

立法會
Legislative Council

LC Paper No. CB(2)1595/99-00
(These minutes have been
seen by the Administration)

Ref : CB2/PL/HA

LegCo Panel on Home Affairs

**Minutes of meeting
held on Monday, 13 March 2000 at 4:30 pm
in the Chamber of the Legislative Council Building**

Members Present : Hon Albert HO Chun-yan (Deputy Chairman)
Hon Cyd HO Sau-lan
Hon Edward HO Sing-tin, JP
Hon LEE Wing-tat
Hon LEE Kai-ming, SBS, JP
Hon MA Fung-kwok
Hon LAU Wong-fat, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, JP

Members Absent : Hon CHOY So-yuk (Chairman)
Hon Fred LI Wah-ming, JP
Hon James TO Kun-sun
Hon Gary CHENG Kai-nam
Hon Christine LOH
Hon Andrew WONG Wang-fat, JP
Hon FUNG Chi-kin
Dr Hon TANG Siu-tong, JP

Public Officers Attending : Items IV and V
Mr Leo KWAN
Deputy Secretary for Home Affairs (1)

Mr R C ALLCOCK
Solicitor-General

Mr Stephen WONG Kai-yi
Deputy Solicitor-General

Ms Roxana CHENG
Senior Assistant Solicitor General

Miss Eliza YAU
Principal Assistant Secretary (Security) E

Mr David WONG
Principal Assistant Secretary (Security) B

Mrs Carrie WILLIS
Principal Assistant Secretary (Security) A

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

Miss WONG Yuet-wah
Assistant Secretary for Home Affairs (7)

Item IV only

Mr Bassanio SO
Principal Assistant Secretary for Constitutional Affairs (5)

Mr Gary Y S YEUNG
Principal Assistant Secretary (Lands)

Ms Diana LAM
Senior Government Counsel

Mrs Jenny CHAN
Chief Labour Officer (Labour Department)

Item V only

Ms Anita NG
Government Counsel

Dr Lawrence LAI
Deputy Director (Hospital Authority)

Dr NG Hon-shing
Hospital Chief Executive (Castle Peak Hospital)

Attendance : Equal Opportunities Commission
by Invitation

Ms Anna WU
Chairperson

Ms Alexandra PAPADOPOLOUS
Legal Adviser

Mr Joseph LEE
Chief Equal Opportunities Officer
(Policy Support & Research)

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Hong Kong Human Rights Commission

Mr HO Hei-wah
Chairman

Mr CHOI Yiu-cheong

Mr WONG Chi-yuen

Ms YEUNG Hoi-ha

Clerk in : Miss Flora TAI
Attendance Chief Assistant Secretary (2)6

Staff in : Miss Mary SO
Attendance Senior Assistant Secretary (2)8

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I. Confirmation of minutes

[LC Paper Nos. CB(2) 1147,1300 & 1340/99-00]

The minutes of meetings held on 7 December 1999, 10 January 2000 and 14 February 2000 were confirmed.

II. Information paper(s) issued since the last meeting

[LC Paper No. CB(2) 1174/99-00]

2. Members noted that the minutes of meetings of the District Office (Kwun Tong) with relevant departments concerning the removal of the "Command Post" in the case of the Kowloon Bay Health Centre had been issued.

III. Items for discussion at the next meeting

[Appendix I to LC Paper No. CB(2) 1346/99-00 - list of discussion items]

[Appendix II to LC Paper No. CB(2) 1346/99-00 - list of follow-up actions]

3. Members agreed to discuss the following items at the next regular Panel meeting scheduled for 4:30 pm on Monday, 10 April 2000 -

- a) work of the new Leisure and Cultural Services Department;
- b) recommendations arising from the Fundamental Expenditure Review on Youth; and
- c) regulation of golf driving ranges located near residential areas.

4. Members further agreed that members of the Panel on Welfare Services be invited to join the discussion on item (b) above.

