

立法會
Legislative Council

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LC Paper No. CB(2)1253/12-13
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 18 February 2013, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Paul TSE Wai-chun, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon Emily LAU Wai-hing, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon CHAN Kin-por, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon James TIEN Pei-chun, GBS, JP
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Hon CHAN Yuen-han, SBS, JP
Hon Alice MAK Mei-kuen, JP
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, JP
Hon SIN Chung-kai, SBS, JP
Dr Hon Helena WONG Pik-wan

Hon IP Kin-yuen
Hon Martin LIAO Cheung-kong, JP
Dr Hon CHIANG Lai-wan, JP
Hon Tony TSE Wai-chuen

Member attending Hon KWOK Wai-keung

Members absent : Dr Hon LAU Wong-fat, GBM, GBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Yuk-man
Hon Gary FAN Kwok-wai

Public Officers attending : Item IV

Mr LAU Kong-wah
Under Secretary for Constitutional and Mainland Affairs

Mr Gordon LEUNG Chung-tai
Deputy Secretary for Constitutional and Mainland Affairs (1)

Mr CHEUNG Doi-ching
Principal Assistant Secretary for Constitutional and Mainland Affairs (5)

Mr Billy WOO Tak-ying
Principal Assistant Secretary (Security) D

Mr Godfrey KAN
Acting Senior Assistant Solicitor General
Department of Justice

Mr Ronald CHAN Ngok-pang
Political Assistant to Secretary for Constitutional and Mainland Affairs

Item V

Mr LAU Kong-wah
Under Secretary for Constitutional and Mainland Affairs

Mr Gordon LEUNG Chung-tai
Deputy Secretary for Constitutional and Mainland Affairs (1)

Mr CHEUNG Doi-ching
Principal Assistant Secretary for Constitutional and Mainland
Affairs (5)

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

Ms IP Ling-bik
Principal Assistant Secretary (Education Commission &
Planning)

Mr Ronald CHAN Ngok-pang
Political Assistant to Secretary for Constitutional and Mainland
Affairs

Attendance by : Item IV
invitation

Amnesty International Hong Kong

Miss Jenny NGAI
Campaigner

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Mr MAK Ip-sing
Member of Yuen Long District Council

Police Power Monitoring Group, Civil Human Rights Front

Mr WONG Ho-yin
Convenor

Family Value Foundation of Hong Kong

Mr Anton WAN
General Secretary

BigLove Alliance

Mr WONG Yiu-ming

Mr Brian LEUNG

Association of Hong Kong Professionals

Mr Lawrence Y K MA
Vice Chairman

Mr LO Hung-shun

人手比例不乎最低工資關注組

Mr WONG Kwai-sang

Women Coalition of HKSAR

Miss YEO Wai-wai

The Sexual Orientation Discrimination Legislation Front

Miss WEI Siu-lik
Spokesperson

Mr Tony TO

Mr Holden CHOW
Member of Islands District Council

Hong Kong In-media

Ms FONG Yuk-kwan
Advocacy Campaigner

Mr Wade CHAN

International Social Service Hong Kong Branch

Miss Adrielle Panares
Director of Development

Hong Kong Christian Institute

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

Motor Transport Workers General Union

Mr LOW Shih-cheng
Deputy Officer (Taxi-drivers Branch)

Yat Tung Community Network Association

Mr KWOK Chung-man

China Universities Alumni (H.K.) Association

Mr Patrick TSE
Deputy President

Democratic Party

Mr OR Yiu-lam
Member of Central Committee

Rainbow of Hong Kong

Mr Tommy JAI
Executive Officer

Rainbow Action

Mr Jimmy SHAM

The Society for Truth & Light

Ms Helen FU
Deputy General Secretary

Item V

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Mr MAK Ip-sing
Member of Yuen Long District Council

Hong Kong Confederation of Trade Unions

Mr POON Man-hon
Policy Researcher

The Association of Experts for Modernization

Mr LAM Kwok-hung

Mr Tony TO

Mr Holden CHOW
Member of Islands District Council

Labour Party

Mr CHENG Sze-lut
Vice-Chairman

Mr Wade CHAN

AHKP (Constitutional and Mainland Affairs)

Mr CHIN Chi-yung

SME Global Alliance

Mr Allan LEUNG

Sun Yat-Sen University United Alumni Association (Hong Kong)

Mr LAI Chi-fung

Mr TAM Kwok-sun

打夠港共協會

Mr LEUNG Kwok-tung

大耶能政策研究

Mr WONG Kai-chiu

Mr Johnny MARK

Narrow Church

Mr TAM Tak-chi

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (2) 3

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Miss Cindy HO
Senior Council Secretary (2) 3

Mrs Fonny TSANG
Legislative Assistant (2) 3

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I. Application for late membership
[LC Paper No. CB(2)635/12-13(01)]

Members agreed to accept Mr Gary FAN's application for late membership.

