

Panel on Constitutional Affairs

List of outstanding items for discussion
(position as at 10 March 2009)

**Proposed
timing for
discussion**

1. The question of "important bill" under Article 50 of the Basic Law

The Panel discussed the question of "important bill" under Article 50 of the Basic Law at a number of meetings since late 1999.

To be decided
by the Panel

The Panel noted the Administration's position on the following issues -

- (a) what constitutes an "important bill";
- (b) who determines whether a bill is important;
- (c) when to determine whether a bill is important; and
- (d) procedures and parties involved in the consultations under Article 50.

Given the Administration's position, the Chairman sought the views of members on the way forward at the meeting on 18 July 2005 when the item was last discussed. Hon Audrey EU suggested and members agreed that the item should remain on the outstanding list. At the meeting on 20 November 2006, members noted the background brief on the past discussions of members and developments subsequent to the meeting on 18 July 2005 prepared by the Legislative Council (LegCo) Secretariat (LC Paper No. CB(2)376/06-07(02)), and expressed no strong view on the timing for discussing the item.

2. Constitutional development

On 12 December 2007, the Administration published The Report on Public Consultation on Green Paper on Constitutional Development. The Chief Executive (CE) submitted a report to the Standing Committee of the National People's Congress (NPCSC) on the same day. The Panel discussed the two reports at its meetings on 17 and 19 December 2007. On 29 December 2007, NPCSC promulgated its decision on issues relating to the methods for selecting CE and forming LegCo in 2012 and on issues relating to universal suffrage. At the meeting on 17 December 2007, members deliberated on the CE's Report.

On-going
discussion

In February 2008, CE set up a task group on constitutional development under the Commission on Strategic Development to study possible options for electing CE and for forming LegCo in 2012, within the framework set out by NPCSC's decision. The task group concluded its discussion in June 2008. Separately, at three meetings held on 17 March, 21 April and 19 May 2008, the Administration listened to the views of Panel members on the two electoral methods for 2012. The Administration advised that it would, within the first half of 2009, consult the public on possible options for amending the methods for electing CE and for forming LegCo in 2012.

During the CE's Question and Answer Session on 15 January 2009, CE announced that the public consultation on the electoral arrangements for 2012 would be deferred to the fourth quarter of 2009. The rationale was that Hong Kong's economic downturn was likely to be most serious during the first half of this year. Members of the public would be primarily concerned about economic and livelihood issues, and might not be able to focus on discussing the electoral methods for elections that would only take place three years later.

3. Role and development of political parties

The Panel held a discussion on the need to introduce a political party law at its meeting on 21 February 2005 and received views from deputations on the role and development of political parties at a special meeting on 26 February 2005.

To be decided
by the Panel

The Administration's position was that the introduction of a political party law would hinder the development of political parties. As one of the means to facilitate the development of political party and political talent, the Administration had extended the financial assistance scheme applicable to candidates in LegCo elections to candidates in District Council elections and increased the subsidy rate to \$11 per vote.

4. Composition, functions and operation of the Electoral Affairs Commission (EAC)

On 21 June 2004, the Research Report prepared by the Research and Library Services Division of the LegCo Secretariat (RLSD) on "Operation of Electoral Regulatory Bodies in Selected Places" (RP04/03-04) was presented to the Panel. Members agreed to further explore the issues raised in the Research Report in future.

To be decided
by the Panel

5. Usage of electoral register

In September 2007, Hon Margaret NG requested the Panel to discuss whether the Administration should review and amend the relevant subsidiary legislation to allow Members returned by election to use the relevant information in the electoral register for communication with their constituents while they were in office, and to require corporate and professional bodies of Functional Constituencies (FCs) to provide the necessary assistance to FC Members.

To be decided
by the Panel

The Panel followed up the issue at its meetings on 17 November 2007 and 18 February 2008. In response to members' request, RLSD had prepared an Information Note on "Usage of electoral register" (IN05/07-08) which was considered by the Panel on 18 February 2008. At the meeting, some members expressed the view that the information contained in the electoral register should be released for use for purposes other than a purpose related to an election, e.g. to communicate with electors after the election. The Administration undertook to relay members' views to EAC for consideration.

