

**立法會**  
**Legislative Council**

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LC Paper No. CB(2)527/10-11  
(These minutes have been seen  
by the Administration)

**Panel on Constitutional Affairs**

**Minutes of meeting**  
**held on Monday, 21 June 2010, at 2:30 pm**  
**in the Chamber of the Legislative Council Building**

**Members present** : Hon TAM Yiu-chung, GBS, JP (Chairman)  
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (Deputy Chairman)  
Dr Hon Margaret NG  
Hon CHEUNG Man-kwong  
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP  
Hon WONG Yung-kan, SBS, JP  
Hon LAU Kong-wah, JP  
Hon Miriam LAU Kin-ye, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon LI Fung-ying, BBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon WONG Kwok-hing, MH  
Hon LEE Wing-tat  
Hon Jeffrey LAM Kin-fung, SBS, JP  
Hon CHEUNG Hok-ming, GBS, JP  
Hon WONG Ting-kwong, BBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon CHIM Pui-chung  
Prof Hon Patrick LAU Sau-shing, SBS, JP  
Hon Cyd HO Sau-lan  
Dr Hon LAM Tai-fai, BBS, JP  
Hon CHAN Kin-por, JP  
Hon WONG Kwok-kin, BBS  
Hon IP Kwok-him, GBS, JP  
Dr Hon PAN Pey-chyou  
Hon Paul TSE Wai-chun  
Dr Hon Samson TAM Wai-ho, JP

Hon Alan LEONG Kah-kit, SC  
Hon LEUNG Kwok-hung  
Hon Tanya CHAN  
Hon WONG Yuk-man

**Members  
absent** : Hon Albert HO Chun-yan  
Dr Hon Philip WONG Yu-hong, GBS  
Hon LAU Wong-fat, GBM, GBS, JP  
Dr Hon Priscilla LEUNG Mei-fun  
Hon CHEUNG Kwok-che  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

**Public Officers :** Item III  
**attending**

Miss Adeline WONG Ching-man  
Under Secretary for Constitutional and Mainland Affairs

Mr Arthur HO Kin-wah  
Deputy Secretary for Constitutional and Mainland Affairs

Mr Hubert LAW Hin-cheung  
Principal Assistant Secretary for Constitutional and Mainland  
Affairs

Ms Roxana CHENG Pui-lan  
Senior Assistant Solicitor General  
Department of Justice

Mr CHOW Wing-hang  
Principal Assistant Secretary (Security)D  
Security Bureau

Mrs NG KIANG Mei-nei, Millie  
Principal Assistant Secretary (Security)E  
Security Bureau

**Attendance by :** Item III  
**invitation**

Amnesty International Hong Kong

Mr Billy LEUNG  
Campaigner

Hong Kong Human Rights Monitor

Miss Debbie TSUI  
Project and Education Officer

Social Affairs Association of the HK Institute of  
Education Students' Union

Mr TSANG Wai-bong  
Project Coordinator

The Group of Approaching LYL Behaviour Action

Mr Edward YUM  
Member

Green Radio

Mr LO Kin-hei

169 Patriotic Democratic Alliance

Mr WONG Ho-ming  
President

**Clerk in  
attendance** : Miss Flora TAI  
Chief Council Secretary (2)3

**Staff in  
attendance** : Mr Arthur CHEUNG  
Senior Assistant Legal Adviser 2

Ms Clara TAM  
Assistant Legal Adviser 9

Mrs Eleanor CHOW  
Senior Council Secretary (2)4

Mrs Fonny TSANG  
Legislative Assistant (2)3

Miss Lulu YEUNG  
Clerical Assistant (2)3

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**I. Information papers issued since the last meeting**

Members noted that the following papers had been issued since the last meeting -

- (a) an e-mail from Mr CHENG Shu-ki on setting up of polling stations in public hospitals by the Electoral Affairs Commission [LC Paper No. CB(2)1768/09-10(01)]; and
- (b) an outline of topics to be covered in the third report of the Hong Kong Special Administrative Region ("HKSAR") under the United Nations Convention on the Elimination of all Forms of Discrimination Against Women ("CEDAW") [LC Paper No. CB(2)1811/09-10(01)].