II. Information papers issued since the last meeting
[LC Paper Nos. CB(2)573/12-13(01) to (02), CB(2)597/12-13(01) to (02)]

2. Members noted that the following papers had been issued after the last meeting –

- (a) letter dated 25 January 2013 from Ms CHAN Yuen-han to the Chairman and the Administration's response dated 1 February 2013 [LC Paper Nos. CB(2)597/12-13(01) and (02)]; and
- (b) joint letter dated 28 January 2013 from 11 Panel members to the Chairman and the Clerk's reply letter [LC Paper Nos. CB(2)573/12-13(01) and (02)].

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3. Miss CHAN Yuen-han proposed that the Panel should discuss enhancing the role and functions of DCs. Ms Emily LAU and Mr LEUNG Kwok-hung expressed support for the proposal. The Chairman said that as advised by the Secretary for Constitutional and Mainland Affairs at the last meeting on 21 January 2013, the proposed subject was within the purview of the Home Affairs Bureau ("HAB"), not the Constitutional and Mainland Affairs Bureau. At the request of the Chairman, the Under Secretary for Constitutional and Mainland Affairs ("USCMA") agreed to relay Miss CHAN's concerns to HAB for follow up as appropriate.

4. Referring to the joint letter of 11 Panel members and the Clerk's reply letter in paragraph 2(b) above, Ms Emily LAU requested that a meeting be held to discuss the allegations made by Mr LEW Mon-hung against the Chief Executive ("CE"), and to invite both to attend the meeting. Mr IP Kwok-him pointed out that the Panel should discuss policy issues rather than individual cases. The Chairman said that as members had different views and given time constraint, he would seek members' views on Ms LAU's proposal by circulation of paper.

(Post-meeting note: members were consulted on Ms LAU's proposal and informed of the outcome of the consultation vide LC Paper Nos. CB(2)664&705/12-13 issued on 20 February and 27 February 2013 respectively.)

III. Items for discussion at the next meeting

[LC Paper Nos. CB(2)621/12-13(01) and (02)]

5. Members agreed to discuss the following items at the next regular meeting on 18 March 2013 at 2:30 pm –

- (a) Second Report of the Hong Kong Special Administrative Region ("HKSAR") under Convention on the Rights of the Child; and
- (b) voter registration in 2013.

Clerk

The Panel agreed to receive public views on the item referred to in (a) above. As regards item (b), the Panel would consider whether public views should be invited after discussion of the subject first.

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IV. Third Report of HKSAR in the light of the International Covenant on Civil and Political Rights ("ICCPR")

[LC Paper Nos. CB(2)2663/10-11, CB(2)621/12-13(03) and (04)]

6. The Chairman welcomed the representatives of 25 deputations attending the meeting. Members noted the updated background brief on this item prepared by the Legislative Council ("LegCo") Secretariat.

Presentation of views by deputations/individuals

Amnesty International Hong Kong ("AIHK")

[LC Paper No. CB(2)649/12-13(01)]

7. Miss Jenny NGAI expressed regret that the motion on "equal rights for people of different sexual orientations" was negated at the Council meeting of 7 November 2012. AIHK urged for a comprehensive public consultation and also raised concerns about the promotion of human rights education in school. AIHK requested the Government to put in more resources to strengthen the professional training for teachers to enhance understanding of human rights issues.

Hong Kong Human Rights Monitor ("HKHRM")

8. Mr LAW Yuk-kai expressed concern about the slow progress of the Administration's implementation of the recommendations made by the United Nations Human Rights Committee ("UNHRC") in its concluding observations. Referring to Article 26 of ICCPR which required that all persons were equal before the law and were entitled without any discrimination to the equal protection of the law, Mr LAW said that it was therefore necessary to prohibit discrimination on the ground of sexual orientation by legislative means and to safeguard the press freedom in Hong Kong. He urged that the Administration should ensure that the next CE election and the LegCo election in 2020 take place by universal suffrage in compliance with ICCPR.

Mr MAK Ip-sing, member of Yuen Long District Council

9. Mr MAK Ip-sing expressed concern about the lack of concrete plans of the Administration for implementation of universal suffrage for CE and LegCo elections. He called on the Administration to request the Central People's Government ("CPG") to respect the public aspirations in this regard.

