立法會
Legislative Council

LC Paper No. CB(2)2546/99-00
(These minutes have been seen by the Administration and cleared with the Chairman)

Ref : CB2/PL/AJLS

Legislative Council
Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Tuesday, 16 May 2000 at 4:30 pm
in Conference Room A of the Legislative Council Building

Members Present	:	Hon Margaret NG (Chairman) Hon Jasper TSANG Yok-sing, JP (Deputy Chairman) Hon Albert HO Chun-yan Hon Martin LEE Chu-ming, SC, JP Hon James TO Kun-sun Hon Mrs Miriam LAU Kin-yee, JP Hon Mr Ambrose LAU Hon-chuen, JP Hon Emily LAU Wai-hing, JP
Public Officers Attending	:	*Item V* Mr Stephen WONG Deputy Solicitor General (Advisory) Department of Justice Mr Andrew BRUCE, SC Senior Assistant Director of Public Prosecutions Department of Justice *Item VI* Mr NG Hon-wah Principal Assistant Secretary for Home Affairs

Item VII

Miss Emma LAU
Acting Judiciary Administrator

Mr David LEUNG
Acting Judiciary Administrator

Mrs Betty CHU
Judiciary Secretary

Mr James CHAN
Assistant Director of Administration

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr Jimmy MA, JP
Legal Adviser

Miss Mary SO
Senior Assistant Secretary (2)8

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2)1956/99-00)

The minutes were confirmed.

II. Endorsement of draft report of the Panel on Administration of Justice and Legal Services to the Legislative Council
(LC Paper No. CB(2)1951/99-00(01))

2. Members endorsed the draft report which gave an account of the work of the Panel for tabling at the meeting of the Legislative Council (LegCo) on 14 June 2000 in accordance with Rule 77(14) of the Rules of Procedure of LegCo. Members also agreed to authorize the Clerk, in consultation with the Chairman, to revise the report to incorporate major issues discussed at the meeting.

III. Information papers issued since the last meeting

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(LC Paper No. CB(2)1950/99-00(01))

3. Members noted the Chairman's letter dated 5 May 2000 to the Secretary for Justice (SJ) on "Rule of law and related matters" which had been issued since the last meeting.

IV. Items for discussion at the next meeting

(LC Paper Nos. CB(2)1951/99-00(02)and (03))

4. Members agreed that the following items would be discussed at the next Panel meeting scheduled for 20 June 2000 -

a) Rule of law and related matters

SJ would be invited to discuss the item, including her response to the issues raised in the Chairman's letter dated 5 May 2000;

b) Appointment of Solicitor General

The Administration would be requested to brief the Panel on the Administration's plan and timetable in the appointment of the Solicitor General; and

c) Admission of Notaries Public in Hong Kong

Representatives from the Hong Kong Society of Notaries would be invited to brief the Panel as to why the rules and regulations concerning admission of notaries public had yet to be made, despite the passage of the Legal Practitioners (Amendment) Ordinance 1998 long time ago. The Administration would also be requested to brief the Panel on the matter, including the reasons for the long time taken to draft the rules, the present position and the likely timing for finalizing the rules.

Appointment of judges to the Court of Final Appeal

5. Mr James TO suggested to invite the Administration to brief the Panel on the legal and administrative matters relating to the appointment of judges to the Court of Final Appeal (CFA), so as to facilitate Members to consider the motion to be moved by the Administration under section 7A of the Hong Kong Court of Final Appeal Ordinance. Noting that the Provisional Legislative Council (PLC) had considered similar motions, Mr TO asked how Members of the PLC had dealt with such motions. The Legal Adviser advised that the PLC had not formed any subcommittee to study the motions but had asked the Administration to postpone the moving of an

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endorsement motion in order to provide Members with more information on the proposed appointees.