**II. Items for discussion at the next meeting**

[LC Paper Nos. CB(2)1828/09-10(01) to (02)]

2. Members agreed to discuss at the next meeting on 19 July 2010 the following items proposed by the Under Secretary for Constitutional and Mainland Affairs ("USCMA") -

- (a) review of the number of elected seats for the Fourth Term District Councils ("DCs"); and
- (b) an outline of the topics to be covered in the third report of HKSAR under CEDAW.

3. Members also agreed that as proposed by the Administration, the Panel would receive views on item 2(b) above at the next meeting.

4. Ms Emily LAU said that the Executive Council had just given its approval-in-principal to the Democratic Party ("DP")'s proposal on "one-person-two-votes" for returning the five new DC functional constituency ("FC") seats in 2012. She considered that the Administration should explain the DP's proposal to Members as soon as possible.

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5. Ms Audrey EU said that when the Subcommittee on Package of Proposals for the Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012 ("the Subcommittee") reported its deliberations to the House Committee on 11 June 2010, the House Committee agreed that the Subcommittee should convene meetings if necessary to discuss any amendments to the constitutional reform package proposed by the Government. Since the DP's proposal would give rise to new issues such as the voting system for returning the six DC FC Members and the procedure for nominating candidates for DC FC, the Administration should explain the related implications and consult Members on the DP's proposal. Ms EU suggested that the Administration should also consider withdrawing the two motions on the amendments to the methods for selecting the Chief Executive ("CE") and for forming the Legislative Council ("LegCo") (the "two electoral methods") in 2012 which were scheduled to be moved at the Council meeting on 23 June 2010.

6. USCMA explained that the two motions to be moved on 23 June 2010 concerning the amendments to the two electoral methods in 2012 would involve amendments to Annexes I and II to the Basic Law ("BL"). In the press conference held earlier that day, CE had made clear that the DP's proposal would be implemented by local legislation, subject to the passage of the two motions on the two electoral methods in 2012. As the DP's proposal would not involve any changes to the wording of the two motions, the Administration had no intention to withdraw them.

7. In response to the views of Ms Emily LAU and Ms Audrey EU that the Subcommittee should convene a meeting to discuss the DP's proposal, the Chairman, who was also the Chairman of the Subcommittee, said that he would liaise with the Administration on the appropriate timing for the Secretary for Constitutional and Mainland Affairs to meet with Members on the DP's proposal.

*(Post-meeting note: The Secretary for Constitutional and Mainland Affairs wrote to the Chairman on 21 June 2010 proposing that there should be a general discussion on the details for implementing the DP's proposal by local legislation at the next Panel meeting in July 2010.)*

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**III. An outline of the topics in the third report of the Hong Kong Special Administrative Region in the light of the International Covenant on Civil and Political Rights**

[LC Paper Nos. CB(2)1722/09-10(01), CB(2)1828/09-10(03) to (05), CB(2)1866/09-10(01) and CB(2)1914/09-10(01)]

8. Members noted that the proposed outline of the topics to be included in the third report of HKSAR in the light of the International Covenant on Civil and Political Rights ("ICCPR") ("the third report") was issued in June 2010 for public consultation until 15 July 2010.

9. Members noted the following papers on the subject under discussion -

(a) background brief prepared by the LegCo Secretariat [LC Paper No. CB(2)1828/09-10(03)]; and

(b) submission from Mr HUI Kwan-yiu [LC Paper No. CB(2)1828/09-10(05)].