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Police Power Monitoring Group, Civil Human Rights Front ("CHRF")
[LC Paper No. CB(2)642/12-13(01)]

10. Mr WONG Ho-yin expressed concern about the large increase in the number of protesters arrested by the Police and the prosecutions instituted under the Public Order Ordinance (Cap. 245). He was concerned that the freedom of expression and assembly of Hong Kong people had been undermined.

11. Referring to a recent court case involving sentencing of the convicted to nine months' imprisonment for desecrating the Chinese and Hong Kong flags, Mr WONG considered that the heavy penalty would deal a blow to the freedom of expression.

Family Value Foundation of Hong Kong
[LC Paper No. CB(2)635/12-13(02)]

12. Mr Anton WAN expressed concern about the implementation of the Convention on the Rights of the Child in HKSAR and problems encountered. Regarding the introduction of a family impact assessment system for assessing Government policies and measures, Mr WAN requested the Panel to follow up and discuss the effectiveness of this new mechanism in due course.

BigLove Alliance

13. Mr WONG Yiu-ming expressed regret that the motion on "equal rights for people of different sexual orientations" was not passed at the Council meeting of 7 November 2012. He also expressed disappointment with the Administration's decision not to conduct public consultation on the need to legislate against discrimination in this area. He requested the Administration to make reference to overseas experience of enacting legislation in this regard and to take measures to protect the rights of people of different sexual orientations.

Mr Brian LEUNG

14. Mr Brian LEUNG said that people of different sexual orientations were frustrated by the Administration's decision not to conduct a public consultation on legislating against discrimination on the ground of sexual

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orientation. He urged the Administration to engage the public in more in-depth deliberation with a view to clarifying general misconception about the adverse impact of such legislation.

Association of Hong Kong Professionals ("AHKP")

15. Mr Lawrence Y K MA pointed out that some protesters' action such as blocking trunk roads on certain occasions in the past had caused serious traffic congestion and chaos. AHKP considered it necessary to strike a right balance between protecting the public's right to freedom of peaceful assembly and the need to maintain public order and safety. AHKP also suggested that a press council and a disciplinary tribunal be set up to deal with any inaccurate news reports.

Mr LO Hung-shun

16. Mr LO Hung-shun expressed concerns about the increased violent incidents that had occurred during public demonstrations and considered that these very often involved people with political motive who sought to serve their own political agenda by so conducting themselves.

Concern Group on Unproportional Manpower and Minimum Wage ("人手比例不乎最低工資關注組")

17. Mr WONG Kwai-sang expressed concerns on the manpower situation of the telebet centres of the Hong Kong Jockey Club and the lack of legal protection of the staff concerned who had to work very long hours and had no right to form labour unions. He considered that workers' rights under Article 8 of ICCPR, which stipulated that no one shall be held in slavery and servitude, could hardly be protected.

*Women Coalition of HKSAR
[LC Paper No. CB(2)661/12-13(01)]*

18. Miss YEO Wai-wai urged the Administration to provide a timetable on enactment of legislation to prohibit discrimination on the ground of sexual orientation as recommended by the UNHRC back in 2001. She asked the Administration to explain why it still had no plan to conduct a public consultation since the Chairperson of Equal Opportunities Commission had also stated his support for enacting the legislation. She urged the Administration to step up efforts to eliminate misunderstanding that such

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legislation, if introduced, would bring about "reverse discrimination" and legalization of same-sex marriage.

*The Sexual Orientation Discrimination Legislation Front ("SODLF")
[LC Paper No. CB(2)661/12-13(02)]*

19. Miss WEI Siu-lik said that SODLF had put forward a proposal in its submission on measures to be taken to eliminate discrimination on the ground of sexual orientation. She stressed that the belief that introducing an anti-discrimination legislation would unduly restrict freedom of expression was an unfounded misconception. Miss WEI said that the misconception about "reverse discrimination" was also not true because the scope of anti-discrimination laws in Hong Kong only sought to protect the target groups from discrimination, harassment and vilification.

Mr Tony TO

20. Mr Tony TO said he disagreed that there was any abuse of power by the Police in handling public meetings and processions. He considered that the Police had acted in a professional manner in dealing with protesters to ensure public safety and order.

Mr Holden CHOW, member of Islands District Council

21. Mr Holden CHOW emphasized that there was a need to strike a balance between upholding people's right to lawful assemblies and maintaining public order. In deciding whether it was appropriate to take enforcement action, he recognized that it was by no means easy because in reality, protesters might become emotional in some situations and conflicts between them and the Police could easily arise.

Hong Kong In-media

[LC Paper No. CB(2)661/12-13(03)]

22. Ms FONG Yuk-kwan called on the Administration to expedite enacting an archives law and legislation on freedom of information in order to ensure proper management of Government records and right of access to information as required under Article 19 of ICCPR. Ms FONG stressed the importance of ensuring access to information and records of public organizations to facilitate public monitoring. She requested the Administration to provide a timetable for enacting the relevant legislation.

