

立法會
Legislative Council

LC Paper No. CB(2)1294/05-06
(These minutes have been
seen by the Administration)

Ref : CB2/PL/HA

Panel on Home Affairs

Minutes of meeting
held on Friday, 10 February 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 James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Andrew CHENG Kar-foo
Hon LI Kwok-ying, MH
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Patrick LAU Sau-shing, SBS, JP
- Members attending** : Hon LEE Cheuk-yan
Hon CHAN Yuen-han, JP
Hon Albert CHAN Wai-yip
Hon Audrey EU Yuet-mee, SC, JP
Hon Alan LEONG Kah-kit, SC
- Members absent** : Hon Margaret NG
Hon LAU Wong-fat, GBM, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Daniel LAM Wai-keung, BBS, JP

Public Officers : Item IV
attending

Mr Stephen FISHER
Acting Permanent Secretary for Home Affairs

Mr John DEAN
Principal Assistant Secretary for Home Affairs (4)

Miss Amy YEUNG
Assistant Secretary for Home Affairs (4)1

Ms Linda SO
Principal Assistant Secretary (Security) C

Ms Anna CHOR
Assistant Secretary (Security) E3

Miss Hinny LAM
Acting Principal Assistant Secretary for Health, Welfare
and Food

Mrs Michelle WONG
Principal Education Officer (School Administration &
Support), Education and Manpower Bureau

Mr Godfrey KAN
Senior Government Counsel, Department of Justice

Item V

Mr Stephen FISHER
Acting Permanent Secretary for Home Affairs

Mr John DEAN
Principal Assistant Secretary for Home Affairs (4)

Miss Amy YEUNG
Assistant Secretary for Home Affairs (4)1

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

Staff in attendance : Ms Joanne MAK
Senior Council Secretary (2)2

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I. Confirmation of minutes

[LC Paper No. CB(2)1012/05-06]

The minutes of the meeting held on 13 January 2006 were confirmed.

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

2. Members noted that a supplementary information paper on the Government's support to elite sports for the 2009 East Asian Games provided by the Administration had been issued after the last regular meeting [LC Paper No. CB(2)1032/05-06(01)].

III. Items for discussion at the next meeting

[Appendices I and II to LC Paper No. CB(2)1011/05-06]

3. Members agreed to discuss the following items at the next regular meeting of the Panel on Friday, 10 March 2006 –

- (a) submission of report by Hong Kong Special Administrative Region (HKSAR) in the light of the International covenant on Civil and Political Rights (ICCPR);
- (b) report on the survey on public attitudes towards homosexuals; and
- (c) Project 256RS – Indoor Recreation Centre, Community Hall cum Library in Area 17, Tung Chung, Lantau Island.

4. As proposed by Ms Emily LAU, members agreed that deputations would be invited to present views under the agenda item in paragraph 3(a) above, and the meeting would be advanced to start at 9:00 am in order to allow sufficient time for discussion. Acting Permanent Secretary for Home Affairs (PSHA(Atg)) confirmed that for discussion of this item, the Administration would provide a paper updating the Panel on the position since the submission of the HKSAR's second report under ICCPR, including the Administration's responses to the list of issues raised by the United Nations (UN) Human Rights Committee in connection with the report.

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IV. Further discussion on the concluding observations adopted by UN Committee on the first report of the Hong Kong Special Administrative Region under the Convention on the Rights of the Child (CRC)

[LC Paper Nos. CB(2)1011/05-06(01) & (02), CB(2)1065/05-06(01) and CB(2)1091/05-06(01)]

Briefing by the Administration

5. PSHA(Atg) said that regarding the recommendation of establishing in HKSAR a national human rights institution which included a clear mandate for the monitoring of children's rights and implementation of CRC and in accordance with the Paris Principles, the Administration was examining the possibility of setting up a Children's Commission. He further said that as an interim measure, the Administration had established a Children's Rights Forum (the Forum) to provide a forum for exchanging views on relevant subjects among children rights non-governmental organisations (NGOs), children representatives and the Administration.

6. PSHA(Atg) said that on the recommendation of enacting a single piece of legislation to protect children's rights, the Administration remained unconvinced that there would be any advantage in replacing existing specific laws dealing with different aspects of the Convention with a single children's ordinance. He pointed out that the Convention covered various policy areas which fell under the ambit of several policy bureaux, and comprehensive legislation was already in place for the protection of children's rights.

