

立法會
Legislative Council

Ref : CB2/PL/CA

LC Paper No. CB(2)2812/11-12
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 20 February 2012, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Miriam LAU Kin-yeek, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Cyd HO Sau-lan
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun, JP
Dr Hon Samson TAM Wai-ho, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Yuk-man

Member attending : Hon Frederick FUNG Kin-kee, SBS, JP

Members absent : Dr Hon Philip WONG Yu-hong, GBS
Hon Timothy FOK Tsun-ting, GBS, JP
Dr Hon LAM Tai-fai, BBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Public Officers attending : Item III

Mr Raymond TAM Chi-yuen
Secretary for Constitutional and Mainland Affairs

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

Ms Anne TENG Yu-yan
Principal Assistant Secretary (Constitutional and Mainland Affairs)

Item IV

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

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

Mrs Philomena LEUNG
Principal Assistant Secretary (Constitutional and Mainland Affairs)

Attendance by invitation : Hong Kong Christian Institute

Mr SHUM Wai-nam, Andrew
Programme Secretary (Social Concern)

Civil Human Rights Front

Miss YEO Wai-wai
Convenor of Human Rights Committee Group

HK Human Rights Monitor

Mr LAW Yuk-kai
Director

Democratic Party of Hong Kong

Ms Josephine CHAN
Women's Caucus, Convener

Yat Tung Community Network Association

Mr KWOK Chung-man

Kwai Chung South Resident Association

Mr CHENG Kwok-kee

Tusen Wan Youth Association

Mr CHEUNG Yat-chuen

Hong Kong Federation of Women's Centres

Ms FU Wing-chi
Resources Development Officer

The Association for the Advancement of Feminism

Ms HUI Pui-lam
Coordinating Officer

Society for Community Organization

Mr TSOI Yiu-cheong, Richard
Community Organizer

Association Concerning Sexual Violence Against Women

Ms Linda WONG
Executive Director

Mr Martin Oei
Political Commentator

Hong Kong Performing Artistes Guild

Mr SHAM Kin-fun
Vice-chairman

D Dong

Mr POON Cheuk-bun
Secretary General

Association for Concern for Legal Rights of Victims of Domestic
Violence

Ms NG Wai-ching
Secretary

Mr WANG Jeng-ping

Ms LEE Yuk-king

Ms XU Nian-wen

Mr LI Hon-ming

The Hong Kong Journalists Association

Ms MAK Yin-ting
Chairperson

Miss CHAN Tzi-ching

Mr Melvin WONG

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

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

Miss Evelyn LEE
Assistant Legal Adviser 10

Miss Cindy HO
Senior Council Secretary (2)3

Ms Wendy LO
Council Secretary (2)3

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Information papers issued since the last meeting

[LC Paper No. CB(2)1041/11-12]

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

- (a) Electoral boundary maps of geographical constituencies in respect of the 2012 Legislative Council ("LegCo") Election [LC Paper No. CB(2)1041/11-12]; and
- (b) Letter dated 30 January 2012 from Hon Emily LAU to the Panel Chairman [LC Paper No. CB(2)916/11-12(01)].

II. Items for discussion at the next meeting

[LC Paper Nos. CB(2)1097/11-12(01) to (02) and CB(2)916/11-12(01)]

2. Members agreed to discuss the following items proposed by the Secretary for Constitutional and Mainland Affairs ("SCMA") at the next regular meeting to be held on 19 March 2012 –

- (a) 2012 Voter Registration Campaign; and
- (b) Electoral Affairs Commission Report on the 2011 District Council Election

3. In addition, the Chairman proposed and members agreed that the Panel should also receive public views on the Consultation Paper on the District Council ("DC") Appointment System at the regular meeting on 19 March 2012 and the meeting should end at 5:30 pm.

4. At the request of Ms Emily LAU and further to her letter dated 30 January 2012 to the Panel Chairman, SCMA undertook to provide information on arrangements for declaring political affiliation by candidates at the Chief Executive ("CE") election, Legislative Council ("LegCo") election and DC election and related matters after the meeting.