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Mr Wade CHAN

[LC Paper No. CB(2)661/12-13(04)]

23. Mr Wade CHAN said that he was generally satisfied with Police arrangements in handling public demonstrations and protests held each year. He considered that the Police had exercised restraint in handling conflicts during these events.

International Social Service Hong Kong Branch

[LC Paper No. CB(2)661/12-13(05)]

24. Miss Adrielle Panares expressed concerns about the problems faced by the vulnerable groups and called on the Administration to step up its efforts in the following areas: (a) providing counseling services and specialized psychiatric assessment for asylum-seekers, torture claimants and refugees to help them get prepared psychologically for repatriation; (b) identifying and rectifying malpractices of recruitment agencies and enhancing protection of foreign domestic helpers under Article 8 of ICCPR; (c) devising publicity and promotion strategies to raise public awareness about the problem of human trafficking in Hong Kong; and (d) enacting legislation to prohibit discrimination on the ground of sexual orientation.

Hong Kong Christian Institute

[LC Paper No. CB(2)661/12-13(06)]

25. Mr SHUM Wai-nam expressed concerns about whether there had been abusive use of power by the Police in dealing with public demonstrations and assemblies. He said that the strategies used by the Police had become increasingly tough and unreasonable, including the repeated use of pepper-spray, and use of excessive force in dealing with the protesters. He called on the Administration to review the Public Order Ordinance which offered no protection to protesters. Mr SHUM also noted with concern that after the abolition of the moral and national education subject, the Government had provided increased funding to implement cross-border exchange programmes.

Motor Transport Workers General Union

26. Mr LOW Shih-cheng expressed grave concerns about the nuisances caused by protesters to the general public. These protesters might risk the safety of other road users while exercising their individual's freedom of

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expression. In those situations, he suggested that the Police should be more decisive in taking enforcement action so that normal traffic condition could resume as soon as possible.

Yat Tung Community Network Association

27. Mr KWOK Chung-man criticized the Administration for failing to foster constitutional development in Hong Kong, and expressed doubt about the Government's determination in the implementation of universal suffrage for the CE election in 2017 and LegCo election in 2020.

China Universities Alumni (H.K.) Association

[LC Paper Nos. CB(2)621/12-13(05) and CB(2)661/12-13(07)]

28. Mr Patrick TSE considered that the Government was committed to implementing universal suffrage for the two elections in accordance with the BL and the Decision of the Standing Committee of the National People's Congress ("NPCSC") in December 2007. He stressed the importance of protecting human rights and upholding the rule of law as the core values of Hong Kong. On handling of public demonstrations and assemblies, he said that the Police had taken appropriate measures to maintain the public order.

Democratic Party

29. Mr OR Yiu-lam urged that the Administration should ensure implementation of the next CE election and the LegCo election in 2020 by universal suffrage in compliance with ICCPR, especially the equal right to nominate and be nominated to run for elections, and to run for elections and be elected. He considered that any screening mechanism for the next CE election would contravene the principles of universal suffrage. He also called on the Administration to revamp the electoral arrangements of the 2016 LegCo Election to pave way for the implementation of universal suffrage for LegCo election in 2020. He also highlighted that CPG still had not ratified ICCPR after signing it in 1998.

Rainbow of Hong Kong

[LC Paper No. CB(2)661/12-13(08)]

30. Mr Tommy JAI considered that the Crimes Ordinance (Cap. 200) was discriminatory against the gay community and enquired about the timetable to amend the legislation as it had been ruled unconstitutional by the Court of Final Appeal in 2007. Mr Tommy JAI also requested the Administration to

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provide statistics in relation to the respective offences of "homosexual buggery with or by man under 16" and "intercourse with girl under 16", and the number of Police arrests since July 2007 in respect of "sexual offences" under section 118C of Cap. 200.

Rainbow Action

[LC Paper No. CB(2)661/12-13(09)]

31. Mr Jimmy SHAM said that a franchised bus company had rejected Rainbow Action's application for bus rental after knowing that the bus was intended to be used for staging a protest against discrimination on the ground of sexual orientation. A complaint was then lodged to the Gender Identity and Sexual Orientation Unit, which had decided that the complaint was unsubstantiated. Mr SHAM considered that the Administration should explain clearly the relevant considerations in determining what constituted a discriminatory act on the ground of sexual orientation.