Presentation of views

10. Miss Debbie TSUI of Hong Kong Human Rights Monitor ("HKHRM") said that according to Article 25(b) of ICCPR, "every citizen shall have the right and the opportunity without unreasonable restrictions to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage". However, the recent remark made by Mr QIAO Xiaoyang, Deputy Secretary-General of the Standing Committee of the National People's Congress ("NPCSC"), on 7 June 2010 and the remarks made by the Chief Secretary for Administration on constitutional reform were inconsistent with the principles of universality and equality as defined in Article 25(b). She was concerned that while the electorate of DC FC would be broadened, the DP's proposal would deprive the right of people other than elected DC members to nominate candidates and to stand for election as well as deviate from the principle that the weight of each vote among different sectors in the community should be equal. She further queried whether a high threshold would be imposed on the nomination procedure and whether FCs would be retained as an extension to the DC FC model in future LegCo elections if the DP's proposal was implemented. Miss TSUI also expressed concern that the Administration had stepped up its effort in suppressing demonstrations and initiating prosecutions against demonstrators since 1 October 2009. The views of HKHRM on right of

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peaceful assembly (Article 21 of ICCPR), right to participate in public life (Article 25 of ICCPR), and other rights were detailed in its submission [LC Paper No. CB(2)1914/09-10(01)]. She requested the Administration to address the issues raised by HKHRM in the third report.

11. Mr Billy LEUNG of Amnesty International Hong Kong ("AIHK") said that AIHK was concerned that the provisions of the Public Order Ordinance (Cap. 245) might impose restrictions on the exercise of rights to freedom of expression and assembly as guaranteed under Articles 19 and 21 of ICCPR, the Race Discrimination Ordinance (Cap. 602) was not entirely in conformity with ICCPR (Articles 2(1) and 26), and HKSAR was not a party to the United Nations' 1951 Convention relating to the Status of Refugees ("CSR"). Views of AIHK were detailed in its submission [LC Paper No. CB(2)1866/09-10(01)].

12. Mr TSANG Wai-bong of Social Affairs Association of the HK Institute of Education Students' Union ("SAA") criticised that the work of the Government to safeguard the rights of Hong Kong people guaranteed in ICCPR was far from satisfactory. He considered that the Government had taken various measures and actions to suppress civil rights and infringe freedom of opinion and expression guaranteed under Article 19 of ICCPR. Mr TSANG added that despite Hong Kong was an international city, its government officials lacked international vision to take on board different views. With CE elected by a small-circle election, 30 FC Members who did not have the mandate of the people and an unfair split voting system, the voices of people could not be reflected in the legislature. He considered that the trampling on human rights was a result of the minority ruling the majority. The resources of Hong Kong were controlled by a few which had led to instability in society. He urged the Government to respect and safeguard human dignity, values and rights. Views of SAA were detailed in its submission [LC Paper No. CB(2)1828/09-10(04)].

13. Mr Edward YUM of The Group of Approaching LYL Behaviour Action ("LYL") said that Article 1(1) of ICCPR provided that all peoples had the right to freely determine their political status and freely pursue their economic, social and cultural development. However, the motions on the two electoral methods for 2012 scheduled to be moved on 23 June 2010, if passed, would restrict people to take part in the conduct of public affairs, to freely make nominations for candidates running in an election, to vote and to stand for election. He criticised that the DP's proposal likewise had neglected the right of people to nominate candidates and to stand for election.

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He pointed out that if a FC system involved a screening process, imposed a high threshold on nomination, or required candidates to come from a particular sector, such system would not be compatible with the principles of universality and equality even though the FC seats were returned on the basis of "one-person-one-vote". In his view, the DP's proposal would not necessarily enhance the democratic element in constitutional reform, but would legitimise the FC system. He expressed dissatisfaction that DP and Ms Emily LAU had foregone their aim to abolish FCs and to implement dual universal suffrage in 2012.