IV. Following up on the Concluding Observations made by the United Nations Human Rights Committee after its hearing on the Report of the Hong Kong Special Administrative Region (HKSAR) under the International Covenant on Civil and Political Rights

[LC Paper No. CB(2) 338/99-00 - Concluding Observations of the United Nations Human Rights Committee after its hearing on the Report of the HKSAR under the International Covenant on Civil and Political Rights (Concluding Observations)]

5. Members noted the written submissions from the Hong Kong Christian Institute and the Hong Kong Bar Association which had been issued vide LC

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Paper Nos. CB(2) 1346/99-00(01) and CB(2) 1346/99-00(03) respectively. Members further noted that the Home Affairs Bureau had provided a paper for the meeting [LC Paper No. CB(2) 1346/99-00(02)].

Meeting with deputations

6. The Deputy Chairman welcomed representatives of the deputations and invited their views on the Concluding Observations.

Equal Opportunities Commission (EOC)

7. The Chairperson of EOC highlighted the work of the EOC in promoting equal opportunities in education and employment and small house entitlement in the New Territories. On education, the Chairperson of EOC said that an investigation conducted by the EOC in August 1999 revealed that the Secondary Schools Places Allocation (SSPA) System, used by the Education Department to allocate Form One places in secondary schools for Primary 6 students, discriminated against girls. To remedy the situation, EOC had recommended that the Administration should review the SSPA System to ensure that boys and girls were allocated Form One places in secondary schools in a way that did not discriminate against either sex. In regard to employment, a half-day conference on Equal Pay for Work of Equal Value (EPWEV) would be hosted by EOC on 18 March 2000 to raise public awareness about the concept of EPWEV. As regards small house entitlement in the New Territories, EOC had urged the Administration to expeditiously introduce amendment to delete an exception provision in Schedule 5 of the Sex Discrimination Ordinance (Cap. 480) which rendered the act of denying female indigenous villagers the granting of land in the New Territories under the small house policy not unlawful.

Hong Kong Human Rights Monitor (HKHRM)

8. The Director of HKHRM expressed disappointment that the Administration had yet to implement most of the United Nations Human Rights Committee (HRC)'s recommendations contained in its Concluding Observations on the previous report made in 1995 and those in the current report. He urged that the Administration should expeditiously give a response as to whether and when it intended the recommendations. If the Administration had no intention to implement them, it should explain why.

Hong Kong Human Rights Commission (HKHRC)

9. Members noted the written submission from HKHRC which was tabled at the meeting and also issued vide LC Paper No. CB(2) 1385/99-00(02).

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10. The Chairman of HKHRC said that the Administration had turned a deaf ear to the HRC's recommendations and concerns, and in so doing would tarnish Hong Kong's reputation as a free and democratic society. He requested the Administration to provide a written explanation on the reasons and justifications for not implementing the HRC's recommendations, particularly in regard to the setting up of an independent Human Rights Commission in Hong Kong and to the enactment of a comprehensive anti-discrimination legislation aiming at eliminating all forms of discrimination. He added that the Administration should also explain why it had not taken any positive steps to address the HRC's concerns, particularly in respect of the arrangement of functional constituencies in the electoral system for the Legislative Council (LegCo) not being in conformity with article 2, paragraph 1, and articles 25 and 26 of the International Covenant on Civil and Political Rights (ICCPR).

Meeting with the Administration

Follow-up on the Concluding Observations

11. The Deputy Chairman invited representatives from the Administration to respond to the views expressed by the deputations.

12. Deputy Secretary for Home Affairs (1) (DS(HA)1) said that the Administration was most attentive to what the HRC had said, not only their positive comments but also their concerns. The Administration was considering them very carefully and positively with an open mind. It must however be pointed out that the development of human rights in Hong Kong had always been progressive and positive and, in some cases, had been accomplished through prudent, incremental, progress. It was in this context that the Administration was now considering its position on the Concluding Observations and on the way forward. The Administration was thankful to the Panel for providing the opportunity to listen to the views of Members and non-governmental organizations (NGOs), both in relation to the Concluding Observations themselves and to the substantive issues to which they related. These views would be a valuable contribution to the Administration's on-going consideration of the Concluding Observations.

