

立法會
Legislative Council

LC Paper No. CB(2)204/99-00

(These minutes have been
seen by the Administration)

Ref : CB2/PL/HA

LegCo Panel on Home Affairs

**Minutes of special meeting
held on Thursday, 23 September 1999 at 10:45 am
in the Chamber of the Legislative Council Building**

- Members Present** :
- Hon CHOY So-yuk (Chairman)
 - Hon Albert HO Chun-yan (Deputy Chairman)
 - Hon Cyd HO Sau-lan
 - Hon MA Fung-kwok
 - Hon James TO Kun-sun
 - Hon Christine LOH
 - Hon Gary CHENG Kai-nam
 - Hon Andrew WONG Wang-fat, JP
 - Hon Emily LAU Wai-hing, JP
 - Hon Andrew CHENG Kar-foo
 - Hon Timothy FOK Tsun-ting, JP
- Members Absent** :
- Hon Edward HO Sing-tin, JP
 - Hon LEE Wing-tat
 - Hon Ambrose CHEUNG Wing-sum, JP
 - Hon Mrs Sophie LEUNG LAU Yau-fun, JP
 - Hon Jasper TSANG Yok-sing, JP
 - Hon LAU Wong-fat, GBS, JP
 - Hon LAW Chi-kwong, JP
- Member Attending** :
- Hon Margaret NG

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Public Officers : Mr David H T LAN
Attending Secretary for Home Affairs

Mr Leo KWAN
Deputy Secretary for Home Affairs

Mr NG Hon-wah
Principal Assistant Secretary for Home Affairs (2)

Mr John DEAN
Principal Assistant Secretary for Home Affairs (7)

Miss WONG Yuet-wah
Assistant Secretary for Home Affairs

Mr R C ALLCOCK
Solicitor-General (Acting)

Mr Stephen WONG Kai-yi
Deputy Solicitor-General

Ms Diana LAM
Senior Government Counsel

Mr John LEUNG
Principal Assistant Secretary for Constitutional Affairs

Mr Bassanio SO
Principal Assistant Secretary for Constitutional Affairs

Miss Cathy CHU
Principal Assistant Secretary for Security (C)

Miss Eliza YAU
Principal Assistant Secretary for Security (E)

Mr Andy CHAN
Assistant Secretary for Security

Mrs Jenny CHAN
Chief Labour Officer, Labour Department

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Attendance by : Hong Kong Journalists Association
Invitation

Ms MAK Yin-ting
Chairperson

Mr Cliff BALE

Hong Kong Christian Institute

Rev KWOK Nai-wang

Equal Opportunities Commission

Ms Anna WU
Chairperson

Mrs Angela HO
Chief Executive

Justice

Ms Gladys LI, SC
Chairman

Mr WONG Hin-lee
Treasurer

Mr P Y LO
Council Member

Hong Kong Bar Association

Mr Johannes CHAN

Hong Kong Human Rights Commission

Mr HO Hei-wah
Chairman

Mr CHOI Yiu-cheong

Mr WONG Chi-yuen

Ms YEUNG Hoi-ha

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Democratic Party

Ms CHAN Shui-ying

Mr WONG Sing-chi

Mr WONG Leung-hai

Office of the Privacy Commissioner for Personal Data

Mr K M LAU
Privacy Commissioner for Personal Data

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2) 2

Staff in Attendance : Miss Flora TAI
Senior Assistant Secretary (2) 2

I. Opening remark

The Chairman welcomed representatives of the deputations and the Administration for attending the special meeting on the Initial Report of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China (PRC) in the light of the International Covenant on Civil and Political Rights (ICCPR). She also welcomed the Privacy Commissioner for Personal Data for attending the meeting as an observer. The Chairman said that the Panel had discussed with the Administration HKSAR's Report on ICCPR on 21 January 1999. The Panel noted that the United Nations (UN) Committee would hold a hearing on HKSAR's Report on 29 October and 1 November 1999. The Panel therefore scheduled a special meeting for 23 September 1999 to receive oral representation of concerned organisations and to consider the Administration's response. The Chairman informed members that eight

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organisations had indicated interest to present their views at the special meeting, and seven of them had provided written submissions.

