

立法會
Legislative Council

LC Paper No. CB(2)1012/05-06
(These minutes have been
seen by the Administration)

Ref : CB2/PL/HA

Panel on Home Affairs

Minutes of meeting
held on Friday, 13 January 2006 at 10:45 am
in the Chamber of the Legislative Council Building

- Members present** : Hon Tommy CHEUNG Yu-yan, JP (Chairman)
Hon TAM Heung-man (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Margaret NG
Dr Hon Philip WONG Yu-hong, GBS
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, GBS, JP
Hon LI Kwok-ying, MH
Dr Hon Fernando CHEUNG Chiu-hung
Hon WONG Ting-kwong, BBS
Hon Patrick LAU Sau-shing, SBS, JP
- Member attending** : Hon LEUNG Kwok-hung
- Members absent** : Hon James TO Kun-sun
Hon LAU Wong-fat, GBM, GBS, JP
Hon Daniel LAM Wai-keung, BBS, JP
Hon CHEUNG Hok-ming, SBS, JP
- Public Officers attending** : Mr Stephen FISHER
Acting Permanent Secretary for Home Affairs

Mr LEE Sheung-yuen
Acting Principal Assistant Secretary for Home Affairs (3)

Miss Vivian CHAN
Assistant Secretary for Home Affairs (3)1

Attendance by invitation : Equal Opportunities Commission

Mr Raymond TANG Yee-bong
Chairperson

Mr Michael CHAN Yick-man
Director (Planning & Administration)

Mr Herman POON Lik-hang
Chief Legal Counsel

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)2

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Ms Joanne MAK
Senior Council Secretary (2)2

Action

I. Confirmation of minutes

[LC Paper No. CB(2)787/05-06]

The minutes of the last meeting on 9 December 2005 were confirmed.

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

2. Members noted that no information papers had been issued since the last meeting.

III. Items for discussion at the next meeting

[Appendices I and II to LC Paper No. CB(2)786/05-06]

3. Members agreed to discuss the following items at the next regular

Action

meeting of the Panel to be held on Friday, 10 February 2006 at 10:45 am –

- (a) further discussion on the concluding observations adopted by the United Nations (UN) Committee on the first report of the Hong Kong Special Administrative Region (HKSAR) under the Convention on the Rights of the Child; and
- (b) proposed race discrimination legislation.

4. In response to Ms Emily LAU's enquiry with regard to the item in paragraph 3(a), the Clerk said that when the subject was last discussed at the Panel meeting on 8 November 2005, the Panel requested the Administration –

- (a) to prepare a composite paper setting out the Administration's consolidated response to each concern and recommendation raised by the UN Committee on the Rights of the Child in respect of HKSAR; and
- (b) to coordinate the attendance of representatives of all policy bureaux concerned.

Members agreed that there was no need to invite deputations from relevant organisations to make oral representations at the next meeting.

Special meeting of the Panel

5. Members noted that pursuant to the decision made at the meeting of the Public Works Subcommittee (PWSC) on 11 January 2006, the Administration had withdrawn its proposal to seek additional funding for the Tseung Kwan O Sports Ground Project (the Project) and would submit it to this Panel for discussion first. The Administration had informed the Panel that as it needed to revise its proposal by including additional information, it could not submit the proposal for discussion at this meeting. The Administration, however, hoped that the Panel could discuss the proposal before the end of January 2006, as the Administration intended to re-submit it to PWSC for consideration in February 2006. Members agreed to hold a special meeting on Monday, 23 January 2006 at 10:45 am to discuss the proposal.

6. Mr Andrew CHENG said that the Chairman of SKDC had earlier written to the PWSC Chairman expressing SKDC's support for the implementation of the Project. Mr CHENG suggested that the Panel should write to Sai Kung District Council (SKDC) to explain that the Legislative Council (LegCo) had no intention to defer the implementation of the Project and why PWSC had requested the Administration to submit the proposal to this Panel for discussion first.

