

Chapter XVI : Constitutional Affairs

16.1 At the invitation of the Chairman, the Secretary for Constitutional Affairs (SCA), Mr Michael M Y SUEN, briefed members on the major programmes under his policy area (Appendix V-15a). The Director of Beijing Office (DBO), Mr Bowen LEUNG, then briefed members on the major areas of work of the Beijing Office (BJO) (Appendix V-15b).

Implementation and promotion of the Basic Law

16.2 On the role and activities of the Constitutional Affairs Bureau (CAB) in relation to its responsibility of facilitating and advising bureaux and departments on matters relating to the implementation of the Basic Law, Mr TSANG Yok-sing enquired about the basis and authority of CAB's advice on the Basic Law and whether CAB had adopted an active approach in this area of work.

16.3 In reply, SCA advised that CAB was responsible for co-ordinating the promotion of the Basic Law at the community level on one hand, and providing advice to individual bureaux and departments on the Basic Law in relation to the formulation and implementation of Government policies on the other. The latter included advice on the participation of the Government of the Hong Kong Special Administrative Region (HKSARG) in international organizations, the signing of multi-lateral and bilateral agreements and other constitutional matters such as the application of Article 74 and the relationship between the legislature and the executive. SCA further pointed out that CAB only played a facilitating and advisory role and therefore would not reach out to monitor the activities of individual bureaux and departments in implementing the Basic Law.

16.4 As regards the basis of CAB's advice provided to other bureaux and departments on the Basic Law, SCA advised that CAB was working closely with the Department of Justice in providing advice. The authority of CAB's advice was based on the Administration's practical experience in the past three years in handling precedent cases. He also pointed out that the Administration's approach in handling relevant cases involving the Basic Law had been accepted by the community at large and/or had been able to stand challenges at the court.

Electoral System

16.5 With regard to CAB's responsibility in ensuring the continual development of the electoral system in accordance with the blueprint of the Basic Law and the needs of the community, the Chairman sought elaboration on how CAB would gauge the needs of the community in this regard. In reply, SCA said that the Basic Law had provided a framework for the continual development of the electoral system in HKSAR. While there were diverse views on the pace of such development, the Administration could still work according to the blueprint of the Basic Law. He stressed that under this blueprint, there was room for Hong Kong to decide on certain matters such as the electoral system after year 2007. As regards the timing for consultation with the public on the subject, SCA confirmed that public consultation would be conducted but the timetable and detailed arrangements had not been drawn up at this stage.

16.6 Miss Emily LAU expressed disappointment that preparatory work for the continual development of the electoral system after 2007 had not received priority as this area of work was not included as a matter requiring special attention in 2000-01. In response, SCA referred to CAB's "Policy Objectives" in the 1999 Policy Address that it would commence a study on the various systems of government in other parts of the world with a view to developing a system which would best suit Hong Kong's long term interests. As an undertaking had already been made and the resources required for conducting this study could be met through internal deployment, CAB therefore had not re-stated this initiative in the 2000-01 Estimates.

Contacts between HKSARG and the Taiwan Government

16.7 Mr LEE Wing-tat referred to one of the responsibilities of the CAB to advise other policy bureaux and departments on matters relating to the relations between HKSAR and the Central People's Government (CPG) and other provincial and municipal governments and to facilitate in developing visit programmes as appropriate. He enquired whether CAB had arranged any official visits between HKSARG and the Taiwan Government and as far as the resource provision for 2000-01 was concerned, whether there were plans to develop visit programmes between HKSARG and the newly elected Taiwan Government in the coming year.

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16.8 In reply, SCA advised that the policy of CPG on Taiwan had been clearly promulgated and there was a dedicated ministry in CPG for handling matters related to Taiwan while the Chief Executive of HKSAR had appointed a consultant to advise him on matters involving the relationship between HKSARG and the Taiwan Government. SCA however pointed out that all along, Hong Kong and Taiwan had commercial and cultural contacts through respective community channels and agencies. It was therefore not necessary to earmark funds in CAB for bureaux or departments to make official visits to Taiwan in 2000-01.

16.9 On whether it was necessary to obtain CPG's consent before HKSARG could make any contact with the Taiwan Government on matters of a non-political nature, such as the development of transportation links between Hong Kong and Taiwan, SCA confirmed that there were contacts between HKSARG and the Taiwan Government on matters of mutual concern before and after reunification and there was no need to obtain CPG's prior approval for officials of HKSARG to visit Taiwan for study tours or on practical and operational matters.

Assistance to Hong Kong residents detained in the Mainland

16.10 Pointing out that the people of Hong Kong regarded the offer of practical assistance to Hong Kong residents in the Mainland an important area of work of the BJO, Mr CHEUNG Man-kwong enquired about BJO's work relating to the setting up of a notification mechanism for Hong Kong residents detained in the Mainland and whether BJO was able to have access to or communicate with these Hong Kong residents.

16.11 In reply, DBO advised that the Mainland laws did not confer any statutory power on HKSARG to handle these cases, or to intervene in the administrative and judicial proceedings in the Mainland. The kind of assistance that BJO could offer depended very much on the circumstances of individual cases. As regards the progress of the 60 cases involving detention of Hong Kong residents in the Mainland referred to BJO by the Security Bureau through the CAB for follow-up action since August 1999, DBO advised that in some cases, after the representation made by his office, the investigation process and prosecution procedures had been expedited and more information had been given on the latest progress of court action.