(Post-meeting Note: The Administration's response was circulated to members on 19 March 2012 vide LC Paper No. CB(2)1430/11-12(01))

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III. Consultation Paper on the District Council Appointment System
[LC Paper Nos. CB(2)1097/11-12(03) and (04)]

5. SCMA briefed members on the Administration's paper [LC Paper No. CB(2)1097/11-12(03)], which outlined the review of the DC Appointment System and the publication of the Consultation Paper on the District Council Appointment System ("the Consultation Paper"). The Consultation Paper invited public views on how the remaining 68 DC appointed seats should be abolished following the reduction of one-third of the number of appointed members in the fourth-term DC commencing on 1 January 2012. Members noted that it was the Administration's inclination to abolish the remaining 68 seats in one go by 1 January 2016. The Administration would collate the public views for the next-term Government to decide on the way forward after the two-month public consultation to be ended on 20 April 2012.

6. Members also noted the background brief prepared by the LegCo Secretariat on the subject matter [LC Paper No. CB(2)1097/11-12 (04)].

Discussions

7. Mr Frederick FUNG said that he supported the 2012 constitutional reform package because the CE promised at a meeting on 20 June 2010 that the Administration would put forward a consultation document on the abolition of the DC appointment system in the autumn of 2010 after the passage of the constitutional reform package. He noted that CE subsequently announced in press conferences held on 21 and 24 June 2010 respectively that he accepted the Democratic Party's 2012 constitutional reform proposal and stated clearly that a consultation document would be issued in the autumn of 2010 to solicit public views on the abolition of the DC appointment system. CE had also reiterated at the media session held on 25 June 2010 that the Administration would submit to LegCo a legislative proposal on the abolition of the DC appointment system in the autumn of 2010. The Administration, however, did not issue any consultation document until now and had not yet put forward the related legislative proposal. He enquired whether the Administration had breached its undertaking to the public. He also asked whether the Administration would earnestly abolish the remaining seats over one term.

8. SCMA affirmed that to respond to the calls on the abolition of the DC appointment system, it was the clear inclination of the Administration to abolish the remaining 68 seats over one term by 1 January 2016. The

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Administration would gauge public views during the public consultation on whether the remaining appointed seats should be abolished in one go in 2016 or over two terms in 2020. The Administration would collate the views for the next-term CE to decide on the way forward. He believed that public aspiration and the inclination of the current-term Government would serve as important references to the next-term CE in making the final decision.

9. Mr LEE Wing-tat said that the Administration's proposal on the abolition of the DC appointment system came rather late. He pointed out that some of the appointed members were in fact members of the political parties and they should participate in direct elections. He considered that the appointed seats were political reward to those who supported the Government and the appointment system was grossly unfair. Mr LEE also queried the legal basis for allowing Rural Committee Chairmen to become ex-officio members of DCs. He considered that the electorate base of Rural Committee Chairmen was narrow compared with that of DC members. He asked whether the Administration would consider abolishing these ex-officio seats as well.

10. SCMA said that the Administration agreed with Mr LEE's view that the DC appointment system should be abolished in the light of the constitutional development. He stressed that it was the policy preference of the Administration to abolish the appointment system in one go in 2016. Those who wanted to participate in community services could take part in elections or through other channels. SCMA further said that the 27 ex-officio members in various New Territories DCs were Rural Committee Chairmen who had individually gone through an election procedure to become ex-officio members under the relevant ordinance. The handling of ex-officio seats could therefore be different from the appointed seats. Should the Administration receive views on the ex-officio seats during the consultation period, it would certainly relate such views to the next-term CE.

11. Ms Cyd HO said that the Government had always ignored public views expressed in past consultation exercises regarding constitutional development. She considered that the appointed seats should be abolished in one go and enquired why the current-term Government reduced only 40 appointed seats in the fourth-term DCs. She asked how the Administration would genuinely respond to the public views received in the coming consultation exercise.