Action

Clerk

7. The Chairman said that Mr CHENG's suggestion should be conveyed to the Chairman of PWSC for consideration, since the decision was made by PWSC and he was not present at the PWSC meeting on 11 January 2006. Meanwhile, the Panel should write to inform SKDC of the special meeting on 23 January 2006 and to invite SKDC to give further views, if any, on the Project. Ms Emily LAU said that at the LegCo Members' meeting with SKDC members on the previous day, SKDC members had also made enquiries about the matter. After discussion, members agreed to the arrangements proposed by the Chairman.

IV. Implementation of recommendations made in the Report of the Independent Panel of Inquiry on the Incidents Relating to the Equal Opportunities Commission (EOC) and the recommendations made in two other reports of the internal reviews conducted by EOC

[Report of the Independent Panel of Inquiry on the Incidents Relating to EOC, LC Paper Nos. CB(2)786/05-06(01), (02), (03)(revised), and (04), and CB(2)858/05-06(01) and (02)]

Briefing by the Administration and EOC

8. Acting Permanent Secretary for Home Affairs (PSHA(Atg)) said that pursuant to a recommendation made by the Independent Panel of Inquiry, it was proposed to separate the posts of EOC Chairperson and the Chief Executive Officer (CEO) and to reinstate the post of CEO as set out in paragraphs 15 and 16 of the Administration's paper [LC Paper No. CB(2)786/05-06(02)]. He said that to implement the proposal, legislative amendments would need to be made to the Sex Discrimination Ordinance (SDO). The Administration would consult EOC and other relevant bodies, such as the Human Rights Forum and the Women's Commission, before taking the legislative proposals forward. He added that the Administration might take the opportunity to introduce other amendments to SDO as well, some of which were previously proposed by EOC.

9. PSHA(Atg) said that more than half of the 70 recommendations made in the report of the Panel of Inquiry were related to the operation of EOC, and those recommendations should be considered by EOC itself. The Administration had accepted most of the remaining recommendations. However, it considered that 10 recommendations either required further consideration and/or involved legislative amendments before they could be implemented. As to these 10 recommendations, six of them were related to the proposal of separating the roles of the EOC Chairperson and CEO. The Administration's responses to the remaining four recommendations were set out in the Annex to the Administration's paper [LC Paper No. CB(2)786/05-06(01)].

Action

10. PSHA(Atg) further said that the Administration had studied the recommendations made in the two reports of EOC's internal reviews which were related to the internal operation and management of EOC. These recommendations would be separately considered by EOC.

11. The Chairperson of EOC (C/EOC) briefed members on the salient points of EOC's paper. The progress of implementation of the recommendations relating to the operation of EOC made by the Panel of Inquiry and implementation of the major recommendations made in the two internal reviews of EOC was set out in the Annexes to the paper. He highlighted certain new initiatives which had been introduced by EOC to enhance its internal communication and transparency of its work. He added that many of the recommendations in EOC's internal reviews replicated those made by the Panel of Inquiry.

12. C/EOC said that EOC welcomed any proposals which would strengthen the governance and structure of EOC on the condition that the importance and stature of EOC as a human rights body would not be undermined. C/EOC further said that both the Commission and he supported the direction of the proposed separation of the posts of EOC Chairperson and CEO.

13. C/EOC said that there was a need to enhance the structural checks and balances within EOC. He pointed out that the Securities and Futures Commission (SFC) was a good example which had put in place very effective checks and balances at the operational level. He said that the Securities and Futures Ordinance required that the majority of the members of the Board to be independent non-executive directors. At present, the Board comprised seven non-executive directors and six executive directors. C/EOC further said that as the executive directors assumed separate supervisory roles in different areas of work of SFC, the composition of the Board ensured independent supervision of the executive functions of SFC and provided a basis for discussion on the question of whether the chairman's post should be executive or non-executive. C/EOC pointed out that there were also checks and balances for the Office of the Privacy Commissioner for Personal Data (PCO), as there was an appeal mechanism provided under the Personal Data (Privacy) Ordinance. He said that, however, it was not the case for EOC as there was neither an appeal nor a review mechanism provided under SDO, and EOC at present only had one executive Chairperson although SDO allowed the appointment of more than one executive member.