7. PSHA(Atg) also briefed members on the Administration's rationale for deciding to retain the current reservations in respect of Articles 32(2)(b) and 37(c) of CRC, as detailed in the Administration's paper.

8. Regarding the recommendation that children's views should be given due weight in schools in the development of policies or programmes affecting them, Principal Education Officer (School Administration & Support) said that the Secretary for Education and Manpower and Permanent Secretary for Education and Manpower often met with students to listen to their views during school visits. In addition, the Education and Manpower Bureau (EMB) conducted surveys of students' views, one of which was the Stakeholder Monitoring Survey, which gauged stakeholders' views on educational reform and other educational initiatives on a regular and longitudinal basis. She added that during the consultations on the new senior secondary academic structure and the 'Review of Medium of Instruction and Secondary School Placement Allocation', views were collated from students, individual schools and youth organisations.

9. On the issue of education for children who had no right to remain in Hong Kong, Principal Assistant Secretary (Security) C (PAS(S)C) said that the

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Administration had been considering requests for allowing such children to attend school on a case by case basis. She pointed out that in accordance with the law, people, including children, who had no right to remain in Hong Kong were subject to removal. Therefore, the question of schooling of such children in Hong Kong did not normally arise. However, the Administration recognised that there might be exceptional circumstances in individual cases that justified special consideration, e.g. where it was foreseen that the removal of the child was unlikely to take place for an extended period of time. In appropriate cases, the Director of Immigration might give an indication of no objection, thereafter the education authorities would consider whether arrangements could be made to admit the children concerned to local schools.

10. With regard to concern about availability of programmes to facilitate family reunion, PAS(S)C said that the Certificate of Entitlement (CoE) Scheme and the One-way Permit (OWP) Scheme had provided legal channels for Mainland children to enter Hong Kong for settlement. She explained that persons who claimed to have the right of abode in Hong Kong by virtue of Article 24(2)(3) of the Basic Law could apply for a CoE, and they might obtain OWPs to settle in Hong Kong as soon as their status had been verified. The Administration also noted that the Mainland authorities had announced in 2002 that Mainland children who were aged below 18 and whose parents had settled in Hong Kong would be issued OWPs for entry to Hong Kong in about one year's time.

11. Assistant Secretary (Security) E3 (AS(S)E3) said that following the recommendation of the Law Reform Commission's report titled "The Age of Criminal Responsibility in Hong Kong", the minimum age of criminal responsibility was raised from seven to 10 years of age in mid of 2003. The Administration would keep the implementation of the relevant legislation under review. AS(S)E3 further said that the Administration was committed to preventing sexual abuse against children, and the Police accorded high priority to preventing and combating crimes relating to sexual exploitation of children.

12. Regarding the problem of corporal punishment, Acting Principal Assistant Secretary for Health, Welfare and Food (PASHWF(Atg)) pointed out that legislation was in place to protect children from abuse and penalise abusers whose acts of child abuse involved assault or other criminal offences. She said that having regard to Chinese culture, the Administration considered it more appropriate and effective to change the behaviour of parents through continuous parent education and educate parents to avoid crossing the line from discipline to abuse and to use better alternative ways of teaching their children.

13. With regard to concern about the reporting of child abuse, PASHWF(Atg) said that the Social Welfare Department (SWD) had formulated "Procedures for Handling Child Abuse Cases" which provided guidance for professionals working with children on how to identify child abuse cases and to refer cases to child protection workers and police for

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investigation and follow-up. The Administration had strengthened services and training relating to the handling and prevention of child abuse and family violence. In addition, SWD had recently launched a new training programme, which included training on basic awareness of family violence for related personnels, risk assessment and intervention skills, as well as advanced skills and refresher training for the professionals.

14. PASHWF(Atg) further said that the Administration reviewed the Comprehensive Social Security Assistance (CSSA) Scheme in December 2005. As the Social Security Assistance Index of Prices in October 2005 had increased by 0.4% over that of 2001-02, the standard rates paid under CSSA and the Disability Allowance had accordingly been increased by 0.4%, and the new rate took effect from 1 February 2006.

15. With regard to the recommendations raised in the area of juvenile justice, Senior Government Counsel (SGC) said that the Administration would consider the recommendation of ensuring the full implementation of juvenile justice standards in Articles 37, 40 and 39 of CRC, and other relevant international standards in this area, as well as the need to provide training on relevant international standards to those responsible for administering juvenile justice.