6. Mr Martin LEE and Mr Albert HO expressed support for Mr TO's suggestion. Mr LEE further said that it was essential for Members to have an understanding of the judicial appointment system so as to ensure that the appointments were made on merits irrespective of extraneous factors. Mr HO also said that the manner of speaking at the Council meeting in considering the proposed resolution also warranted discussion, as the Rules of Procedure of LegCo did not lay down any rules governing such. The Chairman said that she had no objection to Mr TO' suggestion, but urged that in doing so due care should be exercised to avoid giving a wrong impression to the public that LegCo was interfering in judicial independence. Some members suggested that reference should be made to overseas practice and requested the Legal Adviser to assist by providing relevant information.

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(Post-meeting note: The information was circulated to all Members vide LC Paper Nos. CB(2) 2176(02) and (03) on 1 June 2000.)

7. Members agreed to convene a special meeting at 11:00 am on 3 June 2000 to discuss the matter. Representatives of the Administration, the legal profession and the academia would be invited to attend the special meeting. Non-Panel members would also be invited to join the discussion. Members further agreed that the Chairman should, on behalf of the Panel, seek the agreement of the House Committee on 19 June 2000 to request the Administration to withdraw its notice of moving the proposed resolution at the Council meeting on 31 May 2000.

(Post-meeting note: The motion was withdrawn by the Administration on 22 May 2000.)

V. Marital rape under section 118 of Crimes Ordinance (Cap. 200)
(LC Paper No. CB(2)1951/99-00(04))

8. At the invitation of the Chairman, Deputy Solicitor General (Advisory) (DSG(A)) briefed members on the salient points of the Administration's paper. In essence, DSG(A) said that as the Hong Kong courts would place the same interpretation as settled by the House of Lords in the case of *R v R* (Rape: Marital Exemption) [1992] 1 AC 599 that marital rape was a crime, the Administration therefore did not consider it necessary to amend section 118 of the Crimes Ordinance (Cap. 200). To the extent that marital rape might not sufficiently be known to the general public, the Administration would promote greater public awareness as and when necessary. In the meantime, the Department of Justice (D of J) had taken steps to remind the Police, Social Welfare Department (SWD), non-governmental organizations (NGOs) involving in welfare services and women groups that a man

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who raped his wife was liable to be convicted for rape.

9. Paragraph 6 of the Administration's paper stated that the Administration was presently reviewing the relevant rules of evidence and the recommendations of the Law Reform Commission (LRC) published in 1988 on the competence and compellability of spouses giving evidence and would consider whether a bill should be introduced. Mrs Miriam LAU enquired whether the bill in question would be identical to the one introduced in 1990 to implement the LRC's recommendations which was eventually defeated, and whether the scope of the new bill would be confined to the competence and compellability of spouses giving evidence on sexual and related offences. Mrs LAU also enquired about the parties to be consulted by the Administration after completing the review. Mrs LAU further referred to paragraph 7 of the Administration's paper which stated that under section 57 of the Criminal Procedure Ordinance (Cap. 221) a wife would be competent (but not compellable) to testify against her husband on a charge of rape, and enquired whether this provision should also cover a husband who would be competent (but not compellable) to testify against his wife on such a charge.

10. DSG(A) replied that the LRC's recommendations on the competence and compellability of spouses giving evidence in criminal proceeding covered a wide range of offences, including sexual and related offences. However, the 1990 bill did not seek to implement all of them. As regards the question of an consultation, DSG(A) said that the Police, WSD, legal profession, women groups and NGOs involving in welfare services would be consulted.

11. In respect of the competence and compellability of a spouse as witness for the prosecution, Senior Assistant Director of Public Prosecutions (SADPP) said that the existing law in this regard was very narrow, i.e. a person was only competent (but not compellable) to testify against the person to whom he or she was married to on offences specified in Schedule 2 of Cap. 221, which included the whole of the Separation and Maintenance Orders Ordinance (Cap.16), Part VI (Incest) and Part XII (Sexual and related offences) of the Crimes Ordinance (Cap. 200) and a limited selection of offences under the Offences Against the Person Ordinance (Cap. 212). A person was therefore neither competent nor compellable to testify against his or her spouse on charges such as murder, robbery and any other kinds of violence which were not related to the person himself or herself.