12. SCMA replied that the Administration would report the result of the consultation on the DC appointment system to Members and the public after

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the end of the public consultation period. He said that while there were views that appointed DC members should be abolished in one go, there were also views that they should be abolished over two terms in phases. Having considered views from all sectors, the former SCMA announced last year that the number of members to be appointed in the fourth-term DC would be reduced by one-third as a start. The coming public consultation aimed to gauge public views on how the remaining 68 seats should be abolished and whether the public supported the Government's proposal to abolish the remaining seats in one go. The initiative showed that the Government had the determination to abolish the DC appointment system.

13. Ms Emily LAU said that the Democratic Party considered that the appointed seats and ex-officio seats should have been abolished long ago. She enquired about public views on the appointed seats and ex-officio seats collected in past public opinion polls conducted by the Administration.

14. SCMA informed members that according to a recent public opinion poll conducted in early 2011, more respondents actually preferred the abolition of appointed seats in phases than in one go. In anticipation of the implementation of the universal suffrage for the election of CE in 2017 and forming of LegCo in 2020, the Administration considered that the abolition of DC appointment system in 2016 would be conducive to democratic development in Hong Kong. If necessary, the Administration would consider conducting an independent public opinion poll on the DC appointment system subject to the resources available; and the result would be made public. He added that the report of this consultation exercise could also include surveys conducted by academia and organizations in the community to provide the necessary references. Ms Emily LAU urged the Administration to invite public views on the abolition of ex-officio seats by commissioning a public opinion poll as stated above.

15. Mr IP Kwok-him said that the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") supported the abolition of DC appointment system in phases and had an open mind on whether the remaining appointed seats should be abolished in one go or over two terms. He said that as reflected in past public opinion polls conducted by different organizations in the community, there were indeed diverse views on whether the appointed seats should be abolished in one go or in phases. He was of the view that appointed DC members had made significant contributions to the community and noted that they could only participate in the daily operation of DCs but were not eligible to nominate or be nominated as candidates for the DC (second) functional constituency seats in the LegCo

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election and to vote in the CE election. DAB considered that public views should be invited on the Administration's proposal to map out the way forward.

16. Mr Alan LEONG said that the Civic Party considered that the DC appointed seats should have been abolished long time ago and the restoration of the appointed seats after 1997 was a retrogressive step in the constitutional development of Hong Kong. In his view, the appointment system was a means to nurture politicians chosen by the Administration and the arrangement of having different numbers of appointed members in 18 DCs had made those who supported democracy become minorities in respective DCs. Noting that the current-term Government would end on 30 June 2012, he queried how the proposal of abolishing the remaining appointed seats in 2016 could be implemented in the absence of any proposals to amend the District Councils Ordinance in the Consultation Paper.

17. SCMA replied that abolition of the DC appointment system should be best done through legislative amendments if the public supported the Administration's proposal. He believed that the next-term CE would put forward to LegCo legislative proposals to amend the relevant ordinance if he agreed with the proposal of the current-term Government.

18. Mr LEUNG Kwok-hung expressed strong view that the DC appointment system should be abolished when universal suffrage for the election of CE was to be implemented in 2017. SCMA reiterated that it was the policy inclination of the Administration to abolish the remaining 68 appointed seats over one term by 1 January 2016. The coming consultation exercise would gauge public views on whether they supported the proposal of the Administration.

19. Mr WONG Yuk-man expressed strong dissatisfaction that while the Administration would consult the public on how the remaining 68 seats should be abolished, it had not sought any public views on its proposal to reduce one-third of the number of appointed members in the fourth-term DC last year. He queried the reasoning of the Administration's actions and said that it was the stance of the People Power that the DC appointment system should be abolished in one go.

IV. Consultation Paper on Stalking

[LC Paper Nos. CB(2)605/11-12(04) to (05), CB(2)1097/11-12(05) to (06), CB(2)1172/11-12(01) to (07) and CB(2)1290/11-12(01)]

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Presentation of views by deputations/individuals

20. At the invitation of the Chairman, 22 deputations and individuals presented their views on the Consultation Paper on Stalking issued by the Constitutional and Mainland Affairs Bureau on 19 December 2011.

