

# 立法會

## *Legislative Council*

LC Paper No. CB(2)2531/11-12

Ref. : CB2/PL/CA

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

#### **Purpose**

This report gives an account of the work of the Panel on Constitutional Affairs during the 2011-2012 Legislative Council ("LegCo") session. It will be tabled at the Council meeting of 11 July 2012 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

#### **The Panel**

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

3. The Panel comprises 34 members, with Hon TAM Yiu-chung and Hon Mrs Sophie LEUNG LAU Yau-fun elected as Chairman and Deputy Chairman respectively. The membership of the Panel is in **Appendix II**.

#### **Major work**

##### Constitutional development

4. The Chief Executive Election (Amendment) Ordinance 2011 and the Legislative Council (Amendment) Ordinance 2011 were passed by LegCo on 3 March and 5 March 2011 respectively which set out the electoral arrangements for selecting the Chief Executive ("CE") and for forming LegCo in 2012. The CE Election (Amendment) Ordinance 2011 has increased the

number of members of the Election Committee from 800 to 1 200 and specified that a candidate shall only be elected as CE if the candidate obtains more than 600 valid votes under an election with one candidate only and a contested election respectively. The LegCo (Amendment) Ordinance 2011 has provided for the establishment of the District Council ("DC") (second) Functional Constituency ("FC") under which five seats will be returned from the whole HKSAR as a single constituency in accordance with the proportional representation list system and on the basis of one-person-one-vote by all registered geographical constituency ("GC") electors other than those entitled and opted to vote in the other FCs.

5. The Panel was briefed on the major changes to the Proposed Guidelines on Election-related Activities in respect of the CE Election issued by the Electoral Affairs Commission ("EAC") in October 2011. According to the relevant EAC Guidelines, the term "candidate" relating to election expenses included a person who had publicly declared an intention to stand for election at any time before the close of nominations for the election, regardless of whether he had submitted his nomination form. Some members noted with concern that some "potential candidates" as reported by the media had deferred the declaration of their candidacies so that the relevant expenses incurred in the conduct of their electioneering activities would not be counted as election expenses. They were also dissatisfied that the Registration and Electoral Office ("REO") was unable to tell unequivocally whether the conduct of these "potential candidates" could be regarded as public declaration of an intention to stand for election and whether the expenses incurred in the conduct of relevant activities should be counted towards election expenses and subject to requirements relating to declaration and lodgment of election return. REO advised that section 2(1) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO") had stipulated that "election expenses" meant expenses incurred or to be incurred, before, during or after an election, by a candidate. The term "candidate" in relation to election expenses was clearly defined in law. Any expenditure incurred for such election purpose should be regarded as election expenses. Candidates who intended to run for the CE Election should abide by the relevant electoral legislation as any breach of the requirements might involve legal liabilities.

6. The Panel also discussed the practical electoral arrangements for the 2012 CE Election before it was held on 25 March 2012 including the detailed arrangement to inform electors of the need to conduct a second round of voting on the polling day, and to handle the display of questionable ballot papers.

7. The 2012 LegCo election would be held on 9 September 2012. The Panel was consulted on the practical arrangements for the conduct of the

election and the Proposed Guidelines on Election-related Activities in respect of the LegCo Election issued by EAC in April 2012. The electoral arrangements relating to the new DC (second) FC were the primary concern of members.

8. Given the substantial increase in the number of votes to be cast, members in general expressed concern about the polling and vote counting arrangements to return the five DC (second) FC seats. They stressed that measures should be introduced to expedite the counting process and polling staff should be adequately trained on the relevant procedures. Members also urged the Administration to step up the relevant publicity work so that the public would have a better understanding of the arrangements relating to the DC (second) FC, and to map out its contingency plan carefully. REO assured members that staff training would be enhanced and undertook to look into areas to expedite the counting process. The counting of votes for all FCs including the DC (second) FC would be conducted centrally at the Central Counting Station which would be set up at the Asia World-Expo in Chek Lap Kok. Some members expressed dissatisfaction about the remote location of and the insufficient seating capacity at the Central Counting Station. They urged REO to introduce measures to address the problems.

9. Noting that not all polling stations were barrier-free access venues, some members suggested that the Administration should take early action to identify alternative venues to ensure that all venues were accessible to persons with disabilities ("PWDs"). The Administration explained that an elector with disability finding it difficult for him to access the polling station could apply to REO for re-allocation to a special polling station accessible to such electors. If circumstances permitted, REO would arrange with the Society for Rehabilitation to provide Rehabus service for these electors. Its aim was to achieve that at least 90% of the venues were barrier-free and it would try to identify alternative locations as far as practicable.