Issues raised by members

Clarifications made by the Deputy Chairman

14. Referring to a submission made by the EOC Concern Group [LC Paper No. CB(2)858/05-06(01)] requesting her to explain why the reports of the two

Action

internal reviews of EOC could not be released and to provide a timetable as to when the legislative amendment exercise for changing the composition of EOC could be completed, the Deputy Chairman made the following clarifications –

- (a) whether or not the two reports of EOC's internal reviews could be released was subject to the decision of the Commission including the Chairperson, and not subject to her decision since she was only a member of the Commission; and
- (b) she was not in a position to give a timetable for introducing changes to the composition of EOC, as the issue would have to be discussed between EOC with HAB, and any legislative amendments had to be introduced by HAB.

15. The Deputy Chairman further said that these questions raised by the EOC Concern Group had shown that the body had little idea of how EOC operated.

The recommendation of separating the posts of Chairperson and CEO and other recommendations aimed to enhance the transparency and accountability of EOC's work

16. The Deputy Chairman expressed concern whether the statutory powers of EOC would be undermined after separating the posts of EOC Chairperson and CEO. PSHA(Atg) responded that the proposal of separating the two posts did not entail any change to the statutory powers of EOC since they were provided by statute. It would only change the mode of how these powers would be exercised. PSHA(Atg) said that in order to enhance the corporate governance of EOC and provide better checks and balances than the present system did, EOC's policy-making function should be exercised by a management board consisting of a non-executive chairman and members and its executive function should be exercised by a CEO who reported to the board.

17. Ms Emily LAU expressed serious concern about the impact of the current proposal on EOC and the public's perception of EOC's independence. Referring to the Administration's paper [LC Paper No. CB(2)786/05-06(02)], Ms LAU considered it inappropriate to compare the management structure of EOC with that of other public bodies which had very different nature of business, such as the Airport Authority and the Hong Kong Tourism Board. She considered it only appropriate to compare EOC with PCO and the Office of the Ombudsman, which were also responsible for implementing work to safeguard human rights. She queried why the Administration had only proposed to enhance the corporate governance of EOC but not PCO and the Office of the Ombudsman as well since they also did not have a management board or any system of checks and balances. She suggested that in taking measures to enhance the corporate governance of EOC, the Administration

Action

should consider whether the same measures could be adopted for PCO and the Office of the Ombudsman, and the primary aim of any such measure should be to strengthen the roles and functions of these bodies.

18. Ms Emily LAU further said that while she agreed that there was a need to enhance the work of EOC as she felt that it had not been very proactive in promoting human rights, this did not mean that the powers of EOC should be undermined. She urged the Administration and EOC to enhance the transparency and accountability of EOC's work by introducing the following measures expeditiously –

- (a) opening EOC meetings to members of the public and making public the minutes of these meetings (except for confidential agenda items);
- (b) implementing the following recommendations made by the Panel of Inquiry –
 - (i) in making appointments to EOC, the Government should consider inviting EOC to nominate candidates representing relevant community groups. In doing so, EOC should invite nominations from various organisations representing community groups for its consideration; and
 - (ii) the Government should consider advertising vacancies and establishing a nominating committee (comprising Government officials and representatives of key stakeholders) to assist in the appointments to EOC, and issuance of a press release after each appointment attaching the appointee's detailed curriculum-vitae.

19. Ms LAU pointed out that it was a common practice in overseas places to establish nominating committees to assist in the appointments to important public bodies. She expressed concern about the lack of transparency in the appointment process of the EOC Chairperson and members in the absence of clear selection criteria and an open recruitment process for the appointment of the Chairperson. She said that these had made it seem that the appointees were handpicked by the Government. She also expressed strong dissatisfaction with the Administration's decision not to adopt the recommendations referred to in paragraph 18(b) above as stated in its paper [Annex to LC Paper No. CB(2)786/05-06(01)].