13. DS(HA)1 further said that Hong Kong's human rights situation compared very favourably with many developed countries. According to the Observer's Human Rights Index 1999, Hong Kong was ranked 147 out of 194 countries/areas in the observance of human rights (the lower the ranking, the better was the human rights situation of the country/area concerned), as opposed to the United States of America, Japan, Australia and the UK getting a ranking of 64, 82, 88 and 126 respectively. Nevertheless, the Administration would not be complacent about its work in protecting and promoting human rights in Hong Kong.

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14. At the request of Mr LEE Wing-tat, DS(HA)1 undertook to provide the Observer's Human Rights Index 1999 to members after the meeting.

(Post-meeting note: The Observer's Human Rights Index 1999 was circulated to members vide LC Paper No. CB(2) 1400/99-00.)

15. Concerning the HRC's recommendation of setting up an independent Human Rights Commission in the territory, DS(HA)1 said that the Administration did not see any obvious advantage in doing so as the existing framework for the protection and development of human rights had served Hong Kong well. DS(HA)1 pointed out that human rights in Hong Kong were founded on the rule of law and an independent judiciary to provide remedies against infringement of human rights, and a sound and comprehensive legal aid system that assured the citizens of their right to seek legal remedy. These foundations had in turn been strengthened by the constitutional entrenchment of the ICCPR and the International Covenant on Economic, Social and Cultural Rights under Article 39 of the Basic Law (BL). In addition, comprehensive safeguards were provided by the Ombudsman's Office, EOC, the Privacy Commissioner's Office and the legislature. Also, the Government continued to operate in full view of a free and active press.

16. Regarding the HRC's concern that the electoral system for LegCo, in particular the arrangements relating to functional constituencies, did not comply with articles 2, 25 and 26 of the ICCPR, Principal Assistant Secretary for Constitutional Affairs (5) (PAS(CA)5) said that such concern overlooked the reservation taken out against article 25(a) and (b) of the ICCPR when the ICCPR was extended to Hong Kong. PAS(CA)5 explained that the reservation was made in light of the actual situation and the principle of gradual and orderly progress of democratic development in the HKSAR. The present electoral system, including functional constituencies, had served Hong Kong well. It should also be borne in mind that the electoral system was not static. The ultimate aim, as declared in BL68, was the election of all the Members of LegCo by universal suffrage. It was against this background that the Administration maintained that the electoral system for LegCo did not give rise to incompatibility with any of the provisions of the ICCPR, including articles 2 and 26.

17. The Solicitor-General (SG) said that there was no question of the Administration turning a deaf ear to the HRC's recommendations and concerns, as evidenced by the following actions taken by the Administration in respect of some of the HRC's Concluding Observations made in 1995 and 1999 -

HRC's Concluding Observations made in 1995

- a) *Concern that no report on Hong Kong under the ICCPR would be submitted after the reunification* : this concern had

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disappeared, following the notification given by the Central People's Government (CPG) to the United Nations in early 1998 that HKSAR was prepared to submit its first report in light of the relevant provisions of the ICCPR in 1998.