10. The Panel was also briefed on the voter turnout publicity campaign for the 2012 LegCo Election. In response to members' suggestions to put emphasis on enhancing publicity for the DC (second) FC and prompting electors to update their registered particulars with REO, the Administration agreed to consider including the relevant messages in the TV and radio announcements of public interest to be produced.

#### Arrangements for filling vacancies in LegCo

11. The Administration introduced the LegCo (Amendment) Bill 2011 in June 2011 to provide for a replacement arrangement for filling any vacancy in the membership of LegCo arising during the term of office of LegCo in any GC

or DC (second) FC. Members of the bills committee formed to study the Bill and the public expressed diverse views on the proposed replacement arrangement. Some members of the bills committee requested the Administration to consider their views on ways to improve the legislative proposals and to conduct a public consultation exercise to listen further to the views of the public on the arrangements for filling vacancies in LegCo. The Administration had subsequently conducted a two-month public consultation exercise on the relevant arrangements and withdrawn the Bill.

12. The Administration briefed the Panel on the consultation results and its latest proposal before introducing a new bill to implement the proposal. Under the latest proposal, a resigned Member would be prohibited from standing in any by-election in the same LegCo term within six months of his resignation. Some members supported the latest proposal which, they considered, had struck a right balance between the need to prevent possible abuse of the existing by-election system and the need to protect the right of the Hong Kong people to vote. These members were of the view that the latest proposal should be able to answer the strong call from the community to plug the loophole whereby Members could resign at will in order to trigger a by-election in which they intended to stand and sought to be re-elected. They considered that the proposed arrangement was simple and reasonable, as it only sought to prohibit resigning Members from standing in any by-election within six months of their resignation and would not apply to mid-term vacancies arising from death, serious illness and other involuntary circumstances. These members, however, stressed that the Administration should provide more details of the legal advice about the constitutionality of the latest proposal.

13. Some other members, however, expressed objection to the Administration's latest proposal and concern about its constitutionality. They considered that the proposal was susceptible to legal challenge because apart from the right to stand for election, it would still compromise a person's right to vote if the Member who resigned could not stand again in the by-election but that Member was his choice. Furthermore, the proposal could not address the alleged mischief because other members of the same political party of the resigning Members or people who shared their political views could still stand in a by-election. Public expenditure would still need to be incurred for the holding of the by-election. These members were of the view that there was nothing inappropriate for Members to be able to resign in order to trigger a by-election in which they sought to stand, and the electorate should be allowed to express their support or otherwise for such an action by exercising the right to vote in the by-election. The existing arrangement for filling a vacancy in LegCo through a by-election should therefore be retained.

14. According to the Administration, in examining the constitutionality of the latest proposal, BL26, which stipulated that permanent residents of HKSAR had the right to vote and the right to stand for election in accordance with law, had to be read in conjunction with BL68 and Annex II to BL, which provided LegCo with a broad discretion in determining the contents of legislation which governed the specific method for forming LegCo. Restrictions could be imposed on the right so long as they were proportionate to a legitimate aim. Having regard to the above, the Department of Justice had come to the conclusion that the latest proposal was constitutional. The latest proposal was a compromise among the different views expressed during the public consultation exercise and concerns about the need to preserve the right to vote. Although the latest proposal would not entirely prevent a Member from resignation to trigger by-election, it could have considerable effect in preventing a Member from doing so as he would consider the consequences of the act.

#### Issues relating to District Council

15. In his speech delivered at the luncheon for the Chairmen and Vice-Chairmen of DCs on 14 September 2011, the former Secretary for Constitutional and Mainland Affairs advised that the Administration considered that the DC appointment system could be abolished in phases by going through a transitional period. The Administration intended to reduce by one-third of the number of members to be appointed in the fourth term DCs in 2012, i.e. appointing only 68 members instead of 102. After the DC election in November 2011, the Administration would embark on further public discussions as to how the issue should be dealt with, including the duration of the transitional period, how the relevant legal provisions should be dealt with, etc.