12. Mrs Miriam LAU enquired about the practice of other leading common law jurisdictions on the competence and compellability of spouses giving evidence.

13. SADPP replied that the practices varied. For example, in some jurisdictions in Australia a person was competent and compellable to testify against his or her spouse in all or a large number of offences but the judge who heard the case was allowed to excuse, say, a wife not to testify against her husband on the ground of significant community interests or related matters. In the United Kingdom, a wife

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was either compellable, or competent but not compellable, to give evidence on certain types of crimes in limited circumstances. SADPP further said that the law of Hong Kong on the competence and compellability of spouses giving evidence followed the old English common law, as well as section 57 of Cap. 221 and an additional coverage in section 31 of the Theft Ordinance (Cap. 210) for money crime. In his view, it would be best for Hong Kong to come up with its own solution on the issue rather than looking at any magic solution in some other jurisdictions.

14. Miss Emily LAU referred to paragraph 5 of the Administration's paper which stated that the Prosecutions Division had not in recent times declined to initiate a prosecution for rape on the basis of marital relationship, and enquired whether any complaints had been received from wives that the Police was reluctant to follow up their plight of being raped by their husbands, when was the last time that a husband had been prosecuted for raping his wife, when was the last time that a husband had been convicted for marital rape, and whether the Police knew that a husband could be convicted for raping his wife.

15. SADPP replied that the Division had never received a complaint of marital rape from the Police. Miss LAU asked whether the situation reflected that there was no marital rape in Hong Kong, or that the Police was unaware of the fact that a husband who raped his wife was liable to be convicted for rape. SADPP replied that he was not in a position to respond to the first question, as he did not know whether other branches of the Administration had received such complaints. On the second question, he said that as far as he was aware, the Police understood the law clearly. In order to put beyond doubt that the Police knew that marital rape was a crime, he undertook to remind the Police in this respect. He added that in the end it was a matter for the aggrieved to have the courage to come forward to make complaints to the Police.

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16. The Chairman said that the Administration, in preparing the paper for discussion of this item, should have checked with other Government departments such as SWD which were places likely to receive complaints on marital rape. She pointed out that the occurrence of marital rape was not uncommon in Hong Kong, as evidenced by a recent press conference given by a women group in which wives recounted their personal experience of being raped by their husbands. In her view, if the problem had not become so serious and intolerable at home, these women would not have taken such a drastic step. The Chairman wondered whether the reason for D of J not receiving any complaints of marital rape from the Police was because the Police treated these complaints merely as family bickering and simply told the wives to go home and make up with their husbands.

17. Mr Martin LEE said that he was not so sure that the Police knew that marital rape was a crime. To his knowledge, not even all lawyers knew that marital rape was a crime as many were taught in law schools that husbands were entitled to conjugal

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rights with their wives. SADPP concurred with Mr LEE's comments, and added that he was also not aware that marital rape was a crime until he read the judgment of the House of Lords in *R v R* [1992] 1 AC 599. In reply to Mr LEE's enquiry as to whether any written instruction had been issued to the Police following the judgment of the House of Lords in *R v R* [1992] 1 AC 599, SADPP said that he did not know whether this had been done. Nevertheless, he had undertaken to advise to the Police that marital rape was a crime so that nobody could claim ignorance in future.

18. Mr LEE further said that he found it very odd that wives who had the courage to talk about their plight of being raped by their husbands in a press conference did not make a complaint to the Police. He wondered whether it was a case of the wives lacking the courage to do so, or they simply did not know that marital rape was a crime and therefore did not complain. The Chairman said that the reason why these women did not make a complaint to the Police was because they did not know marital rape was a crime, and that was precisely what highlighted the problem.

19. Mr James TO was of the view that apart from the Police, other relevant departments of the Administration such as SWD, NGOs involved in welfare services, women groups, and other bodies which received complaints from the public such as the offices of the District Council members should also be made aware of the fact that a man who raped his wife was liable to be convicted for rape under Hong Kong law.