- b) *Sex Discrimination Ordinance (Cap. 480) had not been brought into effect and that it limited the damages awarded to women who were subject to sexual discrimination and did not give power to direct the reinstatement of women who had lost their job due to sexual discrimination:* Sex Discrimination Ordinance was enacted in July 1995 and came into full force in 1996. By virtue of the Sex and Disability Discrimination (Miscellaneous Provisions) Ordinance 1997, which was enacted in June 1997, the limit on damages awarded to a claimant who brought an action under section 76(7) of the Sex Discrimination Ordinance was removed, and the District Court was empowered to order reinstatement of the claimant.
- c) *Poor standards of detention of the Vietnamese boat people:* following the ending of the port of first asylum policy for Vietnamese people arriving in Hong Kong in January 1998, almost all the Vietnamese migrants (VMs) formerly detained in Hong Kong holding centres had returned to Vietnam. The last detention centre for VMs was closed in May 1998. The remaining VMs had been released on recognisance.
- d) *While the majority of the population in Hong Kong was Chinese, official charge forms and charge sheets as well as court documents were in English:* official charge forms and charge sheets as well as court documents were now in bilingual form.
- e) *Laws depriving convicted persons of their voting rights for periods of up to ten years might be a disproportionate restriction of the rights protected by article 25 of the ICCPR :* amendments had been made to sections 31 and 39 of the Legislative Council Ordinance (Cap. 542) to provide that a person convicted of specified offences or sentenced to a certain period of imprisonment should be disqualified from being an elector for three years and from being a candidate for five years.

HRC's Concluding Observations made in 1999

- f) *Educational system in Hong Kong discriminated against girls in selection to secondary schools:* a review was being conducted on the SSPA System to ensure that boys and girls had equal opportunities in secondary schools placement.

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- g) *The age of criminal responsibility should be raised to ensure the rights of children under article 24 of the ICCPR* : the Law Reform Commission was currently reviewing the minimum age of criminal responsibility. It was envisaged that the review would be completed this coming summer.
- h) *Confession under the voir dire procedure* : the Law Reform Commission was currently reviewing the procedure governing the admissibility of confession statements in criminal proceedings. Results of the review were expected to be out this coming summer.

18. SG further said that to ensure that the human rights provisions of the BL were complied with by policy bureaux and government departments, proposals for new legislation would need to be vetted by the Human Rights Unit of the Department of Justice (D of J) before they were introduced into LegCo.

19. The Deputy Chairman enquired whether, apart from disagreeing with HRC on the interpretation of article 25 (a) and (b) of the ICCPR, the Administration held different views from HRC on the interpretation of other provisions in the Covenant. SG replied in the negative, and added that the position taken by the Administration over the interpretation of article 25(a) and (b) of the Covenant was the same as that adopted by the British Government before the reunification. For other provisions of the Covenant, HRC was concerned as to whether the Administration had put in sufficient efforts to comply with the provisions.

Legislation for the offences of treason and sedition

20. Mr Andrew CHENG expressed concern that the Administration had not taken any positive steps to address the concern of HRC that the overly broad definitions of the offences of treason and sedition under the Crimes Ordinance (Cap. 200) had endangered freedom of expression guaranteed under article 19 of the ICCPR. On the contrary, the Secretary for Justice had recently said that the Administration was now studying how to proceed with the enactment of laws to implement BL23 which prohibited any act of treason, secession, sedition and subversion against the CPG. Mr CHENG enquired about the legal and policy considerations for the enactment of laws to implement BL23, and the timetable for introducing them into LegCo.

21. Principal Assistant Secretary for Security (A) (PAS(S)A) replied that explained that BL23 involved complex issues that required careful study and there would be particular regard to the provisions of the ICCPR. The Security Bureau and the D of J were currently undertaking legal and policy research on the subjects. PAS(S)A assured members that the legislative proposals for the

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implementation of BL23 would have to be consistent with the provisions of the ICCPR, the continued application of which to the HKSAR was guaranteed under BL39. When the legislative proposals were ready, there would be extensive public consultation.

22. Mr LEE Wing-tat enquired whether the CPG would be consulted during the drafting stage of the legislative proposals to implement BL23, or whether it would be consulted after such proposals had been formulated. PAS(S)A responded that the Administration would follow the normal practice of policy formulation and legislation process. Parties concerned that would be affected by the policy and legislative proposal would be duly consulted. She reiterated that the Administration was only in an early stage of policy and legal research on the subjects and there was no firm plan for the consultation and legislation process. She added that given the very nature of the subjects covered by BL23, she believed there would be communication with the CPG.