6. *Submission of reports by the Hong Kong Special Administrative Region Government to the United Nations under international human rights treaties

The second report of HKSAR under the International Covenant on Economic, Social and Cultural Rights (ICESCR) was submitted to the United Nations (UN) in June 2003. The concluding observations of the UN Committee on Economic, Social and Cultural rights, issued on 13 May 2005, were discussed by the Panel on Home Affairs (HA Panel) on 21 June 2005. China is expected to submit its second report before 30 June 2010.

As and when
those reports are
submitted by
China to UN and
published
Constitutional
and Mainland
Affairs Bureau
(CMAB) &
LWB

The initial report of HKSAR under the Convention on the Rights of the Child (CRC) was submitted to UN in June 2003. The concluding observations of the UN Committee on the Rights of the Child, issued on 30 September 2005, were discussed by the HA Panel on 8 November 2005 and 10 February 2006. The report on HKSAR will form part of China's combined third and fourth report which is expected to be due by 31 March 2009.

The second report of HKSAR under the International Covenant on Civil and Political Rights (ICCPR) was submitted to UN on 14 January 2005. The concluding observations of the Human Rights Committee, issued on 30 March 2006, were discussed by the HA Panel on 9 June 2006. The Administration further provided a copy of the HKSAR Report [LC Paper No. CB(2)369/07-08(01)] on its follow-up to the recommendations made in paragraphs 9, 13, 15

and 18 of the above concluding observations to the Panel on 15 November 2007. The HA Panel discussed the HKSAR Report on 11 January 2008. The third report is expected to be due in 2010.

China's 10th to 13th combined report under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), of which the report on HKSAR formed a part, was submitted to UN in June 2008. UN hearing is tentatively scheduled for August 2009. After discussion of the report on HKSAR at its meeting held on 15 December 2008, the Panel agreed to further discuss the subject matter and receive views from the public in May/June 2009.

May/June 2009

UN Human Rights Council has initiated a Universal Periodic Review of all UN member states. The hearing on China, which covered HKSAR, was held on 9 February 2009. The Panel discussed the section on HKSAR of the report of the Central People's Government to UN on 19 January 2009.

The second report of HKSAR under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was submitted to UN in early 2004, the reporting responsibility of which falls under the purview of the Labour and Welfare Bureau (LWB). The concluding comments of the Committee on the Elimination of Discrimination Against Women, issued on 31 August 2006, were discussed by the HA Panel on 9 February 2007. The third report of HKSAR will be part of China's 7th and 8th combined report which is expected to be due for submission by September 2010.

Under the Convention on the Rights of Persons with Disabilities, HKSAR (the reporting responsibility falls under the purview of LWB) will submit a report as part of China's combined report to UN within two years after the entry into force of the Convention for HKSAR on 31 August 2008. Thereafter, HKSAR is required to submit subsequent reports at least every four years.

The Administration's second report on implementation of international human rights treaties in Hong Kong in 2004 was issued vide LC Paper No. CB(2)2403/04-05(01) dated 1 August 2005.

7. *Review of the Personal Data (Privacy) Ordinance (Cap. 486)

The HA Panel discussed the progress of the review of the Personal Data (Privacy) Ordinance with the Administration and the Privacy Commissioner for Personal Data (PCPD) at its special meeting on 4 July 2008. According to the Administration, PCPD has put

To be confirmed
CMAB

forward various amendment proposals which would impact on various sectors of the community. The Administration aims at coming up with concrete proposals to amend the Ordinance for public consultation during the Fourth LegCo.

8. *Amendments to the Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO) proposed by the Equal Opportunities Commission (EOC)

The Race Discrimination Bill (RDB) passed on 10 July 2008 has incorporated one of the amendments proposed by EOC, i.e. to extend the definition of sexual harassment in SDO to cover conduct which created a sexually hostile or intimidating environment at an educational establishment. As regards the other amendments proposed by EOC, the Administration has pointed out that some of them are technical amendments and the others might have read-across implications to other anti-discrimination ordinances. The Administration would consider the most appropriate way to take forward these proposed amendments and would further report progress to the relevant Panel in due course.