(Post-meeting note : The Administration has subsequently advised that the UN hearing on HKSAR's Report will be postponed by one day, i.e. to 1 and 2 November 1999.)

II. Meeting with deputations

Hong Kong Journalists Association (HKJA)

[Paper No. CB(2)2765/98-99(01)]

2. At the invitation of the Chairman, Chairperson of HKJA highlighted the salient points in the written submission. HKJA was concerned about the potential impact of the interpretation of two key provisions in the Basic Law by the Standing Committee of the National People's Congress (NPCSC) in relation to the right of abode of some mainland offspring of Hong Kong permanent residents. HKJA also noted a significant erosion of democratic representation in the current Legislative Council (LegCo). HKJA considered this a deterioration of the judicial and political environment as well as the freedom of expression in Hong Kong. HKJA also identified a number of issues which might restrict the freedom of expression, access to information and editorial independence of the media in Hong Kong. These issues included the threat of subversion laws, disputes over the role of the government-owned Radio Television Hong Kong, criminalisation of desecration of the Chinese and Hong Kong flags and emblems, and the proposal of the Law Reform Commission (LRC) to set up a statutory Press Council for the Protection of Privacy (Press Council).

Hong Kong Christian Institute

[Paper No. CB(2)2765/98-99(02)]

3. Representative of the Institute briefed members on the written submission. He said that there had been a marked decrease of civil and political rights of Hong Kong citizens since the transfer of sovereignty on 1 July 1997. He urged the Administration to implement the recommendations of the UN Committee, in particular, the removal of the reservation to Article 25 of ICCPR so that the Executive Council (ExCo) and LegCo would be returned by direct election.

Equal Opportunities Commission (EOC)

[Paper No. CB(2)2775/98-99(01)]

4. Chairperson of EOC briefed members on the written submission which set out EOC's views and work in relation to HKSAR's Report on ICCPR, with

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particular reference to Article 3 on equal rights of men and women and Article 26 on right to equal protection before the law. She also outlined EOC's achievements and work plans in eliminating discriminatory practices on the grounds of sex, disability and family status.

5. Chairperson of EOC said that EOC had called upon the Administration to take early action in a number of areas, in particular the following -

- (a) to establish a central monitoring mechanism on HKSAR's obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- (b) to devise a co-ordinated approach at the policy level so that issues of discrimination and equal opportunities could be reviewed when policies were developed for implementation. For example, better protection could be afforded to people with a disability if their needs had been taken into account when formulating the policies on technology development;
- (c) to introduce legislative amendments empowering EOC to take legal action in its own name to combat discriminatory practices; and
- (d) to review the Secondary School Places Allocation System (SSPA) with a view to removing sex discrimination.

In concluding her representation, Chairperson of EOC said that EOC would like to be subject to the Ombudsman's jurisdiction to provide an additional means of redress to an aggrieved party.

Justice

[Paper No. CB(2)2795/98-99(01)]

6. Chairperson and Council Member of Justice briefed members on the written submission. Chairperson of Justice said that the state of the rule of law in Hong Kong had deteriorated since the transfer of sovereignty. In relation to the interpretation of Articles 22 (4) and 24(2)(3) of the Basic Law by NPCSC, Justice considered Government's approach had reflected its lack of respect for the rule of law and judicial independence. Chairperson of Justice said that her presentation to the Panel was somewhat inhibited because many issues in the written submission might still be the subject of proceedings in the Court of Final Appeal (CFA).