14. Mr LO Kin-hei of Green Radio ("GR") requested the Administration to include in the third report the views of GR on the following Articles of ICCPR -

- (a) Preamble - GR doubted whether the Administration had created favourable conditions for people to enjoy their civil and political rights;
- (b) Article 9(1) - GR expressed concern that the Police had stepped up prosecutions against demonstrators, and questioned how the right to liberty and security was safeguarded when demonstrators were strip-searched after being arrested;
- (c) Article 17(1) - GR expressed concern that campus drug testing which had interfered with one's privacy, honour and reputation should not be implemented on a territory-wide basis. GR also expressed concern that some officers of the Police and the Independent Commission Against Corruption did not comply with the relevant requirements of the Interception of Communications and Surveillance Ordinance (Cap. 589) ("ICSO"), as revealed in the Commissioner on Interception of Communications and Surveillance's Annual Report 2008, resulting in infringement of the right to protection of privacy, family, home and correspondence;
- (d) Article 19 - GR expressed concern that the recent confiscation of the statue of the Goddess of Democracy by the Police on the ground that the organiser of the public exhibition in Times Square had violated the Places of Public Entertainment Ordinance (Cap. 172) had infringed the right to freedom of opinion and expression; and



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- (e) Article 21 - GR expressed concern that the unnecessary obstruction created by the Police to demonstrators during peaceful gatherings especially those held outside the Liaison Office of CPG in HKSAR ("the Liaison Office") was tantamount to restricting the right of peaceful assembly.

15. Mr WONG Ho-ming of 169 Patriotic Democratic Alliance said that the Administration should address the issues of FC and universal suffrage in the third report. He expressed dissatisfaction that at present, 14 out of 30 FC Members were returned uncontested, but the current split voting system had given the power of FC Members who were returned by a small electorate to veto proposals put forward by GC Members who had a public mandate, particularly on issues relating to people's livelihood. Referring to the recent statement made by Mr QIAO Xiaoyang on 7 June 2010 (who had said that "the core details of universal suffrage is the protection of universal and equal election rights" and "FCs have existed since electoral system was introduced to Hong Kong, and objective assessments should be made"), Mr WONG was concerned that it could imply that while there was a right for citizens to vote when universal suffrage was implemented, they might not have the right to stand for election and the right to make nomination. In addition, FCs might be retained in another form which was inconsistent with the principle of universality and equality provided in Article 25(b) of ICCPR. He stressed that when universal suffrage was implemented, FC must be abolished. He criticised that DP had foregone its electoral pledge to pursue dual universal suffrage in 2012. Under the DP's proposal, the weight of each vote among different sectors in the community was not equal. It would also create further hurdles to achieve genuine universal suffrage. Mr WONG urged the Administration to withdraw the two motions regarding the two electoral methods in 2012, to abolish the FC system and the split voting system, and to implement genuine universal suffrage in Hong Kong.

Discussion with members

*Development of democracy (Articles 1, 19 and 25)*

16. Mr WONG Yuk-man said that the British Government had made use of the reservation in respect of Article 25(b) of ICCPR to deprive Hong Kong people of the right to democracy during the colonial era. While Hong Kong people thought that they would become their own master after the change of sovereignty, the HKSAR Government had explained that the

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reservation would continue to apply to Hong Kong. Mr WONG said that the DP's proposal would have to stand the test of universality and equality as defined in Article 25(b) of ICCPR. He said that since CPG had indicated that the DP's proposal was not inconsistent with BL and the 2007 NPCSC Decision, there was a dramatic change of views among senior Chinese officials, including Mr QIAO Xiaoyang and Mr LI Gang, Deputy Director of the Liaison Office, and Beijing loyalists, including Miss Elsie LEUNG and Miss Maria TAM. This revealed that the Government's strenuous effort to promote its constitutional reform package was of no importance and the accountability system was pathetic, as CPG was the only one who could have the final say on matters relating to constitutional reform. Mr WONG then bombarded DP with criticism that it had betrayed the people of Hong Kong and democracy, undermined Hong Kong's autonomy, and made under-the-table dealings with CPG. He considered that DP owed Hong Kong people an explanation.