16. The Panel discussed the Consultation Paper on the DC Appointment System at its meeting on 20 February 2012 which was published by the Administration on the same day. The Panel also received views from the public on the Consultation Paper at another meeting. Some members were of the view that the appointed membership of DCs should be abolished long time ago because the restoration of these appointed seats in the former District Boards on 1 July 1997, which had been abolished in 1994, was a retrograde step in democratic development. They also queried why the public was not consulted when the appointed DC seats were restored on 1 July 1997 but now that their views were sought solely on the remaining 68 seats. Some members suggested that the ex-officio DC membership should also be abolished in one go, as it would be ridiculous to see that on one hand the CE would be returned by universal suffrage in 2017 but on the other hand, DC appointed seats were still retained and appointed by CE.

17. While expressing support to the abolition of 68 appointed seats over one term or two terms, some members held the view that over the years appointed members had made significant contributions; and that the Administration should consider increasing the number of elected seats to cater for the workload previously handled by the appointed DC members. The Panel noted the Consultation Report on DC Appointment System which was issued on 26 June 2012 which recommended that the fourth-term Government should consider abolishing the remaining 68 appointed seats over one term.

18. The Panel was briefed on the major findings and recommendations in the EAC Report on the 2011 DC Election which was held on 6 November 2011. Members noted that the Administration considered the findings and recommendations of the Report acceptable and undertook to work with EAC to pursue follow-up actions.

#### Regulation of election advertisements

19. The practical difficulties in complying with the statutory declaration requirements for candidates to submit election advertisements ("EAs") to REO have all along been a concern to Members. During the last legislative session, the Panel had on various occasions stressed the need to relax the regulation of EAs.

20. When the Administration briefed the Panel on its proposed amendments to relax the regulatory regime of EAs, members in general welcomed the proposals so as to facilitate candidates to conduct electioneering activities. However, some members expressed concern about the practical difficulties for a candidate to comply with the proposed requirement to maintain his election website for a 12-month period after publication of the election results and also considered the proposed penalty for failing to meet the requirement too severe.

21. Members noted the Administration's proposal to amend the existing requirements such that (a) a candidate or a person was not required to obtain prior written consent from those who provided support in EAs published by him if such support was provided by the supporters themselves out of their own volition; and (b) if a candidate or a person published or continued to publish the EAs with the support mentioned in (a) above without any modification of the contents or description of the support, the candidate or the person was not required to obtain prior written consent from those who provided support in such EAs. Otherwise, the candidate or the person had to follow the existing requirement to obtain prior written consent before publishing such EAs. Some members expressed concern that as it might not be possible to ascertain the real identity of a person who had indicated support, there would be practical difficulties for the candidate to obtain prior written consent from persons

indicating support to a candidate on social networking and communication websites on the Internet given the spontaneous support received. The Panel suggested to the Administration that it should take into account public views in formulating the legislative proposal. In response, the Administration published its Consultation Paper on Review of Regulation on EAs for public consultation. The Electoral Legislation (Miscellaneous Amendments) Bill 2012 which sought to, among others, introduce amendments to the regulatory regime of EAs was introduced into LegCo on 8 February 2012. The Bill proposed to allow candidates to post their EAs onto a central portal maintained by REO within one working day after the publication of EAs and was passed on 9 May 2012.

### Voter registration

22. Following widespread media coverage on a large number of undelivered poll cards and some suspected vote-rigging cases in the 2011 DC Election, the Panel requested the Administration to review the voter registration ("VR") system in order to ensure the accuracy of the voter registers and to protect the integrity of an election. The Panel stressed that every effort should be made to restore public confidence in the electoral system before the LegCo Election in September 2012.

23. In response to the strong call from the Panel, the Administration conducted a review of the existing VR system and REO implemented a number of improvement measures to the system starting from January 2012. These measures included: (a) enhanced checking performed by REO; (b) enhanced publicity measures; (c) additional checks on lists of demolished buildings and buildings to be demolished; and (d) enhanced cross-matching with other government departments on the residential addresses of electors. The Administration also consulted the Panel on other proposed measures to improve the system. Members in general stressed the need for a comprehensive public consultation exercise on the proposed measures. The Administration subsequently issued the Consultation Paper on Improvement Measures of the VR System. The Panel held a special meeting to receive views from the public on the Consultation Paper.

24. Members in general expressed dissatisfaction with the inadequacies of the existing VR system. They were disappointed at the work of REO which, they considered, had failed to perform its functions conferred by laws to ensure accuracy and integrity of the voter registers. They also urged that any suspected cases of vote-rigging should be seriously handled by the law enforcement agencies in accordance with the law and additional resources should be provided for implementing remedial measures to verify the accuracy of the voter registers as soon as possible.