7. Chairperson of Justice also drew members' attention to the long standing problem that there was no independent mechanism for investigation of

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complaints against disciplinary services, such as deaths in custody. She pointed out that the absence of an independent investigation mechanism would lead to mistrust between the community and the disciplinary services. She quoted the example that the jury of a recent inquest into a death in custody had returned an open verdict because they were not satisfied with the evidence presented before the court. She warned that such incident indicated a mistrust of the current system and this would ultimately affect public officers in discharging their duties.

Hong Kong Bar Association (the Bar)

[Paper No. CB(2)2874/98-99(01)]

8. Representative of the Bar briefed members on the written submission which identified a number of omissions in the ICCPR Report. He nevertheless expressed appreciation of the time and effort the Government had put in for preparation of the Report. He hoped that Government could provide supplementary information on developments since 30 June 1998.

9. Representative of the Bar highlighted that the Bar could not accept Government's explanation that no records of allegations of torture and ill-treatment by the police had been maintained. He pointed out that such information could be collected from cases where the courts had ruled on ill-treatment of prisoners in trials or had expressed doubts about the admissibility of some confession statements as evidence before the court. He added that the LRC had already included relevant statistics in its report on police powers ten years' ago. Referring to paragraph 339 of the ICCPR Report which stated that freedom of information legislation was not necessary because a person who was denied access to an official document could always complain to the Ombudsman, representative of the Bar considered that Government should also provide the relevant complaint statistics and the procedures for lodging such complaints in the ICCPR Report.

10. Representative of the Bar said that judicial independence and the rule of law had always been the primary concerns of the Bar. In the recent right of abode case, the Government's unusual step of requesting CFA to clarify its judgement on political grounds was regrettable, because the court should not be involved in political issues. Representative of the Bar emphasized that NPCSC's interpretation had overturned the CFA's adjudication and undermined judicial independence. Government's actions had also undermined the powers of CFA to interpret substantive provisions of the Basic Law within its ambit, to decide whether to seek an interpretation from NPCSC as provided for in the Basic Law, and to follow the rule of evidence which was part of the common law system in the interpretation of the Basic Law. Representative of the Bar pointed out that Government's action to seek NPCSC's interpretation was a serious blow to the legal system and the rule of law in Hong Kong. He therefore urged Government

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to give a full objective account of the issue, setting out relevant legal and constitutional arguments, in a supplementary report to the UN Committee.

Hong Kong Human Rights Commission (HKHRC)

[Paper No. CB(2)2874/98-99(02)]

11. Chairman of HKHRC informed members that HKHRC would make a report to the UN Committee on individual provisions of ICCPR, a copy of which would be forwarded to the Panel for reference. Chairman of HKHRC then briefed members on the written submission. He was of the view that the ultimate objective of the whole reporting process was the implementation of the provisions of ICCPR in Hong Kong. It was regrettable that the Government had not followed up on the recommendations of the UN Committee as detailed in the previous Concluding Observations, and that human rights issues were hardly mentioned in the Chief Executive's Policy Addresses. Chairman of HKHRC remarked that ratification of the ICCPR would be meaningless if the Government did not implement recommendations of the UN Committee for compliance with provisions of the ICCPR. He therefore urged LegCo to take an active role in monitoring the Government's work to follow up on these recommendations.

12. Chairman of HKHRM said that HKHRM agreed with other deputations that the Government should provide a supplementary report on the developments since completion of the ICCPR Report. He pointed out that the UN Committee had not discussed in detail British Government's supplementary report in 1996. It was therefore necessary for HKSAR Government to provide a comprehensive report to the UN Committee covering various developments, for example, establishment of the Provisional Legislative Council (PLC), during the period preceding the transfer of sovereignty.

13. Chairperson of HKHRM informed members that the UN Committee had made repeated requests that State Parties should include concrete examples in their reports to facilitate UN Committee's understanding of the status/progress of implementation of human rights covenants. With regard to public meetings and demonstrations, he suggested Government to give an account of how the police dealt with these cases. He said that a disproportionately large number of police officers (between 150 to 200) had been deployed to conduct surveillance on a public procession with no more than 30 participants organized by the April Fifth Group. He also requested Government to give a detailed account of Director of Immigration's action to remove two illegal immigrants (who had applied for legal aid to establish their claim to have the right of abode in Hong Kong) shortly before the outcome of pending legal proceedings was delivered.