The Society for Truth and Light

32. Ms Helen FU expressed appreciation of the government's efforts on promotion of equal opportunities for people of different sexual orientations including organizing various publicity and promotion programmes, sponsoring community projects through the relevant funding scheme, promoting the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation in public and private sector organizations. She considered that the Administration should step up its publicity and education efforts to further promote inclusion, integration and equality. She further suggested that the Administration should conduct a study on the profound implications that might arise from enacting legislation to prohibit discrimination on the ground of sexual orientation.

33. Members also noted the written submissions provided by individuals/organizations not attending the meeting [LC Paper Nos. CB(2)621/12-13(06) and CB(2)661/12-13(10)].

Issues raised by members

Constitutional development

34. Ms Emily LAU said that the Democratic Party was very concerned about the implementation of universal suffrage for the 2017 CE Election and

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the 2020 LegCo Election. She hoped that universal suffrage could be achieved through the concerted efforts of the community. In response to Ms LAU's question, Mr WONG Yiu-ming said that he supported implementation of universal suffrage, adding that had LegCo Members been elected on that basis, the motion on equal rights for people of different sexual orientations moved by Ms Cyd HO in November 2012 would have been passed. Dr Kenneth CHAN said that the Civic Party also supported the implementation of universal suffrage and abolition of the functional constituencies system. He considered that the Government failed to make any improvement to the many deep-rooted conflicts in Hong Kong, including the disparity between the rich and poor which had become worse ever since the Reunification.

Discrimination on the ground of sexual orientation

35. Ms Emily LAU said that she shared the concern of some deputations on the need for enhancing protection against discrimination on the ground of sexual orientation. She pointed out that the findings of the survey sponsored by Ms Cyd HO had shown that 63.8% of the respondents supported enacting legislation to prohibit discrimination on the ground of sexual orientation. Ms Cyd HO pointed out that her motion had been negated at the Council meeting of 7 November 2012 only because it had not been agreed by a majority of the Members returned by functional constituencies. In fact, according to the voting results, 31 Members had voted for and 25 Members had voted against her motion. She considered that the Administration should conduct the relevant public consultation taking into account the voting results of LegCo and public opinion as reflected by the survey.

36. Mr CHAN Chi-chuen urged the Administration to enact legislation to prohibit discrimination on the ground of sexual orientation as requested by the UNHRC in its previous concluding observations. Referring to paragraph 26.10 of HKSAR's third report under ICCPR, Mr CHAN asked the Administration to elaborate its stance that "self-regulation and education, rather than legislation, are the most appropriate means of addressing discrimination in this area" and the basis of this stance. Mrs Regina IP considered that the Administration should not postpone conducting public consultation on the need to enact legislation to prohibit discrimination on the ground of sexual orientation though it was controversial. She requested the Administration to explain to the public the implications if the Government enacted such a law by following similar scope of protection of the existing

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anti-discrimination laws as the blueprint. She considered that the Administration should clarify that enacting such a law did not mean legalization of same-sex marriage. Dr Priscilla LEUNG suggested that before considering taking legislative measures, the Administration might explore use of mediation service as an alternative for settling the relevant disputes and conflicts.

37. USCMA said that while there was no plan of the Government at present to conduct public consultation on whether legislation should be enacted to prohibit discrimination on the ground of sexual orientation as this was a highly controversial issue, the Administration would make sustained efforts in the promotion of equal opportunities for people of different sexual orientations and transgendered persons through public education and publicity. The Administration would increase provision for these areas of work. Also, the Administration would study relevant legislative and administrative measures adopted by overseas jurisdictions, and was planning to establish a new platform to exchange views with different stakeholders on this issue.

Freedom of information and press freedom

38. Ms Cyd HO said that it was important to safeguard freedom of information and press freedom. Noting that some deputations suggested punishing publication by the media of inaccurate news reports, Ms HO considered that sometimes the inaccuracy might have to do with the improper arrangements on the part of the Government in releasing information to the media. She also highlighted that Hong Kong's ranking for press freedom had fallen to a five-year low of 58 in the world and sought the views of deputations on this. Mr LAW Yuk-kai of HKHRM commented that the self-censorship of the media had all along been an issue of concern. He shared the view that the Government failed to take appropriate measures in its release of information to the media and this had resulted in regression in press freedom. He added that there was also suppression of press freedom by the Police as shown in their way of handling media coverage of public demonstrations in recent years.

39. Dr Kenneth CHAN expressed support for the Hong Kong In-media's proposal of enacting an archives law and legislation on freedom of information to ensure freedom of public access to Government information. Mr Charles Peter MOK sought the views of the deputations on whether there was regression in the freedom of information on the Internet or any

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restrictions imposed. Ms FONG Yuk-kwan of Hong Kong In-media replied that difficulties were often encountered by non-mainstream media reporters in seeking information by making enquiries with Government departments and public organizations.