25. Members stressed that voting in an election was a fundamental right guaranteed under BL. They cautioned that the Administration should not go from one extreme of turning a blind eye to the loopholes of the VR system to another extreme of introducing excessive stringent measures to tighten up the system. Any new measure should not cause inconvenience to eligible electors or undermine the desire of the public to apply for VR. Members in general supported the proposal for setting out the electors in accordance with principal residential addresses in the voter registers for public inspection in order to facilitate the public to identify irregularities in respect of residential addresses. Members, however, had reservations about the proposal for introducing a requirement that address proof should be provided as standard supporting evidence at the same time when a person applied for registration as a GC elector or when a registered elector applied for change of his residential address ("the proposed requirement for address proof") and the proposal for introducing penalty for registered electors who failed to report change of addresses or who failed to report such change before the statutory deadline for reporting change of registered particulars and vote in an election afterwards ("the proposed penalty concerning update of address").

26. The Administration briefed the Panel on the outcome of the public consultation exercise. In light of the views received, the Administration decided not to pursue some of the proposed measures including the proposed requirement for address proof and the proposed penalty concerning update of address. The Administration undertook to step up efforts in ensuring the accuracy of the voter registers by increasing the extent of random checks including using a more targeted approach.

27. The Panel was briefed on the main features of the 2012 VR Campaign. Members noted that in the light of public concern about the accuracy of the voter registers, the Administration would strengthen the message on the importance for new registration to provide true and correct information and for registered electors to update their residential addresses. At members' suggestion, the Administration undertook to use more user-friendly terms when promoting VR and when explaining relevant registration arrangements to the general public.

#### Declaration of interests and avoidance of potential conflict of interest by CE

28. Following wide media reports in February 2012 on CE travelling on private jets and yachts of his friends, renting a residence in Shenzhen for use after leaving office and accepting hospitality offered by his friends, there was grave concern in the community on the probity of the CE's conduct. The Independent Review Committee for the Prevention and Handling of Potential

Conflicts of Interests ("the Independent Review Committee") was set up on 26 February 2012 to review the present regulatory system for the prevention and handling of potential conflict of interests concerning CE, Members of the Executive Council ("ExCo"), and officials under the Political Appointment System ("PAS"), including the arrangements for declaration of interests and investments, acceptance of advantages and entertainment, and post-office outside work.

29. At its meeting in April 2012, the Panel discussed issues relating to declaration of interests and avoidance of potential conflict of interests by CE. Members generally recognized the need to strengthen or enhance the current regulatory system for CE and stressed that a clean government was a core value of Hong Kong. They expressed deep regret that the CE's conduct had eroded public confidence in the government, the rule of law and civil service morale. Some members were strongly of the view that section 3 and section 8 of the Prevention of Bribery Ordinance (Cap. 201) ("POBO") which were applicable to public servants should also apply to the office of the CE. They considered that all public office holders should be governed by the same set of standards as rigorous as those applied under the Civil Service Code. Relevant views and suggestions of members were conveyed to the Independent Review Committee.

30. The Independent Review Committee announced the results of its review and its 36 recommendations on 31 May 2012. At its special meeting on 4 June 2012, the Panel followed up with the Administration on its plan to take forward these recommendations. The Administration was requested to revert to the Panel on its implementation plan in the short, medium and long terms, and the relevant legislative timetable to implement the Independent Review Committee's recommendations to apply the regulatory regime of section 3 and section 8 of POBO to the office of CE.

#### Establishment of Chief Executive-elect's Office

31. The Panel was briefed on the proposed establishment of the Office of the Chief Executive-elect ("CE-elect") for the fourth-term Government. According to the Administration, the proposed CE-elect's Office would provide support to the CE-elect in undertaking various tasks so as to ensure a smooth transition. Members in general expressed support for the setting up of the proposed CE-elect's Office to undertake preparatory work for the transition, but issues about the transitional arrangements between the incumbent CE and the CE-elect, the working relationship between the two Offices and regulation over the conduct of those non-civil service appointees of the CE-elect's Office under special appointments were raised. Some members were particularly concerned that a newly appointed Principal Official ("PO") would have to deal with

legislative proposals that fell within his policy portfolio if the scrutiny work of LegCo straddled beyond 1 July 2012, and public money might be wasted in case of an abrupt change of policy due to the polarized views held by the incumbent CE and the CE-elect. They also considered that the non-civil service appointees of the CE-elect's Office should abide by the Civil Service Code which set out the core values and standards of conduct of civil servants.