20. The Chairman said that although promoting greater public awareness that marital rape was a crime was a good thing, it nevertheless would not be the same as amending the law to make it clear beyond doubt that marital rape was a crime. Given that amending the legislation to this effect was straightforward and having regard to the earlier advice of the Administration that some lawyers were unaware of the fact that a man who raped his wife was liable to be convicted for rape, she could not understand the Administration's reluctance to introduce legislation. The Chairman further said that although the Hong Kong Court of Appeal had already accepted the correctness of the judgment of the House of Lords in *R v R* [1992] 1 AC 599 that marital rape was a crime in *HKSAR v Chan Wing-hung* [1997] 3 HKC 472, it should be noted that the latter was not concerned with a charge of rape. Hence, marital rape was considered as a crime had yet to be tested in Hong Kong courts. For the avoidance of doubt, she was adamant that the law should be amended to expressly state that marital rape was a crime. The Chairman added that this point was also made by the judge presiding over the case of *HKSAR v Chan Wing-hung* who appeared to hold the view that it was best to legislate marital rape as a crime rather than relying on the courts to interpret the crime based on one single precedent case tried in the United Kingdom, i.e. *R v R* [1992] 1 AC 599.

21. Mr James TO, Mr Martin LEE and Miss Emily LAU shared the Chairman's views. Mr LEE further said that before amendment could be made to the law stipulating that marital rape was a crime, the Police should be clearly instructed in one simple circular that marital rape was a crime so that they would know how to follow

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up on any complaints lodged.

22. The Chairman concluded that members were unanimous in support of amending the law to put beyond doubt that marital rape was a crime. She suggested and members agreed that the Administration be requested to reconsider its position on the matter and revert to the Panel before the next meeting on 20 June 2000. In the event that the reply was in the negative, the Administration should provide further information such as ramifications of amending the law, the definition of "rape" in other overseas jurisdictions, and statistics on complaints received from wives against husbands by relevant departments, e.g. the Police and SWD on sexual ill-treatment such as rape.

VI. Review of applicability of Personal Data (Privacy) Ordinance to "State" organs stationed in the HKSAR

(LC Paper No. CB(2)1951/99-00(05))

23. The Chairman said that at the Panel meeting on 25 February 1999, the Administration had advised that due to the complexity of the Personal Data (Privacy) Ordinance (PDPO), more time would be needed to discuss with the Central People's Government (CPG) about the applicability of the Ordinance to the CPG offices in Hong Kong. Since then, the Administration had been chased for a progress report and a timetable for completing the review, but to no avail. According to the paper presented by the Administration for the meeting, discussions with the CPG were still going on and no details of the discussions could be disclosed. The Chairman invited Principal Assistant Secretary for Home Affairs (PAS/HA) to brief members on the difficulties encountered, if any, in its discussions with the CPG and when the discussions with the CPG were expected to be completed.

24. PAS/HA replied that he had nothing more to add to what had been presented in the Administration's paper. He however assured members that the Administration attached great importance to the matter and would inform the Panel of the result of the review as soon as possible.

25. Mr Martin LEE enquired whether the long time taken for the Administration to complete the discussions with the CPG was due to the reluctance of the CPG to discuss the matter. PAS/HA replied in the negative, and pointed out that a meeting had in fact been held recently. Mr LEE then requested the Administration to provide information on the dates, venues and attendance lists (including representatives from both sides) of the meetings held, as well as the issues discussed. Mrs Miriam LAU also requested for the same information in respect of meetings scheduled to be held with the CPG.

26. PAS/HA replied that he did not have the information on hand, as he did not

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personally attend all the meetings nor did his colleagues in the Home Affairs Bureau (HAB). He pointed out that apart from the HAB, other Government bureaux and departments, such as the Constitutional Affairs Bureau (CAB), had also taken part in the discussions with the CPG over the matter. In fact, CAB was the bureau responsible for co-ordinating the matter with the CPG. In response to Miss Emily LAU's request for a written reply to be provided after the Panel meeting, PAS/HA said that he could not promise that he could provide all the information requested without first discussing with his Bureau and other Government bureaux and departments concerned. Miss LAU queried why should there be any difficulty for the Administration to release such information which was factual in nature. The Chairman concurred with Miss LAU, and expressed concern at the lack of transparency over matters involving discussions with the CPG.