20. PSHA(Atg) responded that EOC was different from PCO and the Office of the Ombudsman in that it was the Commission to exercise the powers of EOC whereas for PCO and the Office of the Ombudsman, powers were vested in the Privacy Commissioner and the Ombudsman respectively. For EOC, all

Action

policies and decisions should be discussed and approved by the Commission and not by the Chairperson alone. However, the decision-making functions of PCO and the Office of the Ombudsman were respectively exercised by the Privacy Commissioner and the Ombudsman himself/herself. PSHA(Atg) pointed out that even the Personal Data (Privacy) Advisory Committee established under the relevant Ordinance only played an advisory role and could not exercise the powers vested in the Privacy Commissioner. As the current proposal was aimed at strengthening the governance of an organisation by its governing board, it was appropriate for EOC and not PCO or the Office of the Ombudsman.

21. PSHA(Atg) further said that the recommendation of separating the posts of EOC Chairperson and CEO was made in the report of the Panel of Inquiry as well as in the two reports of EOC's internal reviews. He pointed out that following the controversy surrounding EOC, it had been the common view of the public that there was a need to enhance the checks and balances in EOC and to prevent concentration of power in the full-time executive Chairperson.

22. PSHA(Atg) pointed out that not many overseas countries had adopted the practice of establishing nominating committees. He said that this practice had been adopted in the United Kingdom (UK) for a short time only and whether or not it was the best way to identify suitable candidates for appointment to advisory and statutory bodies had yet to be proven.

23. PSHA(Atg) further said that at present, the Administration issued a press release to announce new appointments to EOC. The background of the appointed Chairperson would be provided in the press release. He added that the Administration would provide more background information of the appointed members in the press release in future.

24. C/EOC said that EOC would conduct a press conference after each regular EOC meeting from 2006 onwards and upload the minutes onto the Internet. He undertook that he would convey the suggestion of opening up EOC meetings to the public to the Commission for consideration.

EOC

25. C/EOC said that while he agreed that it was the right direction to enhance the organisational structure of EOC, the impact of the current proposal on the stability of EOC and staff morale had to be carefully considered. He further said that CEO, if reinstated, would probably be the one who had the most frequent contacts with the stakeholders and, theoretically, CEO might participate even more than the Chairperson in the work to promote human rights and equal opportunities. C/EOC said that while he had no preference as to who should be responsible for the stewardship of EOC, the respective role and functions of the Chairperson and CEO had to be made clear if the current proposal was to be implemented. He added that given that EOC had its powers and functions already clearly stated in the law, the non-executive Chairperson

Action

might have a limited role to play in terms of giving policy direction and he/she might only need to attend a few EOC Meetings a year to receive reports.

26. Ms Emily LAU requested the Administration to explain why it had proposed to appoint a full-time executive EOC Chairperson when it drafted the relevant legislation in the 90s and why it had now come to a different view that the EOC Chairperson should be a non-executive position appointed on a part-time basis.

27. PSHA(Atg) responded that the appointment of executive Chairpersons was commonly regarded as the best mode of governance at that time when the Sex Discrimination Bill was drafted. He cited the Kowloon-Canton Railway Corporation (KCRC), the Mass Transit Railway Corporation (MTRC) and SFC as examples of public bodies headed by executive Chairpersons in the past. He further said that as at the present day, KCRC and MTRC no longer had executive Chairpersons. Moreover, in the scrutiny of the Urban Renewal Authority (URA) Bill, LegCo had opposed the Administration's proposal to appoint an executive chairman and as a result, URA now had a non-executive chairman and a managing director to serve on its board. In addition, a proposal to change the governance structure of SFC such that SFC should be governed by a non-executive chairperson and its executive arm be headed by a CEO had been presented to LegCo in 2005.