Hong Kong Christian Institute
[LC Paper No. CB(2)1172/11-12(01)]

21. Mr SHUM Wai-nam, Andrew presented the views of Hong Kong Christian Institute as detailed in its submission. He said that while the Institute considered that victims of stalking ought to be protected by law, the proposed legislation should not offer an opportunity for unwarranted curbs on press freedom and freedom of expression including protesters' activities directed at a government official. Given that the wide scope of coverage of the legislation would cause uncertainty in law enforcement, the Institute expressly objected to the introduction of anti-stalking legislation framed in the manner as proposed in the Consultation Paper.

Civil Human Rights Front
[LC Paper No. CB(2)1172/11-12(02)]

22. Ms YEO Wai-wai presented the views of Civil Human Rights Front as detailed in its submission. She commented that the Consultation Paper had failed to give full consideration to the possible conflict between the operation of the proposed legislation and the exercise of civil and political rights. She requested the Administration to withdraw its proposal and consider dealing with stalking arising from activities relating to debt collection, harassment by abusive husbands and partners or against tenants under the Money Lenders Ordinance (Cap. 163), Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) and Landlord and Tenant (Consolidation) Ordinance (Cap. 7).

HK Human Rights Monitor

23. Mr LAW Yuk-kai considered that the Consultation Paper had failed to give full consideration to the possible conflict between the operation of the proposed legislation and the exercise of press freedom and civil and political rights. He pointed out that the provision against harassment to deter lawful activities in the proposed legislation had the potential of restricting many activities including picketing and other labour activities as well as various forms of protest behaviour.

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Democratic Party

[LC Paper No. CB(2)1172/11-12(03)]

24. Ms Josephine CHAN presented the views of the Democratic Party as detailed in its submission. She supported the proposed legislation against stalking with a clearly defined scope of coverage to step up protection of women and deal with activities of abusive debt collectors. Ms CHAN said that this would help to avoid unnecessary uncertainty in law enforcement. She, however, urged that the proposed legislation should not have the effect of undermining the autonomy of the press and the freedom of expression.

Yat Tung Community Network Association

25. Mr KWOK Chung-man queried why the Administration did not consider introducing separate legislative measures to deal with specific problems such as harassment by ex-spouses and activities of abusive debt collectors. Mr KWOK was of the view that anti-stalking legislation might be applied to curtail Hong Kong residents' right to freedom of demonstration and protests; and that direct approaches to a person or government official by protesters would be found guilty of harassment under the proposed legislation.

Kwai Chung South Resident Association

26. Mr CHENG Kwok-kee said that Kwai Chung South Resident Association held the view that the conduct of stalking should be criminalized because victims of stalking ought to be protected by law. He also suggested that the proposed legislation should provide a clear framework for mediation and conciliation.

Tsuen Wan Youth Association

27. Mr CHEUNG Yat-chuen supported the view that stalking behaviour should be criminalized as it would be difficult for the victims to seek redress through instituting legal proceedings having regard to the costs involved. He said that a general and broad exemption for news-gathering activities was not necessary in order to guard against possible abuse, and the provision of a defence to protect legitimate news-gathering activities would suffice.

Hong Kong Federation of Women's Centres

[LC Paper No. CB(2)1172/11-12(04)]

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28. Ms FU Wing-chi presented the views of Hong Kong Federation of Women's Centres as detailed in its submission. She said that criminalizing stalking behaviour could protect the privacy and personal safety of women. She pointed out that while the proposed legislation would plug a loophole in law and complement existing legislation, it should not be used as a means to inhibit press freedom and free expression. She suggested that the scope of coverage of the legislation should not be too broad.

The Association for the Advancement of Feminism
[LC Paper No. CB(2)1172/11-12(05)]

29. Ms HUI Pui-lam presented the views of the Association for the Advancement of Feminism as detailed in its submission. She commented that the scope of coverage of the proposed legislation was too broad and its terms should be clearly defined. In particular, the provision for harassment to deter lawful activities had the potential of restricting many activities including picketing and other labour activity as well as various forms of protest behaviour. She suggested that the Administration should introduce separate legislative measures to deal with specific problems to regulate specific stalking behaviours; and that frontline police should be more alert when dealing with family disputes which might amount to domestic violence acts. Ms HUI was also concerned that influential figures and public officers would abuse the proposed legislation by threatening journalists or protesters with vexatious legal actions.