27. Mrs Miriam LAU enquired why CAB had not sent a representative to attend this Panel meeting. PAS/HA responded that as the Administration's paper had already presented the present position on the progress of the review, it was considered appropriate for HAB, the policy bureau responsible for the formulation and implementation of the PDPO, to send representatives to attend the meeting. Members suggested that more from the highest level of the Administration should attend future meetings for discussion of this item.

28. In response to the Chairman on the Mainland bodies involving in the discussions, PAS/HA replied that the Administration mainly discussed the matter with the Hong Kong and Macau Affairs Office, although representatives of other CPG offices in Hong Kong had sometimes also participated in the discussions.

29. Referring to paragraph 4 of the Administration's paper which stated that the Privacy Commissioner for Personal Data (PC)'s decisions on investigations into complaints about contraventions of the PDPO had been challenged on numerous occasions by way of appeal to the Administrative Appeals Board (24 cases) or judicial reviews (one case), Miss Emily LAU enquired whether these cases had any bearing on the prolonged discussions with the CPG, for instance, whether the fact that the PC's decisions had been overturned on several occasions by the Administrative Appeals Board's or court's rulings was a cause of concern to the CPG.

30. PAS/HA replied that the intention of paragraph 4 was simply to substantiate the point made in the Administration's paper issued in March 1999 that the PDPO was complicated. It was therefore understandable that more time would be needed to explain to the CPG the key provisions of the PDPO and how they were being interpreted and applied by the PC.

31. The Chairman said that she could not see how the complexity of the PDPO should be a factor for determining whether the PDPO should be extended to apply to the CPG offices in Hong Kong. In her view, given that Article 22 of the Basic Law stipulated that CPG offices set up in Hong Kong and their personnel should abide by

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the laws of Hong Kong, the decision as to whether a certain ordinance should be extended to apply to the CPG offices in Hong Kong should therefore be a matter of principle regardless of the complexity of the ordinance concerned. The Chairman enquired whether the Administration's decision to apply the PDPO to the CPG offices in Hong Kong would be subject to the agreement of the CPG.

32. PAS/HA responded that the Administration would arrive at a recommendation as to whether the PDPO should be extended to apply to the CPG offices in Hong Kong after it had completed discussions with the CPG. In the meantime, the Administration still needed more time to explain to the CPG the key provisions of the PDPO because of the complexity of the Ordinance. PAS/HA pointed out that prior to the implementation of the PDPO, the Administration had undertaken similar exercise to explain to numerous public and private organizations in Hong Kong the key provisions of the Ordinance to allay their various concerns. In the end, this had helped the acceptability of the PDPO by the organizations concerned.

33. Mr James TO expressed concern about the long time taken by the Administration to discuss with the CPG. Should the same situation happen to a bill being considered by LegCo, Members would be put in a difficult position as to whether they should support the bill in the absence of the Administration's advice on the binding effect of the bill on the CPG offices in Hong Kong. He quoted an example of the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Bill 1999 which was being scrutinized by a bills committee. He said that although the Bills Committee had almost concluded its deliberations, it was still waiting for the Administration's response as to whether it would introduce a Committee Stage amendment to expressly state that no persons, including the CPG offices in Hong Kong, should have access to the DNA databases or disclose any such information except for the purposes specified. Pending the Administration's response, the Bills Committee had yet to decide whether to support the resumption of the Second Reading debate on the Bill.