32. According to the Administration, the current term Government would strive to implement its policies as it had pledged according to the time-table within the remainder of its term. The scrutiny work of legislative proposals would not be affected by the change of CE and his POs. Moreover, POs were underpinned by civil servants with extensive experience and newly appointed POs would have the knowledge to explain policies under their policy portfolios to LegCo. The incumbent Government would continue to implement its policies until 30 June 2012. The CE-elect's Office would play a pivotal role in providing continuity in policy and would ensure a smooth transition arising from the changeover.

33. As regards the working relationship between the CE-elect's Office and the incumbent CE's Office, the Administration advised that if the CE-elect considered it appropriate, the post-holders of Secretary-general of the CE-elect's Office and Private Secretary to the CE-elect would continue their service in the CE's Office as from 1 July 2012 to maintain consistency, given their roles in co-ordinating transitional affairs and preparatory work in formulating the policy plan of the new term of government. The CE's Office would be the counterpart of the CE-elect's Office serving as the liaison point between the CE-elect's Office and the current Government. The Administration also advised that non-civil service appointees under special appointments had to be governed by statutory and common law rules of confidentiality and the code of conduct governing their civil service counterparts.

#### Proposed re-organization of the Government Secretariat

34. On 4 May 2012, ExCo endorsed the re-organisation proposals put forth by the CE-elect to restructure the Government Secretariat with effect from 1 July 2012. The Panel discussed the re-organisation proposals and the related staffing and financial proposals at its meetings on 9, 15 and 21 May 2012 with the Administration and the Head of the CE-elect's Office ("H/CEEO"). The Panel also received views from a total of 226 organizations/individuals at its two special meetings on 19 and 26 May 2012 on the re-organisation proposals and related issues.

35. Some members expressed concern about the tight timetable proposed by the Administration and queried the need for the proposed re-organisation to be implemented on 1 July 2012. They considered that the Administration should have conducted a comprehensive public consultation exercise on the proposed re-organisation before its submission to LegCo for approval. Some members pointed out that the outcome of the last two exercises of the re-organisation of the Government Secretariat had fallen short of public expectation. They queried whether the proposed re-organisation would bring about material improvements to important livelihood and economic issues, and the delivery of public services. These members asked whether specific performance targets would be set if the proposed re-organisation was implemented on 1 July 2012.

36. Some other members expressed support for the proposed re-organisation in order to facilitate the CE-elect to implement the priority policy initiatives pledged during the CE election with the ultimate aim of enhancing the effectiveness of governance and social harmony. They generally recognised the need for a comprehensive government structure as envisioned by the CE-elect to facilitate the implementation of his policies to address the livelihood concerns in a timely and effective manner.

37. According to H/CEEO, the purposes of the proposed re-organisation were (a) to enhance the capacity of the team of politically-appointed officials ("PAOs") in reaching out and feeling the pulse of the community and stakeholders, so that policies would align more closely with public aspirations; (b) to strengthen the co-ordination of policy formulation and implementation that cut across policy programmes, and develop long-term plans; and (c) to step up efforts in expanding the economic base of Hong Kong by capitalising on the opportunities arising from the rapid economic development on the Mainland and nurturing competitive industries. H/CEEO further advised that the restructuring of the existing Commerce and Economic Development Bureau into two bureaux, namely Technology and Communications Bureau and Commerce and Industries Bureau, was in recognition of the importance of industrial development and technology in economic development, and to provide more dedicated high level leadership in developing Hong Kong's trade and key service industries. The new bureaux would facilitate the pursuit of the issues of concerns of the industrial and commercial sector.

38. Some members were of the view that the Administration should have reviewed PAS and identified shortfalls of the existing government structure before seeking its further expansion. They considered that a disciplinary mechanism should be established under PAS so that PAOs will bear their political responsibility at varying degrees in accordance with their performance, and there should be a clearer delineation of the role of Political Assistants.

These members stressed that without any critical review of the efficiency and effectiveness of the system, it was unreasonable to create an additional layer of PAOs under the politically appointed team.

