

**立法會**  
**Legislative Council**

Ref : CB2/PL/CA

LC Paper No. CB(2)19/14-15  
(These minutes have been seen  
by the Administration)

**Panel on Constitutional Affairs**

**Minutes of meeting**  
**held on Monday, 16 June 2014, 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 Frederick FUNG Kin-kee, SBS, JP  
Hon Jeffrey LAM Kin-fung, GBS, 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, SBS, JP  
Hon WONG Kwok-kin, BBS  
Hon IP Kwok-him, GBS, JP  
Hon Mrs Regina IP LAU Suk-yea, GBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon WONG Yuk-man  
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 CHAN Chi-chuen  
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 CHUNG Kwok-pan

**Member attending** : Hon Claudia MO

**Members absent** : Hon Albert HO Chun-yan  
Hon LEE Cheuk-yan  
Dr Hon LAU Wong-fat, GBM, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon LEUNG Kwok-hung  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon Gary FAN Kwok-wai  
Hon Charles Peter MOK  
Dr Hon Kenneth CHAN Ka-lok  
Hon CHAN Yuen-han, SBS, JP  
Hon Tony TSE Wai-chuen

**Public Officers attending** : Item III

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

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

Mr CHOW Wing-hang  
Principal Assistant Secretary for Labour and Welfare (Welfare)  
Labour and Welfare Bureau

Ms Amy WONG Pui-man  
Principal Assistant Secretary (Security)  
Security Bureau

Mr LO Pui-lam  
Chief Curriculum Development Officer (Chinese)  
Education Bureau

Mr Vernon LOH  
Senior Government Counsel  
Department of Justice

Mr Michael YAU Lok-fung  
Assistant Secretary for Constitutional and Mainland Affairs

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

Mrs Philomena LEUNG  
Principal Assistant Secretary for Constitutional and Mainland  
Affairs

Mr Eric LEE Ka-wai  
Assistant Secretary for Constitutional and Mainland Affairs

**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

Ms Wendy LO  
Council Secretary (2) 3

Mrs Fonny TSANG  
Legislative Assistant (2) 3

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

1. Members noted that no information paper had been issued since the last meeting.

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

[LC Paper Nos. CB(2)1758/13-14(01) and (02)]

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2. Members agreed to discuss the following items proposed by the Administration at the next regular meeting on 21 July 2014 at 2:30 pm -

- (a) disqualification of candidates with unserved prison sentences and other related matters; and
- (b) third report of the Hong Kong Special Administrative Region ("HKSAR") under the United Nations ("UN") Convention on the Elimination of All Forms of Discrimination against Women.

Regarding item (b), the Panel agreed to invite deputations to attend the next meeting to join the discussion.

White Paper on "The Practice of the 'One Country, Two Systems' Policy in the Hong Kong Special Administrative Region" ("White Paper")

3. Mr Frederick FUNG said that the White Paper had aroused wide public concern and proposed to discuss it at the next meeting. Under Secretary for Constitutional and Mainland Affairs ("USCMA") explained that the White Paper was published by the State Council, and that two Mainland officials would speak on the subject matter at a seminar to be held within that week. As such, the Administration had no intention to propose discussion of the document at a Panel meeting. Besides, he noted that a Member would raise an oral question on the White Paper at the Council meeting of 25 June 2014. In response to the Chairman's enquiry as to whether invitation would be extended to LegCo Members to attend the seminar, USCMA said that he would revert to the Panel as early as possible. Mr Frederick FUNG reiterated that as the HKSAR Government would be responsible for implementing the relevant policies set out in the White Paper, the HKSAR Government officials concerned should attend a meeting of the Panel to answer members' questions on the White Paper. He added that given the limited time allowed for "Questions" at a Council meeting, he remained of the view that the subject should be discussed at a Panel meeting.

4. Mr SIN Chung-kai and Mr CHAN Chi-chuen expressed support for Mr FUNG's proposal. Mr SIN asked whether the Administration had made any input in the drafting work of the White Paper, and if so, the relevant details. At the Chairman's request, USCMA undertook to convey members' concerns and suggestions to the Administration for consideration.