14. Director of HKHRM also pointed out that quasi-government organizations such as EOC and Police Complaints Council had not been invited

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to participate in the drafting of HKSAR's Report on ICCPR. He questioned whether it was in breach of the UN reporting procedure if Government had not conducted public consultation on the Report before its submission to the UN Committee.

Hong Kong Human Rights Monitor (HKHRM)

[Paper No. CB(2)2916/98-99(01)]

15. Director of HKHRM briefed members on his paper which was subsequently forwarded to the Panel on 29 September 1999 [Paper No. CB(2)2916/98-99(01)]. He said that the rule of law and democracy in Hong Kong were among the most adversely affected areas since the transfer of sovereignty. Director of HKHRM informed members that apart from the repatriation cases referred to in paragraph 13 in the Report, there were other anomalies. For example, the police had resorted to obtaining a warrant from a police superintendent to search the premises of the Macau Jockey Club after a magistrate had refused to issue the warrant. These two incidents clearly demonstrated Government's lack of respect to the courts. Director of HKHRM also commented that Hong Kong could hardly be called a democratic society as the public had no opportunity to participate in the selection of its Chief Executive and Hong Kong deputies to the National People's Congress.

16. Regarding the protection of human rights after the transfer of sovereignty, Director of HKHRM expressed serious concern that the Government became less tolerant of the expression of political opinions and showed less respect to the freedom of association. In this connection, he quoted the criminalization of deliberate desecration of the National and Regional Flags and Emblems in public, and the withholding of the registration of political organizations such as the group "Forget Not June 4th" as examples.

17. Director of HKHRM also highlighted the following recommendations -

- (a) a Human Rights Commission to be set up in accordance with the Paris Principles;
- (b) the Coroner Ordinance (Cap. 14) to be amended so that investigation for the coroner on death in custody would be carried out by an independent body;
- (c) the Independent Police Complaints Council Ordinance to be enacted to confer power of investigation on the Council; and
- (d) an independent monitoring mechanism to be put in place in respect of the rights of complaints of persons deprived of liberty,

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especially those held in the custody of Immigration Department and juvenile homes of Social Welfare Department.

18. Director of HKHRM urged Government to take positive actions to implement the various recommendations made by the UN Committee and requested the Panel to follow up with the Government in this respect.

Democratic Party (DP)

[Paper No. CB(2)2878/98-99(01)]

19. Representatives of DP took members through the written submission which set out DP's views on development of democracy, right to participate in public life, equal rights of men and women, ensuring to all individuals the rights recognized in the ICCPR, right to fair hearing, protection of privacy, freedom of opinion and expression, right of peaceful assembly and freedom of association. Representatives of DP considered that Government should provide a supplementary report to address concerns in these areas as detailed in DP's submission.

III. Discussion on the Administration's responses

[Paper No. CB(2)2854/98-9(01)]

20. At the invitation of the Chairman, Secretary for Home Affairs (SHA) briefed members on the Administration's response to written submissions received and responded to the views expressed at the meeting. SHA said that the Government attached great importance to the implementation of ICCPR and the views expressed at the Panel meetings on the subject.

21. Members agreed that deputations should be invited to participate in the ensuing discussion.

Interpretation of the Basic Law by the NPCSC

22. Responding to Ms Emily LAU, representative of the Bar stressed that the courts possessed the power of final adjudication in interpreting the laws. It was not possible to argue on legal principles that CFA's interpretation of the legal provisions was incorrect. He pointed out that if the Government found CFA's judgement not practical to implement because of social and economic reasons, it should seek an amendment of the relevant legislation. Such a mechanism was provided for under the system of separation of powers and the Government had done so before the transfer of sovereignty.