16. SGC informed members that the Administration would consider the recommendation that the juvenile courts' jurisdiction to hear and determine charges should be extended to cases brought against persons under the age of 18 (under the existing law, it was limited to persons aged below 16). It would also invite the Judiciary to consider the recommendation that cases tried in juvenile courts be heard by magistrates who were "appropriately trained".

17. SGC further said that in ensuring that deprivation of liberty was always used as a last resort, section 109A of the Criminal Procedure Ordinance (Cap 221) already provided that no court would sentence a person of or over the age of 16 and under 21 years of age to imprisonment unless the court was of opinion that no other method of dealing with such person was appropriate, except for an excepted offence. SGC said that Department of Justice (D of J) considered that this should suffice to address the UN Committee's concerns.

18. SGC also pointed out that section 11 of the Juvenile Offenders Ordinance (Cap 226) provided that no child under the age of 14 would be sentenced to imprisonment, and no young person (aged 14 to 15) would be sentenced to imprisonment if he could be suitably dealt with in any other way. SGC said that D of J considered that these provisions would suffice to address the UN Committee's concerns.

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Issues raised by members

Progress of implementation of CRC

19. Dr Fernando CHEUNG expressed disappointment at the Administration's response set out in its paper. He criticised the Administration for ignoring many of the concerns and failing to respond positively to the recommendations raised in the concluding observations, e.g. setting up an independent human rights institution with a specific mandate on children's rights, readjusting social welfare schemes as the economy had much improved, prohibiting corporal punishment by legislation, seeking children's views systematically on all policies and programmes affecting them, and tackling the problem of persistence of discrimination against refugee, asylum-seeking and undocumented migrant children, etc. He urged the Administration to keep the Panel abreast of any development with regard to its implementation of the recommendations.

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20. PSHA(Atg) said that the Administration had been providing progress reports to the Panel since 2003-04 setting out annual overviews of developments relating to the six treaties which applied to HKSAR and which entailed an obligation to submit periodic reports to the UN Treaty Monitoring Bodies. He undertook that the Administration would cover more details on issues relating to the implementation of CRC in its next progress report.

Commission on Children

21. The Deputy Chairman asked whether the Administration considered that children's interests had been compromised under existing arrangements that each policy bureau was responsible for assessing the impact of its policy decisions on children.

22. PSHA(Atg) responded that the Administration was of the view that there were no problems with the present arrangements, as the best interests of children were necessary considerations in all relevant decision-making in Hong Kong. Moreover, should there be any change in policies or launching of a new policy, it had to first be endorsed by the Policy Committee chaired by the Chief Secretary for Administration (CS), and by the Executive Council as well if legislation was considered necessary. PSHA(Atg) pointed out that this mechanism had ensured that policies were well coordinated to cater for children's needs and interests.

23. Miss CHOY So-yuk requested the Administration to explain the existing mechanism which ensured that the best interests of the children were necessary considerations in all relevant decision-making. PSHA(Atg) responded that before making any policy decisions on matters affecting children, the Administration would widely consult the views of children and stakeholders through various channels and take into account their views. In addition, the

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existing mechanism which required all policy proposals to include an assessment on human rights implications had served the purpose of ensuring that children's interests were one of the considerations, since children's rights were amongst the various types of human rights.

24. Miss CHOY So-yuk shared the concern raised by UNCRC about the lack of channels to systematically collect children's views on policies or programmes affecting them, such as those relating to the problems of pregnancy among children/youth and of high drop-out rates in schools.

25. PSHA(Atg) said that children could voice out their views through the established mechanism. In addition to COY which was targeted at persons aged between 15 and 24, the Administration had been sponsoring NGOs of children's rights to organise programmes, e.g. the Child Ambassadors scheme and Children's Council to gauge children's views on various issues relating to their rights. The recently established Children's Rights Forum also provided opportunities for exchanges of views between Government representatives and children's representatives.

26. Dr Fernando CHEUNG said that many NGOs of children's rights considered that there was retrogression in many areas in the protection of children's rights and pressed for the establishment of a Commission on Children to protect and monitor children's rights. He asked the Administration to provide a timetable for the establishment of an independent human rights institution as proposed by UNCRC. Ms Audrey EU also considered that it was almost a consensus of the society that a Commission on Children should be set up. She expressed a strong view that the Administration should do so for the promotion and protection of children's rights. Mr Albert HO echoed the views of Dr CHEUNG and Ms EU. He pointed out that existing arrangements under which the Home Affairs Bureau (HAB) assumed only a coordinating role in human rights issues could not ensure effective implementation of CRC.

