-type: none"> ● concerned that the activities on policy advocacy carried out by many small organisations would be regarded as political activities ● although any person aggrieved by the decision of the future charity commission could lodge an appeal to the Court of First Instance, this was unfair to small NGOs as it was beyond their financial capability to do so. The operation of the proposed charity commission should be transparent ● the reporting requirements under the new regulatory regime would create additional workload and increase administrative cost of charities. The proposals set out in the consultation paper was too harsh to those properly run charitable bodies

No.	Name of deputation	Major views and concerns
9.	The Association for the Advancement of Feminism [LC Paper No. CB(2)2541/10-11(04)]	<ul style="list-style-type: none"> ● instead of introducing a new regulatory regime, the existing laws and regulations relating to fundraising activities should be improved to tackle the concern over whether such activities were properly run. It appealed to the Sub-committee to conduct a study on the severity of the existing situation and publish the findings for public discussion ● expressed concern about the appointment and accountability of the proposed charity commission and the powers of the charity commission to investigate into any so-called misconduct or maladministration by charitable organisations or their officers ● NGOs could not afford making appeal to the Court of First Instance if they were aggrieved by the decisions of the future charity commission ● it urged the Sub-committee to withdraw the proposal of establishing a charity commission ● the implementation of UN human rights conventions was one of the major objectives of many chartable organizations, therefore the advancement of human rights should be included in the list of charitable purposes
10.	Hong Kong Women Workers' Association [LC Paper No. CB(2)2541/10-11(05)]	<ul style="list-style-type: none"> ● the objectives of the review by the Sub-committee aimed to develop greater accountability and transparency in order to build public trust and confidence. This could be achieved by stepping up public education on donor's rights, fundraising practices and financial accountability of charitable organisations ● the existing assessment and approval of charitable status by IRD was considered effective. It was unnecessary to set up a charity commission ● the exclusion of the advancement of human rights and policy advocacy from the statutory list of charitable purposes would mean that some NGOs were no longer charitable bodies. In view of the far-reaching impact on NGOs, the Sub-committee should withdraw the recommendations set out in the consultation paper
11.	Hong Kong Federation of Women's Centres	<ul style="list-style-type: none"> ● instead of introducing a new regulatory regime, the Administration should consider ways to improve the existing regulatory framework for charities

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		<ul style="list-style-type: none"> ● concerned about the composition and appointment mechanism for the proposed charity commission. As the future charity commission was empowered to investigate alleged mismanagement and misconduct of a charitable organisation, the circumstances under which the future charity commission would exercise such powers should be spelt out clearly ● the independence and autonomy of NGOs should be respected ● the advancement of human rights and policy advocacy should be included in the statutory list of charitable purposes
12.	Hong Kong Exit Social Service Centre	<ul style="list-style-type: none"> ● considered that the growing public concern over how charities should be regulated was an excuse for putting forward the proposals to control charities and their activities ● registered social workers were obliged to promoting human rights, therefore the advancement of human rights and promotion of policy advocacy should be included in the list of charitable purposes ● opposed to the proposal to introduce a new regulatory regime for charities, therefore the consultation paper should be withdrawn
13.	Family Dynamics Network	<ul style="list-style-type: none"> ● the proposed statutory definition of what constituted charitable purposes would kill some charities particularly small ones engaged in activities not being included in the list of charitable purposes, such as promotion of family harmony ● the effect of establishing the proposed charity commission on charities would be similar to the enactment of the legislation to implement Article 23 of the Basic Law ● operational details of the new regulatory regime should be made known to the public as early as practicable
14.	Christian City Mission Church [LC Paper No. CB(2)2541/10-11(06)]	<ul style="list-style-type: none"> ● strongly opposed to the establishment of a charity commission. Given the diversity of types of charities, the future charity commission would incur enormous public money to monitor and control the charities. Too much and unnecessary control would stifle the proliferation of charities and their service development