23. Chairperson of Justice expressed disappointment at paragraph 4 of the Administration's response to written submissions. She stressed that the

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independent judicial power within HKSAR including the power of final adjudication was vested solely in the judiciary. Under the common law and the application of the doctrine of precedent, once a court had made a decision, the legislature had no power to intervene. The benefit of the court decision went beyond the parties to the immediate decision and extended to all other persons whose legal rights had been intervened with on reliance of that same law. In the right of abode case, Government had already fully argued its case before CFA and there was no room for Government to invoke or to review the decision, other than implementing the court decision. She warned that Government's act had posed a threat to the judiciary by trying to influence the decision other than by way of advocacy within the court. It indicated Government's lack of respect to judicial independence.

24. In response to Ms Emily LAU, Chairman of Justice said that she was not aware of similar cases where a Government refused to give effect to the judgements of the courts on grounds of infeasibility.

25. Referring to paragraph 6 of the Administration's response, Council Member of Justice said that the Government had tried to justify its act of seeking NPCSC's interpretation on grounds of exceptional circumstances, i.e. different understanding of the legislative intent and disturbing consequence of the court's decision. He expressed grave concern that Government would continue to seek NPCSC's interpretation in similar cases in future, as such "exceptional circumstances" were not uncommon in disputes between the courts and the Government.

26. In response to these comments, SHA drew members' attention to the fact that the right of abode case involved provisions of the Basic Law which was a national law. SHA stressed that the Government had not challenged the correctness of CFA's judgement but Hong Kong was simply unable to absorb the anticipated huge increase of population arising from the implementation of CFA's judgement. The Government had made it clear that CFA judgement in regard to the cases in hand remained final. SHA said that the Chief Executive's request for NPCSC to interpret the Basic Law was constitutional and lawful and had the support of the community.

27. Acting Solicitor-General (Ag SG) said that the HKSAR delegation would give a full account of the case to the UN Committee at Geneva. With regard to deputations' criticisms about HKSAR Government breaching the common law principles, he referred members to Article 158 of the Basic Law which had vested the ultimate authority for interpreting the Basic Law in NPCSC. Although HKSAR courts could interpret the Basic Law in adjudicating cases within certain limits, the courts did not have the ultimate power of interpretation. In seeking NPCSC's interpretation of provision in the Basic Law, CFA's power of final adjudication had not been undermined, and its decision with regard to the

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right of abode cases had remained final. Ag SG commented that references to English cases and English authorities were not entirely appropriate as far as interpretation of the Basic Law was concerned. There were other jurisdictions, for example, France, where the Government could seek a legislative interpretation to resolve its dispute on a court's decision. He considered that the accusation that seeking a legislative interpretation was contrary to the rule of law and judicial independence could not be substantiated under the new constitutional order. Ag SG further pointed out that Article 48 of the Basic Law conferred on the Chief Executive the constitutional responsibility for the implementation of the Basic Law. It was therefore incumbent upon the Chief Executive to consider the implications of CFA's judgement and its consequences. He reiterated that the Chief Executive had acted in accordance with the Basic Law and the act was entirely constitutional and lawful. Ag SG also reassured the meeting that the Government always respected the judiciary and was totally committed to judicial independence.

28. With reference to a deputation's concern that Government would seek NPCSC's interpretation whenever a CFA's decision was not to its liking, Ag SG stressed that the Government had made it clear on numerous occasions that the circumstances surrounding the right of abode cases and their consequences were highly exceptional and had pledged that NPCSC's interpretation would be sought only in the most exceptional circumstances.

Refusal to grant entry visas to overseas Chinese dissidents

29. Deputy Chairman referred to paragraphs 43 and 44 of the Administration's response in which the Government argued that neither ICCPR nor any other human rights treaty explicitly or implicitly conferred a right of entry of non-residents into any territory other than their own. Deputy Chairman expressed strong dissatisfaction that Immigration Department's refusal to grant entry visas to eleven overseas Chinese on technicality reasons was totally unacceptable. He considered that the refusal would had negative impact on HKSAR's overseas image with regard to freedom of speech and freedom of assembly because -

- (a) all these overseas Chinese had the common background of being Mainland dissidents;
- (b) some of these overseas Chinese had been allowed to visit Hong Kong before the transfer of sovereignty; and
- (c) the refusal had posed an obstacle to the organization of an academic seminar.