27. Ms Emily LAU requested the Administration to respond to the following views expressed by Against Child Abuse in its submission [LC Paper No. CB(2)1065/05-06(01)] –

- (a) UNCRC had not accepted the explanation given by the HKSAR delegation as to why there was no need for HKSAR to adopt the recommendation of UNCRC that legislation and policy-making should take a holistic and comprehensive approach to implementing CRC;
- (b) the Administration should not take advantage of the overlap in the defined ages of the adolescent and of the child and simply change Commission on Youth (COY) into a Commission on Children and Youth; and

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- (c) a Commission on Children should be set up which would be responsible for monitoring the implementation of CRC, and compiling reports on the implementation which should include a comprehensive assessment on the impact of policy decisions of all bureaux on children.

28. PSHA(Atg) responded that there were calls for the Government to set up a Commission on Children modelled on the Women's Commission and COY, and also calls for the Government to appoint a Commissioner for Children. He explained that the Administration might consider whether it should be setting up a Commission on Children or changing COY into a Commission on Children and Youth, since there was some overlap in the defined ages of the youth and of the child. He pointed out that the Administration might also consider whether it should be assigning a policy secretary to take up the new position of the Commissioner for Children, if created, in addition to his existing responsibilities, or setting up a new office, headed by a senior Government official, under the Office of the Chief Executive, the Office of CS, HAB or any other bureau. He said that HAB was discussing with the chairman of COY, related organisations and other policy bureaux the course of action that should be taken to follow up the recommendation. He added that as the Administration was still considering the matter, it could not provide a timetable at the present stage.

29. Dr Fernando CHEUNG and Ms Emily LAU, however, pointed out that what UNCRC advocated for was an independent human rights institution which should be established in accordance with the Paris Principles. Dr CHEUNG pointed out that the defined age of the child and that of the adolescent only overlapped between the ages of 15 to 18 and there were fundamental differences in their needs.

30. PSHA(Atg) responded that the Administration respected the Paris Principles and had conformed with the Principles as far as possible in setting up institutions for the promotion and protection of human rights. He, however, added that it might not be technically feasible at the present stage for the proposed institution, if established, to be independent of the Government.

31. Ms Emily LAU highlighted that what UNCRC had recommended was the establishment of an independent human rights institution which included a clear mandate for the monitoring of children's rights and the implementation of CRC and it should be set up in accordance with the Paris Principles. Moreover, it should have a mandate to receive, investigate and address complaints from the public including individual children, and it could be a specialised branch of the Office of The Ombudsman. She considered that the Administration should not waste time exploring the option of setting up a mechanism within the Government for monitoring of children's rights and the implementation of CRC, as this would fall far short of the expectation of the community. She further said that since an internal review of The Ombudsman Ordinance was

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underway, the Administration should take up the recommendation of UNCRC with The Ombudsman.

32. PSHA(Atg) informed members that the Administration had held initial discussion with The Ombudsman on whether the remit of The Ombudsman should be extended to assume the role of the Commissioner for Human Rights or the Commissioner for Children. The issue would be included in the current review of The Ombudsman Ordinance. He said that the Administration would further consider how to take the matter forward in the light of the findings of the review.

33. Mr Albert HO, however, pointed out that the powers and remit of The Ombudsman were mainly investigation of complaints of maladministration against government departments, and complaints about policies in contravention of provisions of CRC would not fall under the remit of The Ombudsman. He remained of the view that effective implementation of CRC could only be ensured by establishing the human rights institution and devising a comprehensive Plan of Action as recommended by UNCRC.

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34. PSHA(Atg) confirmed that the Administration was considering in collaboration with The Ombudsman whether the powers and remit of The Ombudsman should include handling complaints about whether the implementation of policies by any policy bureau/department had contravened CRC. PSHA(Atg) undertook that the Administration would report to this Panel on the development of the discussion before the end of the current legislative session.

Coordination and a National Plan of Action

35. Dr Fernando CHEUNG sought the Administration's response to the concern expressed by UNCRC about the lack of a comprehensive Plan of Action for the implementation of the Convention in HKSAR and that the coordination of existing programmes and policies in HKSAR was rather sectoral and fragmented. Mr Albert HO considered that the Administration should demonstrate its determination to implement CRC by, at least, issuing a Plan of Action for the implementation of the Convention in HKSAR once a year or once every two years.