17. Echoing the views of Mr WONG, Mr LEUNG Kwok-hung said that Mr Albert HO, Chairman of DP, had mentioned that he was approached by a Chinese official of substantive rank and authority to discuss the constitutional reform package. DP had never revealed the details of those discussions and how many times it had met with officials of the Liaison Office. Mr LEUNG said that since 17 May 2010, he had queried whether DP and the Administration had any mandate to represent Hong Kong people to bargain with the Liaison Office over the constitutional reform package for 2012. He expressed dissatisfaction that DP previously had pledged not to support the proposed package for 2012 unless a roadmap for universal suffrage was provided and the 23 pan-democratic Members would be united to veto the constitutional reform package, but DP had now proposed a so-called improved package which would have the effect of retaining FC for good. He reproached DP Members for betraying their voters who had voted for them in the 2008 LegCo Election, breaking their promise to pursue genuine universal suffrage, and having foregone the Party's charter and principles.

18. Ms Emily LAU said that the DP's proposal was suggested by a young DP member a few months ago and after incessant discussions, both DP and the Alliance of Universal Suffrage had supported the proposal. When the Administration refused to accept the DP's proposal on 7 June 2010, DP had decided not to give up as CPG had not turned down the proposal unequivocally. DP had then continued maintaining dialogue with the Liaison Office. She said that unless the League of Social Democrats

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("LSD") could produce evidence, the launch of its scathing attack on DP about making under-the-table dealings with the Liaison Office was unfounded. After having been heckled by Mr Edward YUM of LYL interrupting her speech intermittently, Ms Emily LAU said that she had not heckled Mr WONG Yuk-man and Mr LEUNG Kwok-hung despite their unfounded abuses because she respected freedom of speech. She raised strong objection that some people had used offensive language to smear, libel and intimidate DP. Ms LAU stressed that the spirit of democracy included politeness, allowing people to express their views in a peaceful and orderly manner, and respecting the views of one another.

19. Ms Emily LAU further said that DP noted that its proposal was controversial. Some people considered that the DP's proposal would favour the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") which held a large number of elected DC seats. The view of DP was that it was up to the voters to decide whom they would vote for in future elections and that decision should be respected. Ms LAU added that the DP's proposal was not perfect; if it was proven to be wrong, DP would pay the price.

20. Mr LAU Kong-wah said that while there were different views in the community on the constitutional reform package, the mainstream view was that constitutional development should move forward where legally viable. In this connection, DAB supported the DP's proposal which would satisfy the demand of the community for a more democratic electoral system. As regards how universal suffrage would be achieved, it could be explored progressively since NPCSC had already provided a timetable for implementing universal suffrage. Mr LAU considered that the debate over the DP's proposal, if not carried out in a sensible and orderly manner, would not be welcomed by the public. While Article 19 of ICCPR provided that everyone had the right to express one's view, some people had, in the past few months, used abusive language to insult others who held views different from theirs and to prevent others from expressing their views. Mr LAU expressed concern that the trend, if continued, would not be conducive to the development of democracy. He urged political parties to respect dissenting views.

21. Echoing Mr LAU's views, Dr PAN Pey-chyou and Mr IP Kwok-him said that an open, diversified, sophisticated and democratic society should respect the views of others, including dissent and minority views. In the course of discussing controversial issues, one had to respect others' views in

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order to gain respect for oneself. For the healthy development of democracy, they found violence and the use of offensive language for the purpose of preventing others from expressing freely their opinions totally unacceptable.

22. Ms Cyd HO said that for a civic society to develop democracy, one had to be accountable to the people including to face the people's anger. In her view, people were discontented over the non-conformity of the constitutional reform package with Article 25(b) of ICCPR. Ms HO said that the Administration should clarify in the third report whether NPCSC had its own definition of universal suffrage, and if so, the difference between its definition and that of ICCPR. The Administration should also clarify the meaning of "gradual and orderly progress", "broadly representative" and "democratic procedures" stipulated in BL45, and the meaning of "reasonable threshold" and "balanced participation". She criticised that while the DP's proposal would have the effect of "diluting" the FC system, it might take 24 years to replace all FC seats by DC FC seats if only five DC FC Members would be added for each LegCo term.