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Deputy Chairman added that despite an oral question at the Council meeting and an appeal to ExCo, Government still declined to disclose the reason of refusal by insisting that the grant of entry visa was based on the merits of individual cases. He pointed out that the Secretary for Security had indicated that relation with other countries could be one of the considerations. As such, he opined that it was obvious that the refusal was based on political considerations.

30. SHA responded that as a matter of general principle, all countries, including those advanced countries, had their own immigration control policies and procedures. Principal Assistant Secretary for Security (C) (PAS(S)C) supplemented that the Director of Immigration would consider each entry application on its own merits having regard to the prevailing circumstances. In exercising this administrative power, the Director of Immigration had considerable discretion. Anyone who was aggrieved by the decision of the Director might apply for judicial review. This had occurred in the past and the courts ruled that if the Director had fairly and honestly considered the applications, there would be no need for him to give specific reasons for rejection in individual cases. She stressed that this power of the Director of Immigration was similar to that exercised by his counterparts in other countries. She also assured members that Director of Immigration's refusal to grant entry visas to these eleven overseas Chinese had nothing to do with freedom of speech. Deputy Chairman reiterated his strong dissatisfaction about the Administration's refusal to disclose the true reasons of rejection in this case.

Removal of claimants of the right of abode

31. Deputy Chairman referred members to a recent case in which two illegal immigrants who had claimed the right of abode in Hong Kong were removed by Immigration Department notwithstanding that the judicial proceedings on an application for injunction against the removal were in progress. He asked whether deputations would consider such action appropriate. Treasurer of Justice said that it was the established practice before the transfer of sovereignty that government departments would take no action on any criminal or civil case for a period of 42 days if there were pending court hearings on that case. He expressed concern that if the Government decided not to follow this good practice, lawyers would need to apply for injunction in every case in order to prevent government departments from taking action against the defendant. Chairman of Justice said that the executive had sought to prevail a court's decision in this repatriation case, thereby undermining the independence of the judiciary.

32. Deputy Chairman sought confirmation from the Administration as to whether the Immigration Department would execute a removal order irrespective of whether there was a pending court hearing on an application for injunction against the removal. In response, PAS(S)C explained that Government must

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exercise extreme care in considering whether repatriation should be halted once an illegal immigrant had applied for legal aid seeking an injunction against the removal. Referring to the large number of Two-way Permit holders (about 2000 persons) and transit passengers (about 3000 persons) from Mainland coming to Hong Kong every day, PAS(S)C said that there would be immense pressure on immigration control if all illegal immigrants could delay the repatriation process by applying for legal aid. PAS(S)C pointed out that persons who entered Hong Kong illegally committed an offence and were subject to removal, and that the Director of Immigration had exercised his power under the Immigration Ordinance (Cap. 115) to remove the two illegal immigrants. With regard to members' concerns, the Security Bureau would look into the various issues arising from these repatriation cases and discuss with the Legal Aid Department the time required for court hearing on an application for injunction against the removal. In this regard, representative of the Bar said that the question was not on the lawful authority of Director of Immigration but whether such an act would constitute contempt of the court.

33. Director of HKHRM expressed strong dissatisfaction that the Government had handled the case purely on expedient considerations without regard to the rights of these people. He considered that section 53 of the Immigration Ordinance should be reviewed so that an appeal against Immigration Department's decision would be examined by an independent judicial body.