34. The Chairman echoed Mr TO's concern. She pointed out that the question of the binding effect of bills on the CPG offices was raised in the scrutiny of a number of bills, e.g. the Arbitration (Amendment) Bill 1999, the District Court (Amendment) Bill 1999, the Adaptation of Laws (No. 9) Bill 1999 and the Adaptation of Laws (No.16) Bill 1999. In respect of the Arbitration (Amendment) Bill 1999, although the Administration confirmed that it was the policy intent of the Bill to bind the CPG offices in Hong Kong, it nevertheless did not agree to amend the Bill to provide an express provision to this effect. The Administration had only agreed to explore ways to address the applicability of the Bill to the CPG offices in Hong Kong after the enactment of the Bill. The District Court (Amendment) Bill 1999 and the Adaptation of Laws (No. 9) Bill 1999 had been dealt with in similar manner. As regards the Adaptation of Laws (No.16) Bill 1999, the Bills Committee concerned was still awaiting the Administration's response to members' request to change the adaptation of certain non-immunity provisions from "State" to "Government". The Chairman

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expressed grave concern that such approach adopted by the Administration to defer consideration of the matter would eventually undermine the rule of law in Hong Kong. In respect of the Adaptation of Laws (No. 9) Bill 1999, the Legal Adviser advised that the Administration had agreed to withdraw certain proposed adaptation amendments concerning the binding effect on the CPG offices in Hong Kong and to deal with them in an omnibus bill to be introduced in the next legislative session.

35. Mr Albert HO said that given that it was the prerogative of the Administration to decide whether certain ordinances should bind the CPG offices in Hong Kong, he questioned the need for obtaining the consent of the CPG in this regard. Mr HO was of the view that although consultation with the CPG was desirable, the latter's consent or otherwise should not affect the Administration's decision for certain ordinances to be binding on the CPG offices in Hong Kong if it was considered justifiable to do so from a policy point of view.

36. The Chairman suggested that the Administration should submit a quarterly progress report to the Panel on the review of the applicability of the PDPO to the CPG offices in Hong Kong. The Chairman further suggested that a letter should be sent to the Chief Secretary for Administration urging her to expedite the review of the PDPO and to address the other adaptation matters raised. Members agreed.

(Post-meeting note: The letter was issued on 31 May 2000 and circulated to members vide LC Paper No. CB(2) 2186/99-00 on 1 June 2000.)

VII. Proposed creation of new ranks and posts of Registrar and Deputy Registrar, District Court

(LC Paper No. CB(2)1968/99-00(01))

37. At the invitation of the Chairman, Acting Judiciary Administrator (JA(Ag)) introduced the Administration's paper which explained the justifications to create two new ranks of Registrar, District Court and Deputy Registrar, District Court and to create one permanent post of Registrar, District Court and two posts of Deputy Registrar, District Court. JA(Ag) said that the Amendment Ordinance would significantly increase the financial jurisdictional limits of the District Court, thereby resulting in the increase of caseload for the District Court as detailed in paragraphs 5-6 of the paper. A Master system, similar to that adopted in the High Court, would be introduced to deal with interlocutory hearings. The Judiciary considered it necessary that the District Court Registry should be headed by a Registrar and supported by two Deputy Registrars who were legally qualified officers to cope with the increased caseload and to ensure proper compliance with the more formalized set of court rules. In addition, a total of eight non-directorate posts comprising three Judicial Clerk, three Assistant Clerical Officer, one Personal Secretary II, and one Workman, would be created to support one Registrar and two Masters of the District Court.