Society for Community Organization

30. Mr TSOI Yiu-cheong, Richard expressed concern that the proposed legislation might be abused as a means to curtail Hong Kong residents' right to political and other forms of protests or press freedom. He commented that the defence of reasonable pursuit was too general and would cause uncertainty, thus putting constraints on the right to demonstrate. He suggested that the overall need for the legislation should be reviewed together with other privacy-related reports published by the Law Reform Commission ("LRC"); and the Administration should strike a balance between the protection of privacy and press freedom.

Association Concerning Sexual Violence Against Women
[LC Paper No. CB(2)1172/11-12(06)]

31. Ms Linda WONG presented the views of Association Concerning Sexual Violence Against Women as detailed in its submission. She said

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that the proposed legislation should only be applied to protect victims of specific stalking cases where the victims were sexually or physically abused. The proposed legislation should not be misused to curb press freedom and freedom of assembly, procession and demonstration as guaranteed under the Basic Law.

Mr Martin Oei

[LC Paper No. CB(2)1097/11-12(05)]

32. Mr Martin Oei presented the views as detailed in his submission. He suggested that the Administration should draw up legislation based on the experience of Scotland with emphasis on the conduct being intended to cause fear or alarm and also in fact causing the victim to suffer fear and alarm. He pointed to the differences between the statutory definition of harassment in England and that in Scotland, which had resulted in different thresholds for the offence. He stressed that press freedom should be safeguarded and news reporting activities should be free from the threat of legal sanctions; and administrative instructions for law enforcement should be issued by way of subsidiary legislation subject to LegCo's scrutiny to enhance transparency.

Hong Kong Performing Artistes Guild

33. Mr SHAM Kin-fun said that Hong Kong Performing Artistes Guild supported the proposed legislation on stalking given that the existing law did not provide sufficient protection to victims of stalking behaviour. He said that stalking had a serious impact on the health, freedom and quality of life of artistes and their families. It was not justifiable on public interest ground to stalk the family members of artistes. He saw a need to define more clearly what constituted stalking or harassment so that people could have a clear idea of what would be prohibited under the law. He considered that a defence would be sufficient to protect legitimate news gathering activities in the public interest.

D Dong

[LC Paper No. CB(2)1097/11-12(06)]

34. Mr POON Cheuk-bun presented the views of D Dong as detailed in its submission. Mr POON raised various issues which the Administration had to thoroughly consider when contemplating a defence or exemption in the proposed legislation. He stressed that a consensus should be reached in the community on the issues raised.

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Association for Concern for Legal Rights of Victims of Domestic Violence

35. Ms NG Wai-ching expressed disappointment that the Administration had failed to balance the competing rights and interests in respect of privacy of the individual and freedom of expression/press freedom since the proposal was issued by LRC in 2000 and that similar views submitted to the Administration in the previous rounds of consultation had not been taken into account. While expressing support for the proposal of making stalking a criminal offence, she stressed that it should not have the effect of undermining press freedom and freedom of expression.

Mr WANG Jeng-ping

[LC Paper No. CB(2)1172/11-12(07)]

36. Mr WANG Jeng-ping expressed concern that the proposed legislation might be used to curtail Hong Kong residents' right to freedom of demonstration, political and other forms of protests or press freedom. He spoke about his personal experience in making protests against the banks as victims of the Lehman Brothers mini-bond crisis and stressed that individual's rights should be protected.

Ms LEE Yuk-king

37. Ms LEE Yuk-king expressed concern that the proposed legislation might be used to curtail Hong Kong residents' right to freedom of demonstration, political and other forms of protests or press freedom.

Ms XU Nian-wen

38. Ms XU Nian-wen was of the view that stalking should be criminalized in principle but it should only apply to specific categories of stalking behaviours in order not to put constraints on the individual's freedom of demonstration or other legitimate claims.

Mr LI Hon-ming

39. Mr LI Hon-ming strongly requested the Administration not to use legislation to suppress lawful protest. He considered that some grey areas in the scope of the legislation should be clearly defined.