36. PSHA(Atg) said that HAB did not see much difficulty in working out an overall Plan of Action by requesting individual bureaux to provide such a Plan concerning their respective policy areas. However, it was considered more useful if the Plan of Action was to be drawn up by the new Commission on Children or the Commissioner for Children, after it had come into existence and had considered the views of stakeholders through public consultation.

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Education for children who had no right to remain in Hong Kong

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37. Ms Audrey EU said that access to education was a basic right of children. She expressed a strong view that EMB should give an undertaking that for children pending arrangements for their removal, they should be guaranteed access to education in Hong Kong irrespective of the duration of their stay. She considered that the current arrangements as explained by the Administration in paragraph 9 were unacceptable. The Chairman requested the Administration to take note of Ms EU's views.

Children in poverty

38. Ms Emily LAU expressed grave concern about the substantial increase in the number of children aged below 15 on CSSA from 19 000 in 1993 to 118 000 in 2003. She asked whether the Administration had mapped out strategies to address the problem. She also urged the Administration to follow up the concern expressed by UNCRC that insufficient resources were allocated to reduce poverty.

39. PASHWF(Atg) responded that Government resources provided for programmes and services for the development of children and the youth, including provision of childcare service and support, and various student financial assistance schemes, had amounted to about \$60 billion for the financial year 2004-05, of which about \$15 billion was specifically reserved for children and the youth from disadvantaged families. In addition, relevant bureaux and departments had redeployed existing resources and allocated additional resources to strengthen assistance to these groups at central and community levels. PASHWF(Atg) further said that the Commission on Poverty had set up a Task Force on Children and Youth which focused on three major areas: studying the causes of intergenerational poverty, improving the interface between existing policies, and implementing projects to build social capital in the younger generation.

Immigration from Mainland China for family reunion

40. The Deputy Chairman asked about the Administration's policy to facilitate reunion of children on the Mainland with their parents.

41. PAS(S)C responded that the OWP Scheme was basically a family reunion programme. She said that although the OWP Scheme was under the Mainland authorities' purview, the Administration had been exchanging views with them on the Scheme and improvements had been made to the Scheme to facilitate family reunion. She said that in order to expedite entry for family reunion, the Mainland authorities had announced in 2003 that once the Mainland spouses were issued OWPs, they could bring with them all their children aged below 18 (previously only one child aged below 14 was allowed) to go to Hong Kong for settlement. Furthermore, applications from children

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aged below 18 whose parents were settled in Hong Kong in general were approved expeditiously. PAS(S)C added that as regards children who were eligible for CoE, they might obtain an OWP to enter Hong Kong for settlement as soon as their eligibility was confirmed.

Policy to preserve and strengthen the family

42. Mr Albert HO pointed out that the Administration had failed to attach importance to the need for preserving and strengthening the family as a unit, and this was reflected in the policy of the seven years' residence requirement to social security benefits. He said that the Administration failed to appreciate the fact that children were also members who made up a family. Therefore, CSSA children would suffer from this requirement in case their parents who were not eligible for CSSA due to this requirement had to rely on the CSSA payment of these children for a living.

43. Mr HO further said that as far as cases of family violence and child abuse were concerned, the Administration's efforts in child protection were inadequate if it failed to take measures to strengthen the protection of their family members. He suggested that the Administration should require on a mandatory basis related professionals including teachers and social workers to report suspected cases of family violence and child abuse to the Police to allow early identification and prevention of such cases.

Juvenile justice

44. Mr Albert HO expressed concern that if the offenders in cases included both persons who were under the age of 18 and adults, these young offenders would have to stand trial together with other adult offenders in court, even if there was only one adult offender. Mr HO considered that such arrangements were unfair to the young offenders involved as these offenders were aged even below 16 in some cases. He stressed that young offenders had the right to have their cases heard in juvenile courts and the present arrangements should be reviewed as soon as possible. SGC undertook that he would convey Mr HO's concern to the Prosecutions Division of D of J for consideration and provide a written response to the Panel later.