40. USCMA said that The Ombudsman was conducting a direct investigation into the access to information regime in Hong Kong, and the Law Reform Commission had set up two subcommittees to review in detail the topic of access to information and embark on a comprehensive study of the relevant laws in overseas jurisdictions with a view to making recommendations. Pending the outcome of the investigation and study, the Administration would take necessary action to follow up the recommendations. USCMA further said that since the introduction of the Code on Access to Information ("the Code") in 1995, about 98% of the requests for information held by bureaux and departments were met in full or in part. The Administration would continue to monitor compliance with the Code.

Privacy protection

41. Referring to the recent incident of online disclosure of the identity card numbers of many company directors in protest against the Government proposal to restrict access to the personal data of company directors, Mrs Regina IP asked the deputations whether they considered that the act was an infringement of human rights as the leaked information could be used to cause nuisances to the data subjects concerned. Acknowledging the importance of personal data protection, Mr LAW Yuk-kai said that there was also a need to strike a balance between personal data protection and the need to allow public access to the relevant information/data for purposes of public monitoring and accountability.

Freedom of demonstration and assembly

42. Ms Emily LAU sought the views of Mr WONG Ho-yin of Police Power Monitoring Group/CHRF regarding some deputations' strong dissatisfaction with the behaviour of participants of public processions ("the participants"). Mr WONG Ho-yin acknowledged that in recent years, demonstrations and protests had involved more confrontation or conflict with the Police, but in general the participants had exercised restraint in their course of action. Demonstrations and protests in general were conducted in a peaceful manner. Ms Emily LAU asked whether the confrontation could

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be avoided if the organizers concerned had better communication with the Police on the relevant arrangements. Mr WONG Ho-yin considered that the confrontation and conflicts reflected the frustrations of the participants in seeking improvements to many problems of social injustice through the existing channels and mechanisms.

43. Mr Charles Peter MOK sought the views of the deputations on the improvements that could be made by the Police regarding public processions and demonstrations. Mr WONG Ho-yin cited the example of the march on 1 July 2012 and said that before the event, CHRF had already expected a high turnout and had applied to the Police for opening up six traffic lanes during the march. The Police had rejected the application and during the march, the participants had no choice but occupied more traffic lanes as there were hundreds of thousands of participants. One of the participants who took part in occupying more traffic lanes was subsequently prosecuted for assaulting a police officer. Mr WONG considered that the incident reflected that while the Police were not held responsible for their mishandling of the arrangements for processions, participants were the ones to bear the consequence.

44. Mr CHAN Chi-chuen considered that there had been retrogression in freedom of assembly and procession since the Reunification. Echoing the view of Mr WONG Ho-yin, Mr CHAN said that more and more participants had been prosecuted under the Public Order Ordinance and, in his view, there were selective prosecutions.

45. Mr IP Kwok-him referred to the view expressed by the Motor Transport Workers General Union about the nuisances caused by the road blockage staged by some participants during public processions, and sought the view of Mr LAW Yuk-kai on the appropriate checks and balances in this regard. Mr LAW Yuk-kai considered that as revealed by history, people would resort to action, even if it might go against the law, to seek justice when it could not be guaranteed by way of legitimate course of actions. Dr Priscilla LEUNG considered that while freedom of demonstration and assembly should be respected, the majority of Hong Kong people would not support unlawful activities that would seriously affect public order.

46. Mr Dennis KWOK emphasized that both public security and protection of fundamental human rights were of equal importance. He highlighted that as shown in the 2012-2013 Rule of Law Index Report released by the World Justice Project, Hong Kong was falling in ranking to

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31st for protection of the fundamental rights while its ranking for order and security was the second highest in the world. He invited views of deputations on the situation.

47. Mr LAW Yuk-kai considered that there were indeed many inadequacies in the Government's work in the protection of human rights, such as in ensuring press freedom, improving the electoral system, eliminating discrimination, legislating against discrimination on the ground of sexual orientation and age, the absence of an enforcement body responsible for the implementation of the Hong Kong Bill of Rights Ordinance (Cap. 383) ("HKBORO"), and addressing concerns about the controversial approach adopted by the Police in handling public demonstrations.

48. USCMA said that the Police respected the rights of members of the public to conduct peaceful assemblies and processions and made every effort to facilitate the conduct of these activities. However, the participants should observe the law and the Police would act resolutely against persons who breached the law. USCMA further said that the Administration would follow up the requests raised by deputations for additional information in relation to individual cases after the meeting. He added that the Administration would revert to the Panel after attending the UN hearing on HKSAR's third report in March 2013.