To be confirmed
CMAB & LWB

9. *Management of public records - issues relating to access to information

The HA Panel agreed at its meeting on 11 May 2007 to discuss the management of public records from the perspective of access to information.

To be confirmed
CMAB and
Administration
Wing (Chief
Secretary for
Administration's
Office)

10. *Issues relating to the Equal Opportunities Commission

Progress of implementation of recommendations made in the Report of the Independent Panel of Inquiry on the Incidents Relating to EOC and the recommendations made in two other reports of the internal reviews conducted by EOC

To be confirmed
CMAB

This item was last discussed at the meeting of the HA Panel on 13 January 2006. According to the Administration, the only outstanding issues relate to the proposal for the appointment of a Deputy Chairman for EOC and the proposal for separating the executive functions from the EOC Chairman. Both require careful consideration and, if accepted, amendments to SDO. CMAB will further examine the matter, taking into account the views expressed

by members at the Panel meeting on 13 January 2006 and any other relevant Panel meetings.

Proposed establishment of an Equal Opportunities Tribunal

The Bills Committee on RDB (the Bills Committee) noted that EOC was looking at the possibility of establishing an Equal Opportunities Tribunal, with informal procedures and active case management functions, so as to make the adjudication process speedy and more accessible. It was agreed that the issue should be referred to this Panel for follow-up.

Review of the composition of EOC

During the scrutiny of RDB, there was a suggestion that the composition of EOC should be reviewed and more representatives of relevant concern groups should be appointed to the Commission. The Bills Committee agreed that the issue should be referred to this Panel for follow-up.

11. Administrative guidelines on promotion of racial equality

In response to the request of the Bills Committee on RDB that a statutory duty should be imposed on the Government and specified public authorities to draw up a Race Equality Scheme, the Administration had instead proposed to compile administrative guidelines on promotion of racial equality within the Government for the key Bureaux and Departments to follow in their formulation and implementation of their relevant policies and measures and undertaken to consult this Panel on the draft guidelines.

Early 2009

12. District Council (DC) election mechanism

Hon Emily LAU raised an oral question on population of DC constituencies at the Council meeting held on 3 December 2008. She considered that the population quota of DC constituencies should be raised and the proportional representation system should be adopted for returning DC members. The Administration explained that if the two measures were adopted at the same time, individual candidates would need to devote more resources to compete for seats with other candidates in the larger constituencies. This would raise the barrier for individual candidates to take part in elections, especially those who were independent and had no political affiliation. Ms LAU proposed that the Panel should follow up relevant issues at a future meeting.

To be decided
by the Panel

13. Exit poll

At the Council meeting on 16 January 2008, Hon Emily LAU raised a question on the existing measures for regulating exit polls. The Panel followed up the issue at a number of meetings in 2008. In response to members' request, RLSD had prepared an Information Note on "Regulation of exit polls in selected places" (IN10/07-08), which was considered by the Panel on 17 March 2008.

March 2009

Some members were concerned about the background of the pollsters and the use of exit poll results by political parties and organizations in making strategic decisions before the close of poll. Some members requested EAC to step up measures to regulate the conduct of exit polls.

According to EAC, it had revised the guidelines for the LegCo election by adopting additional measures to step up the control on the conduct of exit polls and to enhance the transparency of the organizations or persons with approval to conduct exit polls. In its Report on the 2008 LegCo Election, EAC also stated that it would continue to listen to the views concerning exit polls and consider the matter when the guidelines were updated prior to the next general election, along with other electoral arrangements.

The issue was raised again when the Panel discussed the EAC Report on the 2008 LegCo Election at its meeting on 15 December 2008. Ms Emily LAU proposed that the Panel should follow up on the issue and receive views from pollsters, academia and political parties at a future meeting.

* In the last term, these issues fell within the purview of the HA Panel.