23. Mr LEE Wing-tat remarked that if the views of the CPG were sought during the drafting of the legislative proposals to implement BL23, it would be tantamount to the CPG enacting laws for Hong Kong. In reply to Mr LEE's enquiry about the Administration's interpretation of the provision of "the HKSAR shall enact laws on its own" under BL23, PAS(S)A said that this meant the HKSAR legislature would enact the relevant laws for the HKSAR. At the request of Mr LEE, PAS(S)A undertook to provide a written reply on the Administration's interpretation of that provision and to advise whether the eventual consultation could be carried out only within the territory.

Adm

Commencement of the Interception of Communications Ordinance

24. Mr Andrew CHENG queried why the Administration had acted so promptly on enactment of BL23 given its inaction to implement the HRC's recommendations. He also expressed strong dissatisfaction that the Administration had not yet promulgated the commencement date of the Interception of Communications Ordinance enacted at the end of June 1997, and enquired when it planned to do so.

25. Principal Assistant Secretary for Security (E) (PAS(S)E) replied that the Administration was thoroughly reviewing the whole issue of regulation of interception of communication. It involved studying the overseas practices and experience in regulating interception of communications as well as the technological development in the area, taking into account comments received from the public consultation on the White Bill on Interception of Communications. PAS(S)E further said that in order to expedite the matter, an inter-departmental working group, chaired by the Secretary for Security, had been set up to examine in detail the technical and policy issues involved.

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26. The Deputy Chairman enquired about the Administration's views regarding the comments made by HRC that the remaining in force of section 33 of the Telecommunications Ordinance (Cap. 106) and section 13 of the Post Office Ordinance (Cap. 98) had violated the right of privacy under article 17 of the ICCPR.

27. PAS(S)E pointed out that law enforcement agencies could only intercept communications in strict compliance with the law, and that they were required to obtain authorization from the highest level of the Government for each interception operation. PAS(S)E conceded that such arrangements were not ideal, and that was why the Administration was now looking at ways to improve the situation.

28. SG said that although the Telecommunications Ordinance and the Post Office Ordinance did not have stringent privacy requirements, public officers in exercising the powers under section 33 of the Telecommunications Ordinance and under section 13 of the Post Office Ordinance had to comply with the Hong Kong Bill of Rights Ordinance (Cap. 383) and the ICCPR as required by BL39. He also had to respectfully disagree with the HRC's view that public officers were allowed to violate the right of privacy, since Hong Kong laws did protect privacy through the Hong Kong Bill of Rights Ordinance and ICCPR. Similarly, SG said that he had to disagree with the HRC's comments that the relevant provisions of the Public Order Ordinance (Cap. 245) and the Societies Ordinance (Cap. 151) could be applied to restrict unduly the enjoyment of the rights of freedom of assembly and of freedom of association guaranteed under articles 21 and 22 of ICCPR respectively. SG pointed out that in exercising the powers under the Public Order Ordinance to impose conditions or prohibit the holding of public meetings and under the Societies Ordinance to prohibit the operation of societies, public officers were required to comply with the Hong Kong Bill of Rights Ordinance and ICCPR as required by BL39.

29. The Director of HKHRM was unconvinced that the Hong Kong Bill of Rights Ordinance and BL39 provided sufficient safeguards against infringement of an individual's right to privacy and the freedom of communication as provided in article 17 of ICCPR. A case in point was that people who were aggrieved by unlawful interception would not be notified following the termination of an interception operation. To rectify the situation, the Director of HKHRM was of the view that the Administration should at least let the public know under what circumstances would section 33 of the Telecommunications Ordinance and section 13 of the Post Office Ordinance be used by law enforcement agencies to intercept communications, how they went about doing it and the statistics on interception operations, such as the numbers and types of operations. He added that if the Administration continued to refrain from disclosing such information to the public, he would lodge a complaint with the Ombudsman's Office.