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V. Proposed race discrimination legislation

[LC Paper Nos. CB(2)1003/05-06(01), CB(2)1011/05-06(03), CB(2)1065/05-06(02), CB(2)1077/05-06(01) & (02) and CB(2)1091/05-06(02)]

Assessing the need for legislation

45. Referring to paragraph 15 of the background brief prepared by the LegCo Secretariat [LC Paper No. CB(2)1011/05-06(03)], the Deputy Chairman

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requested the Administration to elaborate its view that the need to legislate against racial discrimination was not determined simply based on the results of opinion surveys.

46. PSHA(Atg) responded that while the Administration agreed that it should not decide on the need to introduce any legislation merely based on the results of opinion surveys, the implementation of any legislation would not be successful without the support of the public and the legislature. He said that the Administration had been proactive in promoting the concept of equal opportunities. It was pleased to note that the public attitudes had significantly changed in the past decade, as results of the latest public consultation exercise had found that most of the respondents considered that there was a need for legislation against racial discrimination.

Exclusion of discrimination experienced by new arrivals from the Mainland from the scope of the Bill

47. Referring to paragraph 24 of the background brief prepared by the LegCo Secretariat the Deputy Chairman requested the Administration to explain why the Race Discrimination Bill (the Bill), if drafted in such a way that it also covered discrimination against new arrivals from the Mainland, would violate its original legislative intent. PSHA(Atg) explained that the Bill would include race, colour, descent and national or ethnic origin as prohibited grounds of discrimination. Hence, discrimination against new arrivals from the Mainland by local Chinese could not be regarded as a form of racial discrimination but a form of social discrimination. He further explained that inclusion of discrimination against new arrivals from the Mainland within the scope of the Bill would mean giving additional protection to them.

48. Ms Audrey EU considered that the Administration should not exclude new arrivals from the Mainland from the protection of the Bill merely due to technical problems. She pointed out that discrimination against the new arrivals from the Mainland was prevalent in Hong Kong especially in the provision of goods and services, and the Administration had in the past acknowledged that new arrivals from the Mainland were among its target group of protection in its anti-discrimination work. She suggested that the Administration could state in the Bill that it covered discrimination against new arrivals who had resided in Hong Kong for a certain period of time.

49. PSHA(Atg) pointed out that at present, discrimination laws in Hong Kong specifically included sex, disability and family status as prohibited grounds of discrimination. He explained that the approach of the proposed legislation was consistent with that of other discrimination laws, and the proposed legislation would apply to a person only if the person suffered from discrimination on the prohibited grounds as specified in the Bill. He said that a similar approach was adopted in the United Kingdom (UK) and Australia for their respective discrimination laws. He further said that the Administration

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considered that discrimination against new arrivals from the Mainland by people of the same Chinese race in Hong Kong could not be regarded as racial discrimination, and whether or not such discrimination should be prohibited by legislation should be debated by the public.

50. Ms Audrey EU said that as the Administration had admitted the existence of discrimination against new arrivals from the Mainland in Hong Kong, it should not refuse to extend the scope of the Bill to cover such discrimination simply because of technical problems. She said that the law was a tool to solve problems, and the Administration should not refuse to protect these new arrivals simply because of problems with the definition. PSHA(Atg) reiterated that if the Administration drafted the Bill in such a way that it also covered discrimination against new arrivals from the Mainland, the Bill so drafted would violate the original legislative intent of prohibiting racial discrimination in Hong Kong, as it would be queried why new arrivals should be given additional protection just because they were people of the Chinese race, and whether people of other races, who were not given the same favourable treatment, were being discriminated against.

51. Miss CHAN Yuen-han suggested that the Administration should make reference to the Mainland's related policies on ethnicities and devise measures to tackle the problem of discrimination against new arrivals from the Mainland.

52. PSHA(Atg) said that some people considered that before the new arrivals from the Mainland could assimilate into the Hong Kong society, the Administration should introduce legislation to prohibit discrimination against the new arrivals in order to protect these people. The Administration's position, however, was that it had to further study whether such discrimination was so serious that it warranted prohibition by legislation. He pointed out that there were some other people who considered that since the new arrivals from the Mainland were ethnic Chinese and Chinese-speaking, in time they would be able to adapt to the Hong Kong society and assimilate. They also considered that introducing legislation to provide special protection to the new arrivals would only affect their assimilation into the Hong Kong society.