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*The Hong Kong Journalists Association
[LC Paper No. CB(2)1290/11-12(01)]*

40. Ms MAK Yin-ting expressly objected to the introduction of anti-stalking legislation in Hong Kong, which the Hong Kong Journalists Association believed to be excessively wide in scope and too vague in the definition of stalking. In her view, the proposed legislation would jeopardize legitimate journalistic activities and a person could easily intimidate a reporter into stopping legitimate reporting activities by initiating legal action or police intervention, and whether a person felt "alarmed" or "distressed" by a course of conduct was very subjective. She noted the adverse comments on the investigative means employed by paparazzi and she suggested that professional ethics of the media could be dealt with by the relevant profession and there was always a complaint channel to stop invasion to privacy by lodging formal complaints to the Privacy Commissioner for Personal Data ("PCPD"). She suggested that, instead of having a single piece of anti-stalking legislation, the Administration should consider introducing separate legislative measures to deal with specific problems, such as introducing legislation to deal with stalking behaviors relating to domestic violence.

Miss CHAN Tzi-ching

41. Miss CHAN Tzi-ching shared her experience of being stalked by reporters. She supported the proposal to legislate against stalking as the existing law did not afford sufficient protection to victims of stalking behaviour.

Mr Melvin WONG

42. Mr Melvin WONG was in support of the views expressed by Mr SHAM Kin-fun and Miss CHAN Tzi-ching.

Discussion with deputations

43. Dr Margaret NG shared the views expressed by Ms NG Wai-ching of the Association for Concern for Legal Rights of Victims of Domestic Violence and queried why the issue had been held in abeyance over a decade since LRC had published its report in 2000. In her view, the current Consultation Paper was a much simplified version of the previous issue and had not delved into the issues raised in the previous consultation. As a

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member of the Hong Kong section of the International Commission of Jurists, Dr NG said that during the previous rounds of public consultation, the proposal was rejected by the organization because the need to create a new criminal offence against stalking had not been demonstrated.

44. Responding to Ms Emily LAU, Mr SHAM Kin-fun said that the scope of PCPD could only deal with acts which amounted to unfair collection of personal data contrary to data protection principles, while the act of covert photography intruding into the privacy and family life of the artistes, thereby causing them distress, alarm or even serious impairment of their physical or psychological well-being, did not fall within the ambit of Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"). Ms MAK Yin-ting reiterated that existing channels should be utilized to deal with the related complaints while issues relating to professional ethics of the media should be dealt within the profession. Ms Cyd HO recognized that complaints against intrusion to personal privacy could not be fully addressed by PCPD under the PDPO; and she asked whether the Administration had explored other options while balancing the competing rights and interests, in particular privacy of the individual and freedom of expression/press freedom.

45. Noting the views of Hong Kong Performing Artistes Guild, Ms Audrey EU expressed doubt whether the proposed legislation could effectively deal with stalking by obsessive fans who had mental illness because they would not cease their harmful behaviour because of criminal penalties. The proposed legislation also would not be able to deter one-off incident of harassment as stalking was defined as a series of acts.

Administration's response to major issues raised

46. Under Secretary for Constitutional and Mainland Affairs ("USCMA") thanked the deputations for their views and responded as follows –

- (a) the existing law covered only some aspects of stalking behaviour and did not address stalking as an independent phenomenon. Under the criminal law, a stalker might be prosecuted for breach of the peace but not if the stalking did not involve any violence or threat of violence. LRC, therefore, proposed that anti-stalking legislation should be introduced. The Administration was mindful that how the competing rights and interests, in particular privacy of the individual and

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freedom of expression/press freedom, could be balanced would need to be carefully considered and weighed;

- (b) contravention of the data protection principles was not an offence per se. Some concerns on safeguarding privacy might not be fully addressed under PDPO. The Administration attached great importance to the protection of freedom of expression and press freedom in Hong Kong. At the same time, the Administration was equally cognizant of public concern over the invasion of privacy and the call from some sectors of the community for tighter control. In mapping out the way forward, the Administration would need to strike a balance between different rights such as rights to personal privacy and freedom of expression/press freedom;
- (c) various rights and freedoms were guaranteed under the Basic Law and the International Covenant on Civil and Political Rights and the Hong Kong Bill of Rights Ordinance. Protests and demonstrations were important and legitimate forms of communication. However, they needed to be balanced against equally important and legitimate public interests;
- (d) harassment to deter lawful activities was a rather recent provision introduced in the UK. The consultation paper also sought views on whether the proposed anti-stalking legislation should provide for a similar offence; and
- (e) An internal working group was set up earlier to consider the LRC's recommendations and experiences in other common law jurisdictions.