23. Dr Margaret NG and Ms Audrey EU expressed concern that the Administration's constitutional reform package and the DP's proposal did not conform to Article 25 of ICCPR. They reiterated that the United Nations Human Rights Committee ("UNHRC") had repeatedly pointed out that once an elected LegCo was established, its election had to conform to Article 25 of ICCPR. They considered that the Administration's reliance on the reservation made in respect of Article 25(b) to justify the non-compliance of the electoral system for the formation of LegCo with that provision was not legally sound. In addition, the provisions of ICCPR including Article 25 had been incorporated in the laws of Hong Kong by way of the Hong Kong Bill of Rights Ordinance (Cap. 383) ("BORO"). They requested the Administration to explain in the third report as to whether its definition of the principles of universality and equality was different from that held by UNHRC.

24. USCMA explained that CPG notified the United Nations Secretary General in June 1997 that the provisions of ICCPR as applied to Hong Kong would remain in force beginning from 1 July 1997. In other words, those provisions which did not apply to Hong Kong (including Article 25(b) of ICCPR for which a reservation had been made by the United Kingdom Government when extending ICCPR to Hong Kong in 1976) would also not be applied to HKSAR. In the case of Chan Yu Nam v Secretary for Justice

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(HCAL32/2009 and HCAL55/2009) in 2009, the High Court was of the view that such reservation continued to apply to the HKSAR. She invited members to make reference to an information paper prepared by the LegCo Secretariat for the Subcommittee which had given a detailed analysis of the issue [LC Paper No. CB(2)1652/09-10(02)]. USCMA also advised that Article 21 of the Hong Kong Bill of Rights in BORO mirrored Article 25 of ICCPR and the reservation made in respect of Article 25(b) was specifically provided for in section 13 of BORO.

25. USCMA reiterated that the ultimate goal of universal suffrage for Hong Kong's constitutional development originated from BL, not ICCPR. It was the consistent position of the HKSAR Government that when universal suffrage was implemented in Hong Kong, the electoral arrangements adopted by then must comply with BL, the NPCSC Decisions and the principles of universality and equality. The HKSAR Government would make its best endeavour to obtain the endorsement of LegCo for the 2012 constitutional reform package, so as to pave the way for implementing universal suffrage for CE in 2017 and for LegCo in 2020.

26. Dr Margaret NG sought the views of deputations on whether they agreed to the remark made by Mr QIAO Xiaoyang implying that universal suffrage was about the right to vote, and not necessarily the right to nominate candidates and to stand for election, and whether they considered the proposal to return five DC FC Members by "one-person-one-vote" through indirect election complied with the principles of universal and equal suffrage.

27. Mr Edward YUM of LYL considered that universal suffrage should cover the right to vote, to make nomination and to stand for election. If DC FC candidates could be nominated by registered electors and returned by registered electors under a "one-person-one-vote" system, that would be more democratic than the DP's proposal.

*Setting up of a human rights institution (Article 2)*

28. Mr Ronny TONG said that the Administration should set up an independent human rights institution, as repeatedly recommended by UNHRC, to investigate and monitor human rights violations in HKSAR. He considered that the existing institutional arrangements were not effective for the implementation of the rights guaranteed under ICCPR.

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29. USCMA responded that there was a comprehensive framework for the protection and promotion of human rights in HKSAR, which was buttressed by the rule of law, an independent judiciary, a sound and comprehensive legal aid system, as well as effective monitoring by statutory bodies including the Ombudsman, the Privacy Commissioner for Personal Data and the Equal Opportunities Commission ("EOC"). Moreover, the effectiveness of the human rights protection mechanism was also monitored by the public, the media and LegCo. Therefore, the Administration did not see the need to establish another human rights institution to duplicate the functions of the existing mechanism. USCMA further said that while the Administration respected the recommendations of UNHRC, such recommendations were not legally binding. ICCPR allowed each State Party to implement appropriate measures, taking account of its own situation, to discharge its obligations under ICCPR.