28. PSHA(Atg) also pointed out that there were 15 non-departmental public bodies including EOC and among them only EOC had an executive chairperson. He added that as pointed out in the report of the Panel of Inquiry, since the establishment of EOC, various public organisations had already modernised their governance structure and the Panel of Inquiry also shared the view come up in EOC's Organisational Review that EOC should reinstate the post of CEO.

29. Ms Emily LAU and Mr Albert HO asked what arrangements would be made with the current employment contract of Mr Raymond TANG who had been appointed as EOC Chairperson for five years with effect from January 2005, and whether the remuneration package of the Chairperson would be reviewed if it was changed to be a non-executive position. Mr HO asked whether any agreement had been reached between Mr TANG and the Administration.

30. C/EOC said that he had not discussed about his employment contract with the Administration and he did not anticipate any particular problem arising from it. PSHA(Atg) pointed out that the Administration had to honour its contract with Mr Raymond TANG and should there be any problem relating to contractual matters, such problem could be handled according to the law. The Chairman asked whether the Administration would wait until expiry of Mr TANG's current employment contract before it implemented the proposal.

Action

PSHA(Atg) said that the contract could be changed if a mutual agreement could be reached. He further said that if it was deemed necessary to implement the current proposal, the Administration should not delay it simply because of an individual's contract. In response to the Chairman's enquiry, PSHA(Atg) said that if the current proposal was to be implemented, the necessary legislative amendments would likely be introduced into LegCo in the 2006-07 legislative session.

31. Mr Albert HO criticised the Administration for rushing into appointing Mr Raymond TANG as the EOC Chairperson for five years shortly before the release of the report of the Panel of Inquiry. He queried whether the Administration would need to offer a considerable sum of money to compensate Mr TANG for breaching his contract and if so, whether this should be regarded as an administrative blunder.

32. PSHA(Atg) said that the appointment of the former EOC Chairperson, Mrs Patricia CHU, had been made in the special circumstances that her predecessor Mr Michael WONG had suddenly resigned, which had given rise to a vacuum period, and Mrs CHU was then offered a one-year contract. Towards the end of 2004, the Administration offered to Mrs CHU that her appointment be extended to end of July 2005 taking into consideration the fact that the Report of the Independent Panel of Inquiry was due to be released in February 2005 and the tenure of office of most of the current EOC members, including that of Mrs CHU as EOC member, was due to expire in end of May or in mid-July 2005. As Mrs CHU declined the Administration's offer of re-appointment, the Administration decided to appoint Mr TANG as the EOC Chairperson. PSHA(Atg) further said that the appointment of Mr TANG as the EOC Chairperson for a term of five years was aimed at stabilising the morale of EOC staff.

33. Mr Albert HO pointed out that Mrs Patricia CHU might be interested in serving as the EOC Chairperson for one more year if the Administration had offered her so. He considered that the Administration had failed to act prudently in handling the matter. He said that Government officials concerned should be held responsible if public funds were incurred due to the breach of contract.

34. Referring to paragraphs 7 and 8 of the Administration's paper [LC Paper No. CB(2)786/05-06(02)], Ms Margaret NG considered that the Administration had failed to appreciate the unique nature and role of EOC. She said that it was inappropriate to compare EOC with 14 other public bodies, e.g. the Hong Kong Tourism Board, which had very different nature of business and to describe EOC as a public body with the characteristic that it "operate to a greater or lesser extent at arm's length from the Government". Ms NG pointed out that the independence of EOC was fundamental, as it might conflict with Government bureaux/departments in the course of implementing the anti-

Action

Admin

discrimination ordinances. She requested the Administration to conduct research into the past discussions of LegCo during its scrutiny of the Sex Discrimination Bill to see why the Administration and the legislature had decided at that time that the EOC Chairperson should be a full-time executive position.