Need for the legislation

47. Dr Margaret NG enquired about the statistics on all forms of stalking acts handled by law enforcement agencies over the past 10 years that could show the prevalence of stalking in Hong Kong; and how the Police had handled such reports of stalking acts. USCMA said that according to the Police, relevant statistics on stalking behaviour were not available. Dr NG expressed dissatisfaction at the lack of statistics to support legislating against

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stalking. Her view was echoed by Mr Martin Oei, who added that the Police Force should put in place a proper classification when requests for police assistance were received. Ms Cyd HO said that the relevant statistics should be collated to justify the need for legislation.

48. Dr Margaret NG suggested that if existing law was enforced with vigor, most stalking activities could be put in check. Ms Cyd HO agreed that frontline police officers should ensure vigorous enforcement of the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) to prevent stalking acts from escalating into violence. USCMA explained that the Domestic and Cohabitation Relationships Violence Ordinance provided for civil remedies in the form of injunctions to protect victims of domestic violence against molestation by the other party; and she recognized the need for additional training to the Police Force to cater for enforcement of the anti-stalking legislation if enacted.

49. Mr LEUNG Kwok-hung expressed concern that influential figures and public officers would abuse the legislation by threatening journalists or protestors with vexatious legal actions; and the Police would apply a lower threshold for harassment to them in enforcement. In his view, Police should have kept statistics on cases of public figures or members of the public being repeatedly harassed, and the follow-up actions which had been taken by the Police. Mr LEUNG suggested setting up of a human rights committee to monitor the relevant issues. USCMA noted the concerns and she said that the views collated would be considered at the end of the public consultation exercise. The Administration would follow internal procedures to provide additional resources for law enforcement when a decision was reached on the scope of the proposed legislation. Insofar as law enforcement was concerned, the Administration considered it appropriate for the Police Force, which had the relevant expertise, to enforce the proposed anti-stalking legislation.

Offence of harassment

50. Ms Audrey EU and Dr Margaret NG enquired whether the following activities would be regarded as reasonable pursuit of a course of conduct under the proposed legislation: protests of the victims of the Lehman Brothers mini-bond crisis outside the banks over a period of time and picketing activities of trade unions, and the media hiring cranes to peer at the residence of a CE candidate following revelations of illegal structures there. USCMA said that the reasonable pursuit of the course of conduct in the

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particular circumstances was one of the defences provided for in the proposed legislation. Industrial actions and public demonstrations which proved to be a reasonable course of conduct in the circumstances would be covered by the proposed defence.

Other alternatives

51. Ms Audrey EU asked whether the Administration would prepare supplementary proposals to address specific problems relating to harassment by ex-spouses or former lovers and abusive debt collectors, and intrusion into the private life of artistes. She also suggested that the Administration should explore other alternatives to address specific types of stalking behaviours under the existing criminal provisions, for example, imposing a higher penalty for the offence of offensive phone calls. USCMA said that in the absence of an anti-stalking legislation, a stalker could only be prosecuted if his act constituted a criminal offence but stalking could occur without a breach of the peace or threats of violence; and mere watching, besetting or persistently following would not render the stalker criminally liable. On the suggestion of imposing a higher penalty on the offence of offensive calls, she said that the level of punishment had to be proportionate to the offence. USCMA said that the Administration kept an open mind towards the recommendations in the Consultation Paper. She noted that the community's views about the proposal to criminalize stalking were diverse and that, in particular, there were concerns about the effect of the proposal on press freedom. The Administration would consider carefully the community's views, including the Panel's, before deciding on the recommendations in the Paper.

VI. Any other business

52. There being no other business, the meeting ended at 5:35 pm.