*Gender mainstreaming and women's participation in public affairs (Article 3)*

30. Referring to paragraph 13 of the Appendix to the Administration's paper, Ms LI Fung-ying enquired about the contents to be covered under "equal pay for work of equal value" for men and women in the third report, as she recalled that the recommendations made in the Consultancy Study on Equal Pay for Work of Equal Value in the Public Sector commissioned by EOC in 2004 had not been pursued. She also expressed concern that despite the advocate of gender mainstreaming, there remained a relatively small number of women participating in public affairs including serving on advisory and statutory bodies. She enquired whether the Administration would include in the third report measures to address those inadequacies.

31. USCMA said that the third report would cover, among others, the latest development on equal rights of men and women since it was last reported. In this regard, the principle of equal pay for work of equal value was set out in the Code of Practice on Employment under the Sex Discrimination Ordinance issued by EOC. In 2008, EOC also published a series of guidebooks advising employers that they should maintain the principles of equal pay for equal work and equal pay for work of equal value between men and women, and determine the pay level of each job according to its value to the organisation. In addition, the Consultancy Study commissioned by EOC did not show any evidence of systemic discrimination based on sex. On gender mainstreaming, USCMA said that there was an increasing number of women serving in the civil service, in

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particular at the directorate level, in the past 10 years. In addition, the Administration had increased the gender benchmark for appointments to advisory and statutory bodies from 25% to 30% this month.

*Torture claims (Articles 7 and 9)*

32. Dr Margaret NG said that according to press reports, the Administration had resumed the screening of torture claims with over 200 lawyers providing legal assistance to torture claimants. She also understood that four torture claims had been handled in the past six months. She sought the views of AIHK on whether the handling of those claims by the Administration had complied with Article 3 of the United Nations' Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT").

33. Mr Billy LEUNG of AIHK said that he was not in a position to comment on the four torture claims as he did not have the relevant information on hand. To his understanding, the Administration had enhanced the torture claim screening mechanism and issued guidelines on CAT to its disciplinary forces and other relevant stakeholders. However, those guidelines were not made available to AIHK.

34. Dr Margaret NG suggested that the Administration should give a copy of the guidelines on CAT to AIHK so that it could monitor the work of the Government. Principal Assistant Secretary (Security) D of the Security Bureau ("PAS(S)D") responded that the Administration had briefed the Panel on Security at its meeting held in December 2009 on the enhanced mechanism for screening torture claims and the pilot scheme to provide publicly-funded legal assistance to torture claimants who met the requirements. He undertook to provide the relevant information to AIHK for reference. Addressing the concern of AIHK on CSR, PAS(S)D said that Hong Kong's relative economic prosperity in the region and its liberal visa regime would make the territory vulnerable to possible abuses if CSR was applied to Hong Kong. The Administration had a firm policy of not granting asylum and its established position on CSR remained unchanged.

*(Post-meeting note: The Administration advised that the information on the enhanced screening mechanism for torture claims was sent by the Security Bureau to AIHK on 22 June 2010.)*

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*Residents in distress or detained outside Hong Kong (Articles 10 and 12)*

35. Referring to paragraph 22 of the Appendix to the Administration's paper, Ms Miriam LAU enquired what would be reported under the notification system between HKSAR and the Mainland authorities on HKSAR residents detained in the Mainland. In her view, the Office of the Government of HKSAR in Beijing and the Hong Kong Economic and Trade Office in Guangdong merely served as a mail box between families of Hong Kong residents detained in the Mainland and the Mainland authorities. Given that the Administration would not be able to provide substantive assistance to help those detainees, she wondered whether UNHRC would be satisfied with the information provided in the third report in this regard. Ms LAU also referred to paragraph 24 of the Appendix to the Administration's paper and enquired about the progress of a Hong Kong resident detained in the Philippines under criminal charges for over 10 years during which no trial had been arranged.