53. Mr LEE Cheuk-yan said that he was dismayed to hear that prohibiting discrimination against new arrivals from the Mainland would result in discrimination against other people. He asked whether during the public consultation exercise, the majority of respondents had supported or opposed enacting legislation to prohibit discrimination against new arrivals from the Mainland. Mr Albert CHAN said that the proposed legislation would have a serious loophole if it failed to address the prevailing problem of discrimination against the new arrivals from the Mainland merely due to the problem of definition. He considered that the Administration should not evade addressing the problem even though significant economic implications were expected if new arrivals from the Mainland were included within the scope of protection of the Bill. Mr LEE and Mr CHAN suggested that the Bill could be changed to be

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the “Race Discrimination and Discrimination against New Arrivals from the Mainland Bill”.

54. PSHA(Atg) responded that the proposed legislation would be self-contradictory if it gave people of a particular race more favourable treatment than others. The Administration was of the view that discrimination against the new arrivals from the Mainland was social discrimination. Although such discrimination was unacceptable, it would be inappropriate to cover such social discrimination within the scope of the Bill which sought to prohibit discrimination on the ground of race. He also clarified that the scope of the relevant public consultation document only covered proposed legislation to prohibit discrimination against persons or groups on the ground of race.

55. Miss CHOY So-yuk said that she appreciated the rationale given by the Administration for being unable to cover discrimination experienced by the new arrivals from the Mainland within the scope of the Bill and she accepted the exclusion of them from coverage of the Bill. She, however, urged the Administration to review the need for enacting legislation to prohibit discrimination against the new arrivals from the Mainland as soon as possible and provide a timetable for the review.

56. PSHA(Atg) responded that the Administration intended to commence a study on the need for enacting legislation to prohibit discrimination against the new arrivals from the Mainland, including to conduct a public consultation exercise, after enactment of the Bill.

57. In response to Mr LEE Cheuk-yan and Ms Emily LAU, PSHA(Atg) said that some bureaux including EMB had raised various concerns and questions about the Bill. It was the Administration’s plan to introduce the Bill into the Legislative Council by June 2006.

58. Mr Albert HO requested to put on record that the Democratic Party supported extending the scope of the Bill to cover discrimination against the new arrivals from the Mainland.

Meaning of race

59. Mr Patrick LAU and Mr Albert HO requested the Administration to explain the meaning of race. PSHA(Atg) responded that the Bill would include race, colour, descent and national or ethnic origin as prohibited grounds. He said that there were many cases relating to the interpretation of the meaning of race in other common law jurisdictions. He said that the Chinese, the Japanese, the French and British people were examples of different races; blacks and whites were examples of different colour; and different castes within the caste system in Hinduism were examples of different descent. PSHA(Atg) further said that there were 56 ethnic groups in China, and Han Chinese was the largest one. An example of discrimination on the ground of national origin was a Han

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Chinese discriminating against a Manchu or a Mongolian, and such discrimination would be regarded as racial discrimination after enactment of the Bill. PSHA(Atg) explained that Jews could belong to different races and had different skin colour. They were people who were distinguished by their ethnic origin, and there were four criteria defining the meaning of ethnic origin. He added that discrimination against new arrivals from the Mainland by local Chinese could not be regarded as discrimination on any of these prohibited grounds.

60. The Chairman asked the Administration to confirm that on the basis of the Administration's explanation, if a new arrival from the Mainland who was a Manchu or a Mongolian was discriminated against by a Han Chinese in Hong Kong, whether such discrimination would be regarded as racial discrimination under the Bill. PSHA(Atg) said that the interpretation was correct.

61. Mr Albert HO queried why the Bill would include colour as one of the prohibited grounds as a person's colour only meant differences in outlook. PSHA(Atg) explained that there had been a case in an overseas jurisdiction in which some blacks had discriminated against other blacks who had lighter skin colour.

62. In response to further enquiries made by Mr Albert HO about the application of the Bill, PSHA(Atg) confirmed that if a person was discriminated against by local Chinese in the area of employment because of his non-Chinese family name and his mixed descent, even though he spoke fluent Chinese and looked like a Chinese, such discrimination would be regarded as discrimination on the ground of ethnic origin and would be covered by the Bill. He further confirmed that discrimination against people from some of the autonomous regions in the Mainland, e.g. around Xin Jiang, who had different features in appearance from the Chinese and spoke a different language and had different attire, by local Chinese in Hong Kong would also be regarded as discrimination on the ground of national origin under the Bill.