34. In response to Deputy Chairman's further query, PAS(S)C said that the legal aid counsel of the two illegal immigrants appeared before the court only after the Immigration Department had repatriated these two illegal immigrants at 3:03pm on 21 July 1999. However, Deputy Chairman said that the court hearing was already in progress at the time of repatriation. Members therefore requested the Administration to provide further information on the sequence of events of the repatriation case.

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35. Director of HKHRM recalled that LegCo Members had expressed concern during the scrutiny of the Supreme Court (Amendment) Bill 1997 that a detained applicant might be removed before the writ of habeas corpus could be issued . The Government therefore gave an undertaking at the resumption of the Second Reading debate that, as a matter of practice, once an application of habeas corpus had been made and legal representatives were acting for the applicant, the applicant would not be removed from the jurisdiction without prior notification to the legal representatives.

36. Mr James TO strongly criticized Government for removing these claimants of the right of abode while there were pending court proceedings on an application for injunction against the removal. He warned that the case would have a serious detrimental effect to the rule of law in Hong Kong, and a

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negative impact on Government's credibility as it had not honored its assurance given to LegCo Members. He therefore requested the Government to clarify whether such assurance had been given. Ms Emily LAU also asked the Administration to provide information on the policy and practices in this respect before and after July 1997.

(Post-meeting note : The Administration's response to members' requests relating to the removal of right of abode claimants has been issued vide LC Paper No. CB(2)38/99-00.)

Freedom of opinion and expression

37. Ms Emily LAU noted that in paragraph 36 of the Administration's response, Government said that its comments on the remark made by Mr CHENG An-kuo about the state of relation between Taiwan and PRC were related entirely to Mr CHENG and to his special status. Ms LAU asked whether HKJA would consider Article 19 of ICCPR had provided for the right of all persons to hold opinions irrespective of their status. Chairperson of HKJA said that Government's argument was not acceptable, since officials of the XinHua News Agency often made comments unrelated to their scope of work before the transfer of sovereignty and Government had not passed any comments on this. The incident quoted in paragraph 36 demonstrated that Government had low tolerance of different opinions and had infringed Mr CHENG's right to hold opinion on grounds of his position. Ms LAU further asked whether media practitioners had felt inhibited in reporting because of the dispute. In response, Chairperson of HKJA said that similar comments made by senior government officials would have an accumulating effect resulting in pressure on media practitioners. Representative of HKJA opined that with the threat of subversion law, the dispute had aroused concern among media practitioners having regard to the fine difference between reporting advocacy and advocacy. In this regard, SHA emphasized that the Government had only commented that it was inappropriate for Mr CHENG An-kuo to put forward such views publicly in Hong Kong. SHA took the view that the Administration's comment did not in any way impinge on the freedom of expression. He assured the meeting that Government was not considering legislation to outlaw advocacy and that there would be extensive public consultation if laws on subversion and secession were considered necessary under Article 23 of Basic Law after most careful study.

38. Referring to paragraph 31 of the Administration's response, Mr Andrew CHENG sought confirmation as to whether Home Affairs Bureau (HAB) had started to study the technicalities for the establishment of a Press Council. Deputy Secretary for Home Affairs (DS(HA)) replied in the negative. DS(HA) clarified that the proposal was made by LRC's Privacy Subcommittee which was an independent body outside Government. As one of the parties being consulted by LRC, Government was now examining the consultation paper in detail and

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would provide comments. He stressed that Government kept an open mind and had not formulated any view as to whether the Press Council should be established.

Right to participate in public life

39. On the pace of democratic development in Hong Kong, SHA said that the timetable had been prescribed in the Basic Law and was widely accepted.

40. Concerning paragraph 10 of the Administration's response on the legitimacy of PLC, Chairman of HKHRM maintained the view that despite CFA's confirmation of the constitutional validity of the PLC's establishment, the question of whether PLC was constituted and elected in accordance with the principles of the ICCPR remained to be a matter of dispute.