Admin

Admin

35. Ms Margaret NG further asked whether the Administration already had a blueprint for the division of roles and responsibilities between the EOC Chairperson and CEO, if reinstated. She requested the Administration to provide such information as well as detailed justifications for the current proposal before introducing the relevant legislative amendments into LegCo. She said that the Administration should explain why the proposal to split the posts of the EOC Chairperson and CEO would be able to enhance the independence of EOC and its role and functions.

36. PSHA(Atg) responded that the Administration and the legislature had both considered that the appointment of an executive Chairperson was the best mode of governance for EOC when the legislative proposal for the establishment of EOC was discussed by LegCo. He pointed out that with experiences gained in the past decade, the Administration had come to a view that this was, however, not the best mode of governance, and the legislature probably had also come to the same view. He said that, during scrutiny of the Urban Renewal Authority Bill, it was at the request of LegCo that the Administration had amended its original proposal of appointing an executive chairperson to be one of appointing a non-executive chairperson. He reminded members that during discussions of the controversy surrounding EOC by LegCo in 2003-04, the most frequent criticism stated by LegCo Members was that the relevant EOC Chairperson had acted on his own without any safeguard to check his powers (“獨斷獨行、無王管”).

37. PSHA(Atg) invited members to note that the legislative amendments intended to be made to SDO for changing the composition of EOC were outlined in paragraph 15 of the Administration’s paper [LC Paper No. CB(2)786/05-06(02)]. The amendments were for the purpose of enhancing the structural checks and balances and the internal governance of EOC.

Admin

Admin

38. Ms Margaret NG, however, considered that the crux of the problem, rather, laid with the politicisation of the appointment of EOC Chairperson as reflected in the EOC incidents, and the Administration should learn from the lesson. Ms NG requested the Administration to provide a paper which should explain how the functions and powers between the EOC Chairperson and CEO would be separated and give a detailed analysis of the policy implications of the proposal for consultation with the Panel, before the Bill was drafted. She also requested the Administration to provide a timetable as to when it would conduct the consultation with EOC and the relevant bodies on the proposal, and when it would submit the paper to this Panel for discussion. PSHA(Atg)

Action

agreed that the Administration would provide a paper on the proposal for consultation with the Panel, after it had collated the views received from EOC and the relevant bodies. He also undertook to provide a timetable to the Panel after this meeting.

39. Ms NG further asked whether the Administration would conduct a public consultation exercise on the current proposal before the Administration submitted its final proposal to this Panel for consideration. PSHA(Atg) responded that at present, the Administration had no plan to conduct a public consultation exercise on the proposal. He pointed out that public opinion had been clearly in support of the proposal, which was also recommended by the Panel of Inquiry as well as in the reports of the two internal reviews of EOC. He added that the Administration so far had not received any written views expressing opposition to the proposal.

40. Dr Fernando CHEUNG said that the current proposal to change the EOC Chairperson to be a part-time position had profound implications. He considered that the justifications provided by the Administration were rather flimsy as it failed to explain what improvements, in terms of enhancing the governance of EOC and checks and balances, would be achieved by implementing the proposal. Dr CHEUNG urged the Administration to consider the recommendation of establishing nominating committees, as he considered that the controversy surrounding EOC had been related to the appointment of the EOC Chairperson. He considered that there was actually a greater need to check and balance the power of the approving authority under the mechanism of making appointments to EOC than to check and balance the EOC Chairperson's powers. He requested to put on record that he had reservations about the proposal. He further said that the Administration should conduct public consultation on such an important proposal.

41. In response, PSHA(Atg) reiterated that the Administration had put forward the current proposal on the following grounds –

- (a) there had been calls for the Administration to enhance the checks and balances for the internal governance of EOC as there was concern whether there was over-concentration of power in the full-time executive chairperson;
- (b) experiences had proven that separating the role of chairperson from the executive arm of an organisation was preferable, as seen from the present composition of the respective governing boards of MTRC, KCRC, and URA; and
- (c) the three reports all recommended to split the posts of the EOC Chairperson and CEO and to reinstate the latter.