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38. In estimating the increased caseload for the District Court, JA(Ag) stressed that the Judiciary had made projections on the basis of historical data available and built in appropriate assumptions where appropriate, as well as taking into account the increase in jurisdictional limits for the Small Claims Tribunal from $15,000 to $50,000 implemented on 19 October 1999. The Judiciary would closely monitor the situation to see if adjustments should be made to the original projections after the new financial limits for the District Court had been in force for some time. JA(Ag) further said that under the new District Court Rules, interlocutory applications with serious arguments would continue to be heard by District Judges. In the light of the estimated number of interlocutory hearings and trials, the Judiciary estimated that four additional District Judges would be required to cope with the increase in workload in the District Court. Instead of creating four additional permanent posts of District Judges, the Judiciary intended to re-deploy resources earmarked for two Deputy High Court Judges and two Deputy High Court Masters to help meet the additional requirement of the District Court, as it was anticipated that the number of cases filed with the Court of First Instance of the High Court would eventually decrease as a result of diversion of cases to the District Court. JA(Ag) however pointed out that as there had been an upsurge in the number of civil cases filed since 1997 (a 44% increase in caseload in 1998 over 1997) and the number had remained at a high level, the Judiciary considered it necessary to maintain the staffing level of the High Court at a reasonable level following the commencement of the Amendment Ordinance and the new District Court Rules, so as to clear the backlog of cases with a view to reducing the court waiting time to that closer to the pledged target of 180 days.

39. In reply to the Chairman's enquiries, JA(Ag) said that at present there were four District Judges in the civil division of the District Court. Following the commencement of the Amendment Ordinance and the new District Court Rules on 1 September 2000, the number of District Judges in the civil division of the District Court would be increased to eight. JA(Ag) further said that these eight District Judges would be supported by a Registrar and two Deputy Registrars whose task would be to vet the less contentious interlocutory applications. The Registrar, District Court would act as the leader of the Master's Office and co-ordinate the work of the two Deputy Registrars, District Court. As regards the number of Masters in the High Court, JA(Ag) said that at present there was a total of 11 comprising one Registrar, three Senior Deputy Registrars, five Deputy Registrars and two temporary Deputy Registrars.

40. Mr Martin LEE asked whether the County Court in the United Kingdom had a Master system. JA(Ag) replied that she did not have the information on hand and could provide it to members after the meeting. Mr LEE further said that he was surprised that there were only four District Judges dealing with civil cases in the District Court at present. JA(Ag) responded that the existing number of District Judges handling civil cases was adequate, having regard to the fact that the current civil jurisdiction of the District Court was limited to claims of up to $120,000 or, where claims were for recovery of land, the annual rent or rateable value not

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exceeding $100,000.

41. Mr Albert HO enquired whether the proposed District Court Masters would also deal with matters of the Lands Tribunal and hear and determine interlocutory applications of the Family Court. JA(AG) replied in the negative. She reiterated that the main task of the proposed District Court Masters was to hear the various interlocutory applications in civil actions to ascertain and expedite their readiness for trial by a District Judge. After trial by judges, the District Court Masters would also tax bills of costs.

42. Paragraph 18 of the Administration's paper stated that the actual waiting time for civil cases filed with the High Court still far exceeded the target waiting time of 180 days and that the Judiciary would maintain the staffing level of the High Court at a reasonable level so as to help reduce court waiting time. Miss Emily LAU enquired about the actual waiting time for civil cases filed with the High Court in recent years, and when the High Court could meet its target waiting time of 180 days for civil cases having regard to the expected relief from redistribution of civil cases to the District Court as a result of the increase in the financial limits of civil jurisdiction in the District Court. Miss LAU also enquired about the actual court waiting time for civil cases filed with the District Court, and whether the eventual increase in the civil caseload of the District Court would put its target court waiting time of 110 days for civil cases under pressure.

43. JA(Ag) replied that the average court waiting time for civil cases filed with the High Court in 1997, 1998 and 1999 was 194, 201 and 224 days respectively. JA(Ag) pointed out that despite the appointment of five additional Deputy High Court Judges and three additional Deputy Masters to cope with an upsurge in the number of civil cases in the latter half of 1997, it was still not possible for the High Court to bring the waiting time down to the pledged target for the time being. In the light of this, the Judiciary considered it necessary to maintain the staffing level of the High Court at a reasonable level to clear the backlog of cases with a view to reducing the waiting time. On the question of when the High Court could meet its target court waiting time of 180 days for civil cases, JA(Ag) said that she could not give a reply at this stage as this would depend on the complexity of cases and the number of cases which would be diverted to the District Court after August 2000. She however assured members that the Judiciary would try its utmost to bring the court waiting time for civil cases at the High Court within target. As regards the court waiting time for civil cases filed with the District Court, JA(Ag) said that it averaged about 80 to 90 days as compared to the pledged target of 110 days. JA(Ag) conceded that the increase in civil caseload following the commencement of the Amendment Ordinance and the new District Court Rules would put pressure on the District Court to adhere to the target waiting time of 110 days. Nevertheless, the Judiciary would monitor the court waiting time constantly and conduct regular reviews to ensure that the pledged target would continue to be met.