Publicity on the ICCPR Report

41. In response to Ms HO Sau lan, PAS(HA) said that the Administration had no intention to confine the discussion on the ICCPR Report to the UN hearing and LegCo Panel meetings. Ms HO opined that the Administration should take an active role in publicizing the ICCPR Report in order to promote human rights concepts and to arouse public awareness of human rights issues. In response, SHA said that human rights issue was an important policy area of HAB. HAB had made constant efforts to promote human rights, and the Committee on the Promotion of Civic Education also promoted human rights education. As regards publicity of the ICCPR Report, PAS(HA) informed members that HAB had issued a press release on the publication of the ICCPR Report and made available copies of the ICCPR Report to the public and non-governmental organizations (NGOs), schools and libraries. In response to Ms HO's further enquiry, Assistant Secretary (Home Affairs) said that HAB had, on the basis of past production orders, initially published 3 000 copies of the ICCPR Report which had also been uploaded on the Internet. HAB would print more copies if there was such a need. SHA supplemented that there were also cost considerations when making a forecast of demand for hard copies of the Report.

Submission of reports

42. Referring to HKHRC's criticism that Government had not released the ICCPR Report for public consultation before submission to the UN Committee. SHA said that an outline of the topics to be covered in the ICCPR Report had been published for public consultation and the views received had been taken into account when drafting the Report. He emphasized that it was not possible to have consensus on all issues and that the Report was basically a government report. He said that non-governmental organizations were encouraged to submit their own reports to LegCo or directly to the UN Committee.

43. Representative of the Bar said that he did not agree with paragraph 73 of the Administration's response that the UN Committee did not require an updating report on new developments after completion of the ICCPR Report. He pointed out that the UN Committee had indicated in its Concluding Observations that States Parties were obliged to provide supplementary reports on new developments if necessary in view of the time gap between completion of human rights reports and relevant UN hearings.

44. Ms HO Sau-lan asked whether HAB had approached NGOs which had given their views on the ICCPR Report to explain Government's position after the release of the Report. PAS(HA) responded that HAB had done so where necessary. The Bureau had steadily increased contacts with NGOs in the compilation of human rights reports in recent years. HAB had invited NGOs to attend a consultation forum to gauge their views on the outline of the report and their views had been taken into account in the drafting of the ICCPR Report. SHA added that he also met NGOs informally at lunch gatherings and would be happy to discuss with them if NGOs considered necessary. PAS(HA) also said that the Administration had fully complied with the procedures stipulated in the latest version of the "Manual on Human Rights Reporting" published by the UN. Indeed, its approach was essentially the same as that of Canada which the UN Manual adduced as "instructive". In some respects HKSAR went further than the Canadians, for example, the invitations for comments were not confined to NGOs. However, for future reports HKSAR would adapt the Canadian practice of copying the full text of NGO submissions to the UN Secretariat under separate cover.

Implementation of the UN Committee's recommendations

45. Responding to the criticism that Government was reluctant to implement UN Committee's recommendations, SHA said that HAB had a timetable on the implementation and promotion of human rights treaties. PAS(HA) added that the Government had tremendous respect to the UN treaty monitoring bodies but these bodies were not courts and their recommendations were not legally binding. In many areas, governments, as the authorities on the spot, were better placed than the UN Committees to assess whether particular recommendations were appropriate to local circumstances. In any case, the Government's response to the recommendations made during previous ICCPR hearings had been addressed under the relevant sections of the Report.

IV. Way forward

46. Ms Emily LAU suggested and members agreed to hold a special meeting on Saturday, 2 October 1999 from 9:00am to 12:00noon to continue discussion

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on the ICCPR Report and to consider the Administration's response to other written submissions received. At Ms Emily LAU's suggestion, the Chairman also agreed that deputations attending the meeting would be invited to attend the special meeting on 2 October 1999.

(Post-meeting note : Due to the absence of quorum, the special meeting had been re-scheduled for Tuesday, 12 October 1999 at 10:45 am.)

47. The meeting ended at 1:25 pm.

Legislative Council Secretariat

26 October 1999