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		<ul style="list-style-type: none"> strongly opposed to not including the advancement of human rights, conflict resolution and reconciliation in the statutory list of charitable purposes
15.	Sex Culture Society	<ul style="list-style-type: none"> the spirit of the consultation paper was on the right track, but it was concerned that the proposed charity commission was having too extensive powers and that its formation and appointment of members lacked of transparency the statutory list of charitable purposes should include the advancement of human rights, conflict resolution and reconciliation requirement on public accountability of incorporated charities was already in practice. To further enhance the transparency, the charitable organisations could be required to make public their annual reports, say, on their respective website, such that the public could make an informed decision of making donations
16.	Hong Kong Women Christian Council	<ul style="list-style-type: none"> IRD had issued a warning to the Hong Kong Women Christian Council in 2002 notifying that it might not be regarded as a charitable organisation for participating in political activities. The exclusion of advancement of human rights, conflict resolution and reconciliation from the statutory definition of charitable purposes would impede the development of human rights organisations. The Government should uphold the advancement of human rights as it was one of the signatories to UN human rights conventions the consultation paper had not provided concrete solutions to the deficiencies in the existing framework for monitoring charities. It was on the wrong track to impose more control on charities and charitable activities
17.	Labour-welfare Group of Democratic Party [LC Paper No. CB(2)2553/10-11(02)]	<ul style="list-style-type: none"> more clear and precise definition of charity would be required. For instance, under the proposed definition of charity, it was uncertain as to whether activities of the Jockey Club other than horse racing would be within the meaning of charitable purposes highlighted that the formation of a charity was currently subject to various statutory registration requirements which were considered sufficient to monitor their operations

No.	Name of deputation	Major views and concerns
		<ul style="list-style-type: none"> the concept of charitable activities adopted in the consultation paper was too narrow and outdated, which would stifle the development of self-help organisations and community organisations as their activities and services were not included in the list of charitable purposes
18.	Seanew Media Company Limited	<ul style="list-style-type: none"> an exhaustive list of what constituted charitable purposes should be provided in the legislation to regulate charities the consultation paper did not provide sufficient details of its recommendations for public discussion, in particular the operation and composition of the proposed charity commission
19.	Hong Kong Unison Limited [LC Paper No. CB(2)2604/10-11(01)]	<ul style="list-style-type: none"> the advancement of human rights should be included in the statutory list of charitable purposes. Otherwise, non-subsidised NGOs would refrain from engaging in human rights and political activities in order to maintain the status of charities registered social workers were obliged to undertake activities relating to promotion of human rights in accordance with their code of practice. The proposal of not including the advancement of human rights in the definition of charitable purposes would be in conflict with the core values of social workers public education should be stepped up to enhance public understanding on charities the proposal of establishing a charity commission should be shelved because it was vested with too much powers to investigate into charitable organizations with regard to their charitable objects
20.	Amnesty International Hong Kong [LC Paper No. CB(2)2541/10-11(07)]	<ul style="list-style-type: none"> community organisations played an important role in providing an avenue for the general public to sound out their views and concerns to the Government, and thereby assisting the Government's work in honouring its commitments in implementing UN conventions on human rights. The advancement of human rights should be included in the statutory list of charitable purposes consideration should be given to improving the existing regulatory framework for charitable organisations and enhancing public education on making an informed decision of donations

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21.	The Hong Kong Council of Social Service	<ul style="list-style-type: none"> • a proper balance should be struck between enhancing transparency and accountability of charities and their independency in operation • civil organisations which undertook policy advocacy and human rights activities should be recognised as charities • the regulatory regime for charities should be simple and acceptable by the public, and allow room for individual charities to formulate their own work plans • consideration should be given to enhancing transparency of charities by disclosure of relevant information to facilitate public understanding and monitoring of the charities • the Administration should enhance the existing monitoring mechanism and collaboration among different authorities to enhance the conduct of and public confidence in charitable activities
22.	iDonate	<ul style="list-style-type: none"> • the new regulatory regime should aim at enhancing transparency of charities, without the need to incur extra public money and additional administration cost of individual charities • proposed to require charities recognised by IRD to make public their financial accounts for inspection so as to enhance the transparency of charities, and to consider introducing a standardised format for the disclosure of such information • as shown from the UK experience, the administration cost for a charity commission was very high. It was unnecessary to set up the proposed charity commission • the advancement of human rights and policy advocacy should be included in the list of charitable purposes
23.	The Forthright Caucus	<ul style="list-style-type: none"> • agreed with the need to review the existing fragmented mechanism for approving charitable fundraising activities and monitoring the use of donations • the advancement of human rights, policy advocacy and political activities and related activities should be included in the list of charitable purposes, as undertaking such activities were stipulated in the code of practice for professional social workers

No.	Name of deputation	Major views and concerns
		<ul style="list-style-type: none"> opposed to the proposal of establishing a charity commission as it was vested with unnecessarily extensive powers. Consideration could be given to enhancing the transparency of charitable organisations in operation and how they used the donations, and the enforceability of section 88 of IRO in granting tax exemption status to charitable organisations

Council Business Division 2
Legislative Council Secretariat
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