Exceptions

63. Dr Fernando CHEUNG expressed dissatisfaction with some proposed exceptions from relevant provisions of the Bill. He made the following points –

- (a) the proposal that the Bill would not affect any immigration legislation governing entry into, stay in and departure from Hong Kong, or the application of any such legislation would mean allowing the continuation of the two-week rule which had been criticised as a form of discrimination against the overseas domestic helpers;

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- (b) the proposal for an exception to be made under the Bill for differential treatment between existing employees on local terms of employment on the one hand and existing employees on the overseas terms on the other hand would mean allowing continuation of discrimination against local people in favour of expatriates insofar terms of employment were concerned;
- (c) the proposal that an exception would be provided where being of a particular racial group was a genuine occupational qualification for a job for reason of authenticity working in a place providing food or drink for consumption in a particular setting would give employers of certain types of restaurants the excuse not to hire members of ethnic minorities to work in their restaurants;
- (d) he failed to see the justification for the exception proposed for voluntary bodies which restricted membership to persons of a particular racial group; and
- (e) he failed to see the justification to provide a grace period of three years for an employer with not more than five employees.

64. PSHA(Atg) responded that the exception relating to immigration legislation was proposed for effective border control. He pointed out that the Hong Kong Bill of Rights had also provided for exception for immigration legislation and many overseas jurisdictions had done the same out of the same considerations. PSHA(Atg) further explained that there were operational needs for transnational corporations to employ expatriates from overseas and these corporations might need to offer special allowances to attract expatriates to come to work in Hong Kong. He added that the proposed length of grace period was consistent with that provided for under existing discrimination laws of Hong Kong.

65. Dr CHEUNG expressed dissatisfaction with the Administration's explanation. He pointed out that some of the proposed exceptions would mean allowing the continuation of unfairness created by differences in the treatment between expatriates and local employees, and between overseas domestic helpers and their local counterparts.

66. Ms Emily LAU also expressed concern about the proposed exception for immigration legislation. She said that some members of ethnic minorities had complained that they had frequently experienced discriminatory treatment at immigration control points. PSHA(Atg) pointed out that while the Administration also agreed that any discriminatory treatment should not be allowed, the proposed exception was considered necessary to ensure effective control and law enforcement at immigration control points.

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67. Referring to paragraph 31 of the background brief prepared by the LegCo Secretariat, Deputy Chairman asked the Administration to explain what would be regarded as reasonable justifications for the Government or a public authority not to provide a member of the ethnic minorities with interpretation service. PSHA(Atg) explained that while requirements in respect of languages might give rise to indirect racial discrimination, this might not justify demands for provision of interpretation services in all areas of public services.

Discrimination on the grounds of culture and religion

68. Miss CHAN Yuen-han asked about the Administration's view on whether discrimination on the grounds of culture or religion should fall within the scope of protection of the Bill. She asked whether a person who practiced Islam and thus suffered from insult would be protected under the proposed legislation.

69. PSHA(Atg) pointed out that if it was decided to prohibit discrimination on the ground of religion, it would be necessary to do so by introducing a separate legislation and UK had done so. He pointed out that given the established approach for the discrimination laws of Hong Kong, the Administration would also need to introduce a separate legislation to prohibit discrimination on the ground of culture, specifically, language, if it was decided that such discrimination had to be prohibited by legislation. The Administration, however, was of the view that the problem of discrimination on the ground of religion in Hong Kong was not very serious.

Education of students of ethnic minorities

70. Ms Emily LAU informed members that she had raised a written question at the Council meeting on 23 November 2005 seeking information on the number of students of ethnic minorities taking part in public examinations and their passing rates for different subjects. The Administration's reply was that EMB had not kept such statistics as applicants registering for the Hong Kong Certificate of Education Examination were not required to submit information on their racial origin/nationality. She considered that these statistics were important for EMB to devise appropriate policies and measures to address the problems faced by these students.

71. PSHA(Atg) said that there was concern in the past that collection of information on the basis of racial origin/nationality might have implications on racial discrimination. It was the Administration's present view that it would be necessary for policy bureaux, where necessary, to start keeping statistics in respect of the racial origin/nationality of their service recipients in order to allow improvements be made to their provision of services. The Census and Statistics Department had collated information in Population Census about ethnic minorities in Hong Kong, and various policy bureaux had also started to collate relevant information in respect of their policy areas.

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

Council Business Division 2
Legislative Council Secretariat
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