Action

PSHA(Atg) invited members to note that there was distinct difference between EOC and PCO or the Office of Ombudsman as explained above (paragraph 20). He added that since EOC was a “commission” and not an “Office of the Equal Opportunities Commissioner”, the Administration did not consider the current proposal to split the posts of the EOC Chairperson and CEO inappropriate under the law.

42. Dr Fernando CHEUNG said that the Administration’s explanation on the differences in governance structure between EOC and PCO or the Office of the Ombudsman had pointed more to the fact that there was a greater need to introduce checks and balances in the latter, since these Offices did not have any governing boards, than in EOC. He further said that given the importance of the EOC Chairperson, who possessed some important powers which were exclusive to him as provided under the relevant ordinances, it was inappropriate to have the post changed to be a part-time position.

43. PSHA(Atg) pointed out that during discussions over the EOC controversy, some LegCo Members had repeatedly expressed the view that there was a lack of checks and balances for EOC. He also clarified that the Administration was only proposing to amend SDO so that the Chairperson was no longer an executive chairman, but a non-executive chairperson. The Administration was not proposing that the post had to be a part-time position. He added that whether there was still a need for a full-time non-executive chairperson after EOC had reinstated the post of CEO could be further considered.

Admin 44. Dr CHEUNG requested the Administration to provide more detailed justifications for the current proposal and an analysis of the merits and demerits of the proposed split of posts. He said that he was most worried that the proposed split would result in a situation that EOC would become executive-led and the Chairperson would be sidelined. He also urged the Administration to introduce amendments to SDO and the Disability Discrimination Ordinance as advocated by EOC and its stakeholders since 1999. He considered that there was greater urgency to introduce these amendments than implementing the current proposal.

Admin

45. Mr Albert HO considered that the Administration should justify the current proposal by making comparisons with similar human rights institutions in overseas jurisdictions. He requested the Administration to provide information on what mode of governance structure was commonly adopted for the human rights institutions in UK, Ireland, Australia and Canada, and whether they were also headed by non-executive chairpersons. Mr HO considered that EOC was different from the other 14 public bodies being compared to as these bodies largely operated on the basis of commercial principles whereas EOC had a strong sense of mission. He said that an executive chairperson who had the vision and leadership and possessed a

Action

strong executive ability was, therefore, of particular importance to EOC. He queried whether the real intent of the current proposal was to enhance the Administration's control of EOC since it would be relatively easy for the Administration to change a non-executive chairperson.

46. PSHA(Atg) responded that the Administration had collected the following preliminary information on the overseas experience, and the human rights institutions in two out of the five jurisdictions included in the study had non-executive chairpersons –

- (a) the human rights institutions in UK and Northern Ireland both appointed non-executive chairpersons;
- (b) Canada and New Zealand both appointed full-time executive chief commissioners for human rights; and
- (c) the human rights institution in Australia appointed an executive president.

47. Ms Emily LAU urged the Administration to provide detailed information on overseas experiences for members' reference and to take note of the fact that Northern Ireland was part of UK.

48. C/EOC pointed out that other than the Chairperson, the appointment of full-time executive member(s) was actually allowed under SDO. He further said that the post of CEO had existed before and it was only deleted in June 2000. Hence, provided that the Administration was willing to allocate sufficient funds to EOC, EOC could reinstate the post of CEO and, in this way, checks and balances at the operational level for EOC could be made possible without making changes to existing legislative framework. He added that EOC had recently bid for additional funds for this purpose, but the Administration had not approved the bid.

49. Ms Emily LAU sought the Administration's response to C/EOC's views as stated above. PSHA(Atg) responded that the most important point regarding the recommendation of splitting the posts of EOC Chairperson and CEO was that the Chairperson should be made a non-executive position. PSHA(Atg) pointed out that if EOC simply reinstated the post of CEO, CEO would still be accountable to the Chairperson if the latter remained to be an executive position. Therefore, merely reinstating CEO would not serve the purpose of providing checks and balances for the governance structure of EOC.