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30. PAS(S)E responded that the disclosure of information requested by HKHRM would jeopardize the work of the law enforcement agencies in combating crimes. PAS(S)E further said that in order to preserve the privacy aspect of the information intercepted, law enforcement agencies were bound by standing orders and guidelines that strictly controlled access to the information intercepted.

31. The Chairman of HKHRC said that by not taking the necessary steps to address the HRC's recommendations, the Administration had in effect violated article 2 of ICCPR which stated that each State Party should undertake to ensuring to all individuals within its territory the rights recognized in the Covenant. He reiterated that the Administration should provide a written explanation on the reasons and justifications for not implementing the HRC's recommendations.

32. SG said that article 2 of ICCPR did place an obligation on each State Party to take such legislative or other measures as might be necessary to give effect to the rights recognized by the Covenant. In the case of Hong Kong, apart from introducing legislation to give effect to the rights recognized by ICCPR, such as the Sex Discrimination Ordinance, the human rights of Hong Kong people were guaranteed in BL as well as the Hong Kong Bill of Rights Ordinance which specifically gave effect in local laws to the provisions of ICCPR as applied to Hong Kong.

33. DS(HA)1 reiterated that the Administration was mindful of the HRC's recommendations, and was now considering them very carefully and with an open mind. As the HRC's recommendations invariably involved complex issues with wide-ranging implications, it would not be possible to come up with a decision on any of the them within a short time. Nevertheless, DS(HA)1 assured members that once the Administration had come to a view on a particular HRC's recommendation or concern, a report would be made to the Panel. DS(HA)1 further said that although the date for submitting the next periodic report to the HRC was in October 2003, the Administration would not wait until then to report the progress made to members.

Adm

Way forward to follow up on the Government's progress

34. Miss Emily LAU said that the meeting was a waste of time and resources as the Administration was repeating what had been said in the report and at the HRC hearing. She expressed strong disappointment that the paper provided by the Administration contained flimsy information. Miss LAU further said that the paper should at least incorporate the updated progress as explained to members by the Administration at the meeting, though very little, in following up the HRC's recommendations. Miss Cyd HO echoed Miss LAU's views, and added that the Administration should apprise members of its

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stance on each of the HRC's recommendations, the reasons and justifications for not accepting it, and the implementation timetable for those recommendations to which the Administration agreed.

35. DS(HA)1 reiterated that the Administration was now carefully considering the HRC's recommendations and would report to the Panel in the first instance when a decision on a particular recommendation or concern had been made.

36. In reply to the Deputy Chairman as to whether there were any HRC's recommendation and concern that the Administration would not consider, DS(HA)1 said that he could not give a reply at this stage as the Administration was still considering the matter.

37. Some members expressed concern that inertia on the part of the Administration would make it very difficult for LegCo to monitor Government's progress in implementing the HRC's recommendations. The Deputy Chairman therefore sought members' views on whether a working group should be formed under the Panel to follow up Government's progress in implementing the HRC's recommendations, say, every two months. Miss Cyd HO said that setting up of a working group would not be fruitful if the Administration could not provide a progress report with substantial information.

38. DS(HA)1 said that given the complexity of the issues involved, the Administration could not commit itself to producing such a progress report on a fixed time period.

39. The Deputy Chairman suggested members to give further thoughts on following up Government's progress in implementing the HRC's recommendations in the future.

V. Report of the HKSAR under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
(LC Paper No. CB(2) 2099/99-00 - report of the HKSAR under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)

40. Members noted the written submission from the Hong Kong Section of the International Commission of Jurists [LC Paper No. CB(2) 1353/99-00(01)].

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Meeting with deputations

Equal Opportunities Commission (EOC)

41. The Chairperson of EOC informed members that EOC would shortly undertake a study on the problems faced by people with mental illness, including (a) how competent were people with mental illness able to make use of the complaint systems to protect their rights; (b) how the complaint cases lodged by people with mental illness were dealt with by the organizations concerned; (c) the number of such complaint cases; (d) and the rights of the patient detained in a mental hospital.