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44. Miss LAU referred members to the comments made by the Director of Audit (D of A) in his report published in February 2000 that the reason for a considerable amount of unused time for each courtroom was because at present basically each judge had his/her own courtroom, and enquired whether the Judiciary would construct additional courtrooms in the District Court to match the appointment of four additional District Judges.

45. JA(Ag) replied that additional courtrooms in the District Court would be constructed to cope with the increase in civil caseload. On the question of providing each judge with her/her own courtroom, she explained that under the current listing policy, each judge was to be listed with trials every weekday and was expected to use the courtroom allocated to him/her for a full day. However, it was not possible to utilize 100% of the listed time slots for hearing. There were circumstances outside the control of the courts. For example, trials listed for a period could either be pleaded or settled at the early stage, they could under-run or over-run the full allocated lengths, and they could be adjourned at the request of parties for reasons such as negotiations for compromise, non-availability of witness, or for further reports on defendants' background. As such, the "low" utilization of courtrooms observed was more apparent than real. JA(Ag) further said that in order to maximize the utilization of judges' available time, the Judiciary had been listing urgent and short cases to fill time slots vacated at short notice as well as overbooking judges' diaries so that more cases were packed within the available time. JA(Ag) added that the Judiciary could not agree with the D of A's recommendation about courtroom sharing on the ground that this would only be possible if the listing policy was changed so that judges were not listed with trials for every day. However, the Judiciary had agreed to consider constructing courtrooms of mixed sizes in the design of new court facilities and allocating courtrooms by case nature rather than by judges. The Chairman said that she could not agree with the D of A's comments on courtroom utilization. She was of the view that the number of courtrooms should match with that of judges to ensure judicial efficiency.

46. Paragraphs 5 and 6 of the Administration's paper stated that 50% of the cases filed, 40% of the interlocutory hearings, 30% of the listed trials and 50% of taxation bills were envisaged to be diverted from the High Court to the District Court and that the number of cases filed with the District Court would also increase by 20%. The Chairman enquired when the expected increase in caseload would take place, taking into account of the fact that the cases to be diverted to the District Court would need to go through the requisite process and that it would take some time for the public to be aware of the revised financial limits to the civil jurisdiction in the District Court.

47. JA(Ag) responded that it was the Judiciary's estimation that the caseload projections set out in paragraphs 5 and 6 of the Administration's paper would take about six to nine months' time to fully occur. The Judiciary would closely monitor the situation and increase staffing resources, i.e. the appointment of four additional District Judges and three District Court Masters, as and when necessary. However,

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in order to meet the statutory requirement of introducing a Master system in the District Court following the enactment of the Amendment Ordinance, the Judiciary would need to fill the post of Registrar, District Court first so that the incumbent could set up the Master's Office prior to the commencement of the Amendment Ordinance and the new District Court Rules on 1 September 2000.

48. In summing up, the Chairman concluded that members generally supported the staffing proposal set out in the Administration's paper. Given the significant implication of the revised financial limits of the civil jurisdiction in the District Court on the public, the Chairman proposed to put on record that the Panel on Administration of Justices and Legal Services should follow up the matter in the next
Panel legislative session by requesting the Judiciary to provide a report on the operation of the District Court as well as the High Court six months after the commencement of the Amendment Ordinance and the new District Court Rules, and a quarterly report thereafter. Members agreed.

49. There being no other business, the meeting ended at 6:32 pm.

Legislative Council Secretariat
5 June 2000