50. The Deputy Chairman expressed support for the following recommendations made in the report of the Panel of Inquiry –

- (a) the EOC Chairperson should normally be appointed for a three-

Action

year term instead of a five-year term which was too long; and

- (b) measures should be taken to enhance the transparency and accountability in the system for the appointment to EOC.

Release of the two reports of internal reviews conducted by EOC

51. Ms Emily LAU, Dr Fernando CHEUNG and Mr LEUNG Kwok-hung considered that the two reports should be released for the sake of transparency and accountability. C/EOC said that the Commission had discussed and agreed that the reports of the two internal reviews were internal documents of EOC and would not be released. He pointed out that the major recommendations in the two internal reviews were already stated in Annex II to the EOC's paper.

52. C/EOC further said that the 139 recommendations made in the report of the Panel of Inquiry and in the two reports of EOC's internal reviews did not mean that there were 139 new initiatives for implementation. The 139 recommendations were actually related to a few different categories, and enhancement measures proposed to be taken under the respective categories were set out in the Annex II to the EOC's paper.

53. Mr LEUNG Kwok-hung expressed dissatisfaction that he had requested EOC to release the reports almost a year ago and it was only until the previous day that he had received a reply letter from C/EOC refusing his request. Mr LEUNG considered that EOC's decision was a complete disrespect for LegCo and it had deprived LegCo Members of their right to read the two reports. He queried why EOC had classified the two reports as confidential documents and whether EOC had anything to conceal in deciding not to release the two reports.

54. C/EOC denied that EOC had anything to conceal. He said that the two reports had been provided to the Panel of Inquiry and its report had also made reference to the content of the two reports of EOC's internal reviews. He said that there was nothing secret about the content of the two reports, which was concerned with four main areas, namely, governance, culture, internal operation and communication, and Annex II to EOC's paper had already provided a detailed account of the improvement measures undertaken in these four areas. C/EOC further said that it was the decision of his predecessor to classify the reports as confidential documents. He undertook that he would convey members' views to the Commission which would make the final decision. Mr LEUNG considered it unacceptable to be provided with only a summary as set out in the Annex II. He said that it was impossible for him to monitor the work of EOC without being provided with the two reports. Mr LEUNG also asked C/EOC to clearly state his personal view on whether the two reports should be released. C/EOC reiterated that the decision not to release the two reports was made by the Commission and he should respect that

Action
EOC

decision. The Chairman requested EOC to give a response to the Panel once it had come to a decision on the release of the reports. C/EOC undertook to do so.

Complaints against EOC

EOC

55. Referring to paragraphs 5.2 and 5.3 of the report of the Panel of Inquiry, Mr Patrick LAU asked about the number of complaints against EOC or individuals related to EOC for 2005. C/EOC undertook that he would provide the information after the meeting. In response to Mr LAU, C/EOC said that those allegations against EOC concerning manipulation of complaint figures and hiring friends and relatives had been made two to three years ago and after taking office, he had reviewed the internal management of EOC. He further said that, for example, changes had been introduced to the approach for counting caseload. He explained that there were complainants who made multiple complaints arising from the same incident. Instead of counting the number of complaints, EOC had now changed to calculate caseload on the basis of the number of complainants.

Paris Principles

56. Referring to paragraph 6.15 of the report of the Panel of Inquiry, Mr Patrick LAU noted that the Panel of Inquiry considered the core values as embodied in the Paris Principles and general good organisational practices should form the basis for the operation of EOC. He asked how EOC had put this recommendation into practice, especially with regard to the core value of efficient and effective performance. C/EOC responded that the Paris Principles were related to the status and functioning of national institutions for the promotion and protection of human rights. He pointed out that while EOC was not a national institution, EOC's work had always made reference to the Paris Principles, which would continue to be very important guiding principles for EOC's work.

57. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 2
Legislative Council Secretariat
9 February 2006