Hong Kong Human Rights Monitor (HKHRM)

42. The Director of HKHRM took members through the HKHRM's submission which was tabled at the meeting and subsequently issued vide LC Paper No. CB(2) 1385/99-00(01). The submission detailed the HKHRM's concerns about the application of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) to Hong Kong, the inadequacies of the Crimes (Torture) Ordinance (Cap. 427) and the Fugitive Offenders Ordinance (Cap. 503) in meeting the standards set forth in the CAT and other related issues.

Hong Kong Human Rights Commission (HKHRC)

43. The Chairman of HKHRC briefed members on the following points raised in the HKHRC's submission [LC Paper No. CB(2) 1385/99-00(02)] -

- a) It was doubtful whether the Administration was intent on enforcing the Crimes (Torture) Ordinance, having regard to the fact that no charges against Police officers in the HKSAR v. CHUEN Lai Sze case had been made under the Ordinance for the severe pain or suffering they had intentionally inflicted on the suspects to force a confession;
- b) The investigation work on complaints against Police officers conducted by the Complaints Against Police Office (CAPO) under the Commissioner of Police (CP) lacked impartiality and credibility. An independent body to carry out investigation work on complaints against police officers should be set up to ensure impartiality and credibility. Similar independent body should also be set up for other disciplinary services;
- c) No mechanism had been established by the Administration to follow up cases of Hong Kong people being detained in the Mainland, particularly where the detainees had been tortured;

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- d) Many of the recommendations contained in the Law Reform Commission Report on Arrest 1992 had not been implemented by the Administration;
- e) There had been reported cases of excessive use of electro-convulsive treatment (ECT) on people with mental illness in public hospitals; and
- f) Articles 20, 21 and 22 of the CAT should be applied to Hong Kong.

Meeting with the Administration

Application of the CAT to Hong Kong

44. On the question of the reservation to articles 20 and 30 of CAT to Hong Kong after the reunification, DS(HA)1 explained that Hong Kong was simply following the CPG's stance.

Enforcement of the Crimes (Torture) Ordinance

45. Responding to the concerns expressed by the HKHRM and the HKHRC that the Administration had condoned the use of torture by Police officers by not pressing charges against them under the Crimes (Torture) Ordinance in the HKSAR v. CHUEN Lai Sze case, PAS(S)E said that the Administration would not tolerate the use of any excessive force by Police officers. She pointed out that Police officers were trained to treat all persons, including detainees and arrested persons, as individuals, with humanity and respect, and to act within the law at all times. Police officers who failed to comply with those requirements would be subject to disciplinary action and criminal proceedings as appropriate. For instance, in the HKSAR v. CHUEN Lai Sze case, the four Police officers concerned had been convicted of a criminal offence and sentenced to imprisonment. PAS(S)E stressed that all Police officers were made aware, through induction and on-going training, that torture was an offence. To ensure that detainees were treated fairly, all Police officers received comprehensive training on the Rules and Directions for Questioning of Suspects and the Taking of Statements. Failure on the part of law enforcement officers to comply with the Rules might render any evidence obtained inadmissible. In response to the recommendation of the Law Reform Commission Report on Arrest 1992 to improve the procedures on taking evidence, facilities to videotape interviews of suspects had to date been installed in 66 Police stations.

46. PAS(S)E further said that although complaints against Police officers were dealt with by CAPO under CP, the results of CAPO's investigations were

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rigorously scrutinized by the Independent Police Complaints Council (IPCC), the members of which were appointed by the CE from a wide spectrum of the community and they were not government officials. In discharging their duties, IPCC members could observe CAPO investigations, either by prior arrangement or on a surprise basis. They could also interview complainants, complainees, witnesses and professionals, such as forensic pathologists, from whom they could receive expert advice. To enhance the transparency and credibility of the existing Police complaints system, a series of measures had been adopted, including the appointment of 29 retired IPCC members and other community leaders in September 1999 to serve as lay observers to conduct scheduled or surprise visits to observe CAPO investigations. During the period between September and December 1999, the lay observers had conducted a total of 36 scheduled or surprise visits. PAS(S)E also pointed out that the offices of CAPO were not situated inside, Police stations but in commercial buildings. Moreover, subject to complainants agreement the relevant interview could be taped or video recorded.