36. PAS(S)D responded that while the Government could not intervene in the judicial system or administrative operations of the Mainland when providing assistance to Hong Kong residents under the principle of "One Country, Two Systems", it would look after their legal rights under the Mainland law. The assistance that could be provided by the HKSAR Government included, among others, notifying the family of a detainee about the detention upon receipt of a notification from a Mainland law enforcement agency ("LEA"), passing requests of the family of a detainee to the Mainland LEA, and following up the case with the Mainland LEA based on the information provided by the family of a detainee if the case had not been reported under the notification system. The Administration also provided a hotline for families of Hong Kong residents who were detained overseas. Subject to the information provided by the family of a detainee, it would follow up the case with the relevant LEA. As regards the case in the Philippines mentioned by Ms LAU, the Administration did not have information on hand and would provide the relevant information after the meeting.

*(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(2)2187/09-10 on 19 August 2010.)*



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*Privacy protection (Articles 17 and 19)*

37. Mr Ronny TONG said that the Law Reform Commission ("LRC") in its reports relating to privacy had observed that the existing law did not provide sufficient protection against unlawful or arbitrary interference with an individual's right to privacy as guaranteed under Article 17 of ICCPR and recommended putting in place a statutory framework for such purpose. He pointed out that although the enactment of ICSO regulated interception of communications and covert surveillance by LEAs, the problems about the lack of protection and redress to individuals whose privacy or correspondence had been interfered remained unaddressed. Mr TONG enquired when the Administration would introduce such legislation.

38. USCMA said that in its report on Regulating the Interception of Communications, LRC had made a number of recommendations which had far-reaching implications. The media had expressed concern that the proposals in the report might undermine press freedom. Other sectors had also expressed concerns on the recommendations made by LRC. USCMA said that given that BORO had already provided the necessary protection to individuals' right to privacy and ICSO had regulated the activities of LEAs, the Administration had no intention to introduce such legislation for the time being.

*Minimum wage*

39. Referring to Article 7(a) of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), which provided that the States Parties should recognise the right of everyone to the enjoyment of just and favourable conditions of work, Mr Ronny TONG expressed concern that the Minimum Wage Bill ("the Bill") in its present form while providing a minimum wage rate would not guarantee the standard of a decent living. He hoped that the Administration would amend the Bill to implement the principle enshrined in Article 7(a) of ICESCR.

40. USCMA responded that the Panel had discussed the same issue at its meeting on 18 January 2010 in the context of the ICESCR. In response to members' request, the Administration had subsequently provided a paper explaining the conformity of the Bill with ICESCR [LC Paper No. CB(2)894/09-10(01)]. According to the Labour and Welfare Bureau, the Bill was aimed at prescribing an hourly-rated wage floor to forestall excessively low wages. As specified in its Article 2, ICESCR was

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progressive in nature, requiring States Parties to take steps, to the maximum of their available resources, to achieve progressively the full realisation of the rights in the ICESCR by all appropriate means. In accordance with the spirit of Article 2(1) of ICESCR, the Bill represented a major step taken by the HKSAR Government to achieve progressively the rights in Article 7 of the ICESCR, and thus was in conformity with ICESCR.

41. The Chairman thanked the deputations for attending the meeting and requested the Administration to consider the views of members and deputations when drafting the third report. The Chairman added that in the course of discussion, interaction among members and deputations should be conducted in an orderly rather than confrontational manner. He observed that some of the views expressed were outside the scope of the agenda item, but he intended not to restrict freedom of expression as far as possible. He hoped that future discussion on issues relating to constitutional reform would be held in a harmonious atmosphere.

42. The meeting ended at 4:28 pm.

Council Business Division 2  
Legislative Council Secretariat  
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