(During the meeting, Mr LEUNG Kwok-hung and Mr Lawrence Y K MA ignored the repeated requests of the Chairman for them to stop speaking. The Chairman ruled that both Mr LEUNG and Mr MA had breached the Rules of Procedure. Mr LEUNG and Mr MA left the meeting after the ruling was made.)

V. Outline of the Report of HKSAR for the United Nations Human Rights Council Universal Periodic Review

[LC Paper Nos. CB(2)589/12-13(01), CB(2)594/12-13(01) and CB(2)621/12-13(07)]

49. USCMA said that the Report of the HKSAR ("the HKSAR Report"), which was part of the Report of the People's Republic of China ("China"), would be submitted to the UN Human Rights Council by CPG under the Universal Periodic Review ("UPR") mechanism. China's second UPR was scheduled to take place in October 2013.

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50. Members noted the updated background brief on this item prepared by the LegCo Secretariat.

Presentation of views by deputations/individuals

HKHRM

51. Mr LAW Yuk-kai expressed concern that the HKSAR Report contained only superficial information with too much emphasis on the institutional arrangements and yet there was no mentioning of the inadequacies in the protection of human rights at constitutional and statutory levels. He requested the Administration to include issues of concerns which would have a significant bearing on human rights situation in its future reporting, citing the institutional changes in relation to human rights education not being included in the previous HKSAR Report as an example.

Mr MAK Ip-sing

52. Mr MAK Ip-sing expressed concerns about the demand made by CE in the last month for retraction of a newspaper article as CE claimed that the article was defamatory against him. Mr MAK considered that CE's act might undermine freedom of speech in Hong Kong and he should be more open-minded and listen to different views. He further expressed dissatisfaction with the increasing number of arrests and prosecutions of protesters for "unlawful assembly" under the Public Order Ordinance and considered that these were intended to undermine freedom of expression.

Hong Kong Confederation of Trade Unions ("HKCTU")
[LC Paper No. CB(2)661/12-13(11)]

53. Mr POON Man-hon expressed concerns about the freedom of association which was inadequately protected in Hong Kong given the loopholes in existing laws. For example, the existing law would only bring an award of compensation to the employee concerned on account of his termination while other forms of discrimination were not subject to regulation, and the employee concerned was not entitled to job reinstatement. HKCTU had received complaints from its members whose employment had been terminated without valid reasons while exercising their right to form labour unions or participating in such activities. He said that it was disappointing to note that there was no progress made by the Administration to safeguard the right to collective bargaining by legislative means.

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The Association of Experts for Modernization

54. Mr LAM Kwok-hung said that the implementation of dual universal suffrage was important to Hong Kong and requested the pan-democrats to strive for the implementation of universal suffrage for the CE election in 2017 by adopting a more positive and pragmatic approach instead of persistently criticizing the incumbent CE.

Mr Tony TO

55. Mr Tony TO considered that there were already sufficient safeguards for the protection of human rights at the statutory and institutional levels. While some media organizations might apply self-censorship in their work but, in his view, it had nothing to do with the Government policies. He cautioned that the experience of some western countries in the 60's and 70's showed that labour unions given too much power would have an adverse impact on the economic development and the lesson must be learnt.

Mr Holden CHOW

56. Mr Holden CHOW was of the view that the "Occupy Central" campaign as proposed by some people would seriously affect public order. He said that different sectors of the community should adopt an open attitude. He further emphasized the importance of enhancing communication in the process for achieving the ultimate aim of universal suffrage for the CE election in 2017 and the LegCo election in 2020.

Labour Party

57. Mr CHENG Sze-lut expressed concern about the Administration's maintaining the reservation on ratifying Article 25 of ICCPR which, in his view, had reflected the lack of commitment on the part of the Administration in fulfilling its obligations under ICCPR. He called on the Administration to take on board the recommendations of UN without delay, including the setting up of an independent human rights institution to oversee the human rights situation in Hong Kong and an independent mechanism to handle complaints against Police.

Mr Wade CHAN

[LC Paper No. CB(2)661/12-13(12)]

58. Mr Wade CHAN was of the view that functional constituencies should be retained so that different views of the relevant sectors would

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continue to be represented in the legislature. This could facilitate a balanced view in the formulation of public policies.

AHKP (Constitutional and Mainland Affairs)

59. Mr CHIN Chi-yung was content with the human rights situation in Hong Kong which, in his view, was comparable to that of other democratic countries. He considered that there were sufficient safeguards for protection of human rights in Hong Kong with the establishment of the Ombudsman, the legal aid system and an independent Judiciary in Hong Kong.