47. Miss Emily LAU echoed the views of HKHRM and HKHRC that the four Police officers involved in the HKSAR v. CHUEN Lai Sze case should have been charged under the Crimes (Torture) Ordinance. In reply to Miss LAU's enquiry as to why these officers were not charged under the Crimes (Torture) Ordinance, Deputy Solicitor-General (Dep SG) said that the reason why the officers concerned were not charged under the Ordinance was that the prosecution at that time concluded that there was no reasonable prospect of securing a conviction for an offence alleging an offence against section 3 of the Ordinance. In order to lay a charge of torture under section 3 of the Ordinance, the prosecution had to prove beyond reasonable doubt that an official had intentionally inflicted severe pain or suffering on another, including mental pain, in the performance or purported performance of his/her official duties. He stressed that although the officers were not charged with the offence of "torture, they were prosecuted and convicted of the offence of assault occasioning actual bodily harm . He pointed out that the difficulty of laying a charge of torture was not unique to Hong Kong, and, in fact, there had been very few cases handled by the European Court of Human Rights. The most recent conviction of an offence of torture by the European Court of Human Rights involved carrying out "Palestinian hanging" to the victims where the pain inflicted was considered so severe and cruel that it could be qualified as cruel. Miss LAU further asked and Dep SG replied that there was no legal definition of torture and even the European Parliament had not come up with such a definition, although what amounted to torture was considered in individual cases.

Use of electro-convulsive therapy

48. Regarding the concern about the use of ECT on people with mental illness, Deputy Director (Hospital Authority) said that ECT was a safe and

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effective treatment for patients with certain severe psychiatric illnesses and for those who did not respond well to drug therapy. He further said that ECT was only administered with the patient's consent or a second medical opinion. If a patient was not mentally fit to consent to treatment on his/her own behalf, such consent must be obtained from his/her relatives or guardians and a second expert opinion must be sought to justify the use of the treatment. Physical fitness was carefully assessed before treatment was administered by a specially trained team of anaesthetists, psychiatrists and nurses. The procedure was closely supervised and the patient's response was carefully monitored. In recent years, the average number of ECT treatments received per patient was six.

49. Deputy Director (Hospital Authority) welcomed the EOC survey on people with mental illness, and hoped to be apprised of the survey findings so that the Hospital Authority (HA) could know how well it had dealt with the complaint cases lodged by people with mental illness. He however pointed out that people with mental illness mostly had cognitive sense and knew how to lodge a complaint with the authorities concerned if they felt they had been treated unfairly. He informed members that out of a total of 1,700 complaint cases received by HA per year, about 100 cases were lodged by people with mental illness.

UN hearing

50. Miss Emily LAU enquired about the hearing date of the United Nations Committee on Torture on the Report of HKSAR under CAT. Miss LAU further enquired whether the Administration would prepare a supplementary report to the United Nations Committee on Torture addressing the views and concerns set out in the submissions of the Hong Kong Section of the International Commission of Jurists, HKHRM and HKHRC.

51. DS(HA)1 responded that the United Nations Committee on Torture would consider the Report of China including HKSAR, under CAT in the morning of 4 May 2000, and the Administration, as part of the Chinese delegation, would give its response on the Committee's consideration of the Report in the afternoon of 5 May 2000. The Administration was examining the need for a supplementary report to update latest developments. He further said that under the new arrangements, comments from NGOs and other interested parties which had been received after the submission of the current report would be forwarded to the Committee under separate cover for its consideration.

52. There being no other business, the meeting ended at 6.46 pm.

Legislative Council Secretariat

3 April 2000