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16.12 On the notification mechanism, DBO advised that the Secretary for Security was the responsible policy secretary while BJO assisted in the liaison work. The issue involved a number of Mainland authorities and the Hong Kong and Macao Affairs Office (HKMAO) under the State Council had taken the lead in taking up the matter with the relevant Mainland authorities. Over the past few months, BJO had reiterated to HKMAO HKSARG's concern for setting up the mechanism as soon as possible. Having regard to the fact that most cases involving detention of Hong Kong residents were related to the work of the Public Security Ministry, HKSARG and HKMAO had agreed that a notification mechanism on detained Hong Kong residents should first be set up within the Public Security Ministry, to be extended, if appropriate, to other authorities in the Mainland at later stages. A preliminary framework for the notification mechanism was currently being studied by the Public Security Ministry and BJO would actively follow up with HKMAO.

16.13 As regards the right to visit Hong Kong residents under detention, DBO said that under the relevant Mainland laws, only the legal representative of the detainee would be allowed to visit him. BJO had conveyed the view of HKSARG that as far as the circumstances permitted, representatives of HKSARG should be allowed to visit Hong Kong residents under detention. The response of the CPG was still awaited.

16.14 Mr CHEUNG Man-kwong further enquired whether BJO would take up the responsibility for rendering assistance in cases involving detention of Hong Kong residents and seek the necessary resources for implementing this area of work. He commented that as Hong Kong residents could no longer seek consular protection in the Mainland after reunification, it was reasonable for the public to expect BJO to play a more active role in offering assistance to Hong Kong residents detained in the Mainland.

16.15 In response, DBO re-affirmed that BJO would continue to provide practical assistance to Hong Kong residents detained in the Mainland and their families as far as possible. He also highlighted the importance of BJO's programme area of building up an effective liaison network with relevant Mainland authorities which would in turn facilitate the work of BJO in seeking information and co-operation from relevant authorities in rendering practical assistance to detained Hong Kong residents.

Office accommodation for Beijing Office

16.16 Mr CHEUNG Man-kwong and Miss Emily LAU queried the cost-effectiveness of the proposed construction of a quadrangle house as the permanent office accommodation for BJO and whether it was justifiable on operational grounds. Miss Emily LAU was concerned about any excessive provision of office space and facilities and sought clarification on the factors taken into consideration when identifying suitable premises for BJO.

16.17 In reply, DBO advised that BJO was currently accommodated in leased commercial premises with a gross floor area of some 1 700 square metres (m²), which included a public area for the Immigration Section which was not provided for in other overseas Economic and Trade Offices. As BJO would operate for at least 50 years, it was considered more cost-effective in the medium and long term to purchase permanent accommodation for the Office. It would also be more convenient for operational reasons to house BJO in a stand-alone building instead of inside a multi-storey commercial building. DBO further explained that as Beijing was a large city, BJO should be located in the city centre, i.e. within the bounds of the Second-ring Road, to facilitate access by visitors. Under the current planning requirements in Beijing, all low-density developments within the city centre must be in the form of quadrangle houses. DBO pointed out that quadrangle houses were a form of architectural design which was not necessarily luxurious or extravagant. He assured members that the future permanent office accommodation for BJO would be designed on a practical instead of luxurious basis.

16.18 On the latest progress, DBO confirmed that BJO had identified a few suitable premises within the bounds of Second-ring Road and had held preliminary negotiation with the landlords concerned. However, the Administration would not enter into any contractual commitment before the relevant funding proposal was approved by the Finance Committee. DBO elaborated that the site area of low-density properties in Beijing city centre was usually small and in order to provide adequate office space for BJO, i.e. about 2000 m², it would be necessary to construct a basement floor as planning requirements would not allow the construction of additional upper storeys on such development sites. As the permissible size of the basement floor would not have much effect on the purchase price, it would be appropriate to develop the future selected site to the maximum permissible scale to cater for expansion in the medium to long term in line with existing Government policy. DBO also

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advised that the price difference between offices in high-rise commercial buildings and stand-alone low-rise buildings within the city centre of Beijing was about 10% only and therefore, housing BJO in a stand-alone building was appropriate for both economic and operational reasons.

16.19 Miss Emily LAU maintained her view that a modern office building rather than a quadrangle house was more compatible with the image of Hong Kong as a modern cosmopolitan city, and it was far more important for BJO to project a practical, sensible and efficient image of HKSARG through its work in the Mainland.

Liaison with government authorities and agencies in the Mainland

16.20 To justify the resource requirements, Miss Emily LAU commented that BJO should provide more quantitative information on its liaison work, such as the number of meetings held and the number and ranks of Mainland officials met. In response, DBO explained that liaison work could take different forms and were not confined to formal meetings. While BJO could provide information on the ranking of Mainland officials with whom BJO had liaised, it would not be practicable for BJO to keep specific records on all the meetings and exchanges, formal and informal, in connection with BJO's liaison work.

16.21 Referring to cases in which the Home Visit Permits of some Hong Kong residents had been confiscated, or were not renewed, Mr SZETO Wah was concerned about the latest progress in following up the matter with CPG. In reply, SCA advised that he had raised the matter with HKMAO on a number of occasions and according to HKMAO, the matter was still under consideration by CPG. He undertook to continue to follow up the matter.

16.22 As regards BJO's involvement in the matter, DBO pointed out that BJO could not take over the policy initiative and responsibility of another Bureau but would take necessary action with the Mainland authorities on specific issues on the basis of the instructions of the relevant bureaux and departments of HKSARG. So far, BJO had not received any formal instruction from any bureau or department that BJO should take the lead to follow up the matter. However, DBO informed members that he had conveyed the concern of the Hong Kong community to relevant Mainland authorities on several occasions.

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16.23 As to whether BJO had received any instruction from the relevant bureau(x) to consult CPG on HKSARG's plan to enact legislation on Article 23 of the Basic Law, DBO confirmed in the negative and said that according to his understanding, the matter was still under deliberation within the Administration.