SME Global Alliance

60. Mr Allan LEUNG supported the protection of the personal data privacy and restricting access to the personal data of directors on the Companies Register. He further suggested that the accuracy of personal data provided in the register should be enhanced to facilitate usage of the relevant data by genuine users for legitimate purposes.

Sun Yat-Sen University United Alumni Association (Hong Kong)

61. Mr LAI Chi-fung expressed concerns about the exercise of the right to stand for election and the right to vote of new immigrants when universal suffrage was implemented in future. He raised concerns about the problem of aging population in Hong Kong which would aggravate the poverty problem, and the measures to enhance retirement protection and help alleviate poverty.

Mr TAM Kwok-sun

[LC Paper No. CB(2)661/12-13(13)]

62. Mr TAM Kwok-sun was of the view that since the Reunification, the Government had used different means to restrict freedom of expression. He was of the view that if more and more people remained silent, Hong Kong people would no longer enjoy freedom of expression.

打夠港共協會

63. Mr LEUNG Kwok-tung criticized the defects of the existing election systems and that the legislature had enacted some laws against the interests

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of Hong Kong people. He further criticized that the Administration had disregarded public views and people were forced to stage demonstrations in order to voice their demands.

大 耶 能 政 策 研 究

64. Mr WONG Kai-chiu raised concerns that some religious groups had hindered the democratic development in Hong Kong. He also urged the Administration to take appropriate action to safeguard people's rights to freedom of thought and religion under Article 18 of ICCPR.

Mr Johnny MARK

65. Mr Johnny MARK considered that education and publicity efforts could not substitute the much needed legislation to be enacted to prohibit discrimination on the ground of sexual orientation. He further commented on the curriculum of sex education which should be reviewed and updated as part of the Administration's educational measures.

Narrow Church

66. Mr TAM Tak-chi criticized HKSAR's third report under ICCPR and pointed out that the democratic development of Hong Kong was stalled by ruling out the implementation of dual universal suffrage in 2012. Mr TAM also referred to a recent court case involving a protester who was prosecuted for assaulting the Police but was not allowed to bail out despite that the offence was of a relatively minor nature.

Discussion

67. Ms Emily LAU sought clarification from Mr LAM Kwok-hung of the Association of Experts for Modernization regarding his view on the CE election in 2017. Mr LAM said that the incumbent CE had earlier expressed interest in seeking re-election for a second term. He considered that in order to achieve dual universal suffrage for Hong Kong, the pan-democrats should take that into consideration in putting forward any option on the election method of CE in 2017.

68. Mr Paul TSE said that the consultation arrangement for the HKSAR Report had been improved as he noted that the consultation period had been extended to six weeks this time. Mr TSE suggested that the HKSAR

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Report should put more weight on the part of "Achievements, challenges and initiatives" which should set out the major challenges faced by HKSAR and the Administration's measures to meet up the challenges. In particular, he suggested that several major issues of concern should be covered in a focused manner. These issues should include protection of people with different sexual orientations from discrimination, conflicts between Hong Kong and Mainland residents, upholding judicial independence, and the issuance of domestic free television licence.

69. Dr Kenneth CHAN sought the view of Mr LAW Yuk-kai on the coverage of the HKSAR Report. Mr LAW suggested that the HKSAR Report should give a detailed account of important issues, e.g. conflicts between Hong Kong and Mainland residents and protecting the rights of the ethnic minorities in Hong Kong, and the relevant Government policies.

70. USCMA thanked members and deputations/individuals for their views and responded as follows –

- (a) the Government was committed to attaining the ultimate aim of selecting CE and electing all the Members of LegCo by universal suffrage in accordance with BL and the Decision adopted by the NPCSC made in December 2007. The Administration would ensure that sufficient time would be allowed for the relevant consultation and legislative processes;
- (b) Hong Kong residents enjoyed the freedom and rights of assembly and procession which were protected under BL and HKBORO. The Police would endeavour to facilitate all lawful and peaceful public meetings and processions on the one hand, and reduce the impact of such activities on other members of the public and ensure public order and safety on the other hand;
- (c) on promoting equal opportunities for people of different sexual orientations, the Government had instituted comprehensive public education and publicity programmes, with a view to fostering in the community a culture of mutual understanding, tolerance and mutual respect. Additional resources would be provided to enhance the public education and publicity work in this area. A new platform would also be established to enhance communication and exchange with the relevant stakeholders; and

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- (d) there was a constraint on the length of the HKSAR Report which was limited to three pages. Nevertheless, the Administration would take into account the views and comments of members and deputations in the drafting of the HKSAR Report to ensure that key areas of concern were covered.

VI. Any other business

- 71. There being no other business, the meeting ended at 6:15 pm.

Council Business Division 2
Legislative Council Secretariat
31 May 2013