39. According to H/CEEEO, the proposed re-organisation would bring about improvement to PAS by strengthening policy planning and coordination which would be conducive to the long-term development of Hong Kong. PAS would be improved in that the Directors of Bureaux ("DoBs") concerned would also take part in the recruitment process to identify persons of the right aptitude and calibre to fill the posts of Under Secretaries and political assistants; and that young talents were encouraged to pursue a career in politics through self-nomination for political appointments as well, thereby building a reserve of talents to sustain an effective governance.

40. Some other members, however, queried the need for creating the two new Deputy Secretary of Department ("DSoD") posts under the Chief Secretary for Administration ("CS") and the Financial Secretary ("FS") respectively. They considered that good co-ordination in the formulation and implementation of government policies did not necessarily have to be achieved by creating an additional layer of administration. Moreover, the work of the two proposed DSoDs would inevitably overlap to some degree with that of CS and FS, and might cause a delay in policy decision as the policy secretaries would need to route through an additional layer of administration.

#### Remuneration Package for PAOs Serving in the Fourth-Term HKSAR Government

41. On the recommendation of the Independent Commission on Remuneration for Members of the ExCo and the Legislature, and Officials under PAS of HKSAR, the Administration briefed the Panel on the proposed remuneration package for PAOs serving in the fourth-term Government, including an increase of 8.1% in the cash remuneration for DoBs (i.e. from \$298,115 to \$322,260 per month); the cash remuneration for DSoDs be pitched at 1.75% above that for DoBs; the cash remuneration for Under Secretaries be set at 70% of that for DoBs; the total cash remuneration for Political Assistant(s) engaged by each of the Secretaries of Departments, DSoDs and DoBs be capped at \$100,000 per month; and an annual adjustment mechanism whereby the remuneration for PAOs be adjusted annually in line with the movement of Consumer Price Index (C).

42. Members in general expressed objection to the proposed increase of remuneration of PAOs which, they considered, should be justified by performance. They pointed out that the present remuneration for CE and

DoBs in Hong Kong was already the second highest in the world. Members urged the Administration to give heed to the public sentiment against the proposal.

43. The Government announced on 5 June 2012 that the proposal to increase the remuneration of PAOs would not be pursued. The CE-elect had also announced that the entire political team of the next-term Government would have their pay frozen at the present level, i.e. at the 2009 level following the voluntary pay cut of 5.38%.

#### Human rights reports

44. After having received views from the public on the outline of topics to be included in the third report of HKSAR in the light of the International Covenant on Civil and Political Rights ("ICCPR") during the 2009-2010 legislative session, the Panel discussed the third report with the Administration following its submission to the United Nations ("UN"). Some members expressed concern about the legislative arrangement for implementing universal suffrage for selecting CE in 2017 and for forming the LegCo in 2020. They urged that the current term Government should have introduced legislation in one go on the electoral methods for implementing universal suffrage.

45. The Administration explained that universal suffrage was the ultimate aim of Hong Kong's constitutional development and the Standing Committee of the National People's Congress of the People's Republic of China ("NPCSC") made a decision on 29 December 2007 on issues relating to the methods for selecting CE and for forming LegCo in the year 2012 and on issues relating to universal suffrage. However, the current term Government had only been authorised by NPCSC to deal with the relevant electoral methods in 2012. It would be the task of the fourth-term CE and the Fifth LegCo to deal with issues relating to the future model for implementing universal suffrage for the selection of CE and the formation of LegCo and how CE candidates should be nominated. Meanwhile, the Administration had consolidated and concluded the views relating to universal suffrage received during the public consultation on the electoral methods for selecting CE and for forming the LegCo in 2012 for the consideration of the next-term Government.

46. In the course of the discussion of the third report under ICCPR, some members also stressed the need for setting up an independent mechanism for the investigation of complaints against Police, enhancing barrier-free access for PWDs and providing more support measures for non-Chinese speaking children.

47. The UN Convention on the Rights of Persons with Disabilities ("UNCRPD") has entered into force for the People's Republic of China, including HKSAR, since 31 August 2008. The Panel discussed with the Administration and received views from the public on the Initial Report of HKSAR under UNCRPD.

48. Members shared the deputations' concerns about the long-standing problems about the inadequacy of barrier-free access facilities for PWDs and their difficulties in seeking employment. They stressed that the Administration should promote employment opportunities of PWDs and address the possible adverse impact of the implementation of Statutory Minimum Wage on the employment prospects of PWDs with impaired productivity. Members also urged the Administration to draw up long-term plan for increasing the provision of subsidised residential care places and new initiatives to enhance the community care and support services for PWDs.

49. According to the Administration, it had all along been the policy objective of the Government and the development directions set out in the Hong Kong Rehabilitation Programme Plan to help PWDs develop their potential as well as to build a barrier-free living environment with a view to enabling PWDs to participate in full and enjoy equal opportunities both in terms of their social life and personal growth. The Government would continue to collaborate with the Rehabilitation Advisory Committee, groups of PWDs, parents groups, the rehabilitation sector and other sectors in the community to promote the spirit and core values enshrined in UNCRPD and step up its efforts in fulfillment of the requirements under the Convention.

#### Consultation Paper on Stalking

50. The Panel received a briefing by the Administration on its Consultation Paper on Stalking inviting public views on the recommendations made by the Law Reform Commission ("LRC") in its Report on Stalking published back in October 2000 including the proposal to legislate against stalking. The Panel also received views from the public on the Administration's Consultation Paper.

51. Members in general shared the view of some deputations about the need to balance the protection of privacy and press freedom. Some members raised concerns as to whether public demonstrations and picketing activities of trade unions were covered by the defences under the proposed anti-stalking legislation and whether it would inhibit press freedom. They considered that a specific defence for news-gathering activities should be provided for in the legislation so that legitimate news-gathering activities of political activities which were not conducted publicly would not be affected. It was also

suggested that, instead of having a single piece of anti-stalking legislation, the Administration should consider introducing separate legislative measures to deal with specific problems, such as introducing legislation to deal with stalking behaviors relating to domestic violence and debt collection practices.

52. According to the Administration, reasonable pursuit of the course of conduct in the particular circumstances was one of the defences provided for in the proposed legislation. Industrial actions and public demonstrations which proved to be a reasonable course of conduct in the circumstances would also be covered by the proposed defences. However, to legislate against stalking in a specific context would not resolve entirely the problem because many stalkers (e.g. those having psychological problem) bore no relation to the victims. The Administration considered it appropriate to enact legislation against stalking in general. The Administration was open-minded about whether "legitimate news-gathering activities" should be subsumed under the "reasonable pursuit" defence as recommended by LRC or be made a separate defence, and how such a defence should be framed.

## **Meetings**

53. From October 2011 to June 2012, the Panel held a total of 17 meetings.

Council Business Division 2  
Legislative Council Secretariat  
5 July 2012

**Legislative Council**

**Panel on Constitutional Affairs**

**Terms of Reference**

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

**Panel on Constitutional Affairs**

**Membership list for 2011-2012 session**

<b>Chairman</b>	Hon TAM Yiu-chung, GBS, JP
<b>Deputy Chairman</b>	Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
<b>Members</b>	Hon Albert HO Chun-yan Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP Dr Hon Margaret NG Hon CHEUNG Man-kwong Dr Hon Philip WONG Yu-hong, GBS Hon WONG Yung-kan, SBS, JP Hon LAU Kong-wah, JP Hon LAU Wong-fat, GBM, GBS, JP Hon Miriam LAU Kin-yea, GBS, JP Hon Emily LAU Wai-hing, JP Hon Timothy FOK Tsun-ting, GBS, JP Hon Abraham SHEK Lai-him, SBS, JP Hon Audrey EU Yuet-mee, SC, JP Hon WONG Kwok-hing, MH Hon LEE Wing-tat Hon Jeffrey LAM Kin-fung, GBS, JP Hon CHEUNG Hok-ming, GBS, JP Hon WONG Ting-kwong, SBS, JP Hon Ronny TONG Ka-wah, SC Hon CHIM Pui-chung Hon Cyd HO Sau-lan Dr Hon LAM Tai-fai, SBS, JP Hon CHAN Kin-por, BBS, JP Dr Hon Priscilla LEUNG Mei-fun, JP Hon WONG Kwok-kin, BBS Hon IP Kwok-him, GBS, JP Hon Mrs Regina IP LAU Suk-yea, GBS, JP Hon Paul TSE Wai-chun, JP Dr Hon Samson TAM Wai-ho, JP Hon Alan LEONG Kah-kit, SC Hon LEUNG Kwok-hung Hon WONG Yuk-man

(Total : 34 members)

<b>Clerk</b>	Miss Flora TAI
<b>Legal Adviser</b>	Mr Arthur CHEUNG
<b>Date</b>	3 July 2012