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*(Post-meeting note: The seminar on the White Paper had been cancelled as announced on 17 June 2014. On the instruction of the Panel Chairman, the item, White Paper on "The Practice of the 'One Country, Two Systems' Policy in the Hong Kong Special Administrative Region", was then added to the agenda of the meeting on 21 July 2014. Subsequently, Panel members agreed to further revise the agenda to replace the above item with "The Chief Executive's Report to the Standing Committee of the National People's Congress and Consultation Report on the Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016". The revised agenda was issued to members on 16 July 2014 vide LC Paper No. CB(2)2068/13-14.)*

**III. Hearing of the third report of HKSAR under the International Covenant on Economic, Social and Cultural Rights ("ICESCR")**  
[LC Paper Nos. CB(2)1758/13-14(03) and (04)]

5. USCMA briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)1758/13-14(03)]. Members also noted the updated background brief prepared by the Legislative Council ("LegCo") Secretariat [LC Paper No. CB(2)1758/13-14(04)].

Discussion

*Anti-discrimination work*

6. Mr CHAN Chi-chuen expressed dissatisfaction with the Administration's failure to take measures to eliminate discrimination against sexual minorities despite the repeated calls from the UN Committee on Economic, Social and Cultural Rights ("UNCESCR") since 1996 to enact legislation to prohibit discrimination on the grounds of sexual orientation and gender identity. He considered that the Administration's reiteration that there being no plan to enact legislation in this area was blatant violation of its international obligation under Article 2 of ICESCR. He said that solely relying on public education and publicity efforts were grossly inadequate to eliminate discrimination in this area. Mr CHAN urged the Administration to draw up a legislative timetable and conduct public consultation to prepare for legislating in this area.

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7. USCMA said that outlawing discrimination on the ground of sexual orientation and gender identity was a controversial issue which must be tackled cautiously. To better address the issue, the Administration had set up the Advisory Group on Eliminating Discrimination against Sexual Minorities ("Advisory Group") in June 2013 for exchange of views amongst different stakeholders. The Advisory Group had met four times since establishment. The Advisory Group had decided to carry out a study on discrimination experienced by sexual minorities, through recruiting 200 sexual minorities from different socio-economic background. The study would provide a solid basis to facilitate the Advisory Group to formulate recommendations on strategies and measures, and was expected to be completed by end of 2014. He added that new Announcement of Public Interest had also been issued to promote equal opportunities for sexual minorities.

8. Ms Cyd HO considered that some government policies were discriminatory against sexual minorities. She said that homosexual couples, who did not have a marriage relationship under Hong Kong law, did not have the same entitlements as those enjoyed by a "married spouse" in areas such as inheritance of estate, the right to make medical decisions for his or her spouse, and eligibility for dependent visa for settlement in Hong Kong on the ground of family reunion. USCMA dismissed that the Government was discriminatory towards sexual minorities. He advised that bureaux and departments were required to act in accordance with the existing policies and legislation. Same sex marriage registered overseas was not recognized in Hong Kong under the existing law.

9. Mrs Regina IP said that she had learnt from press reports that there were consulates in Hong Kong which administered "civil union for same-sex partners" for their nationals in Hong Kong. She requested the Administration to advise in writing whether the relevant certificates were recognized in Hong Kong. USCMA agreed to provide a written response.

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10. Ms Starry LEE expressed concern about the earlier incidents of harassment of Mainland tourists by local people. In response to Ms LEE's enquiry, USCMA advised that the Race Discrimination Ordinance (Cap.602) ("RDO") protected people from discrimination on the ground of their race, colour, descent or national or ethnic origin. As such, the above type of harassment fell outside the scope of RDO. Nevertheless, he noted that the current Discrimination Law Review conducted by the Equal Opportunities

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Commission ("EOC") would consult the public on, among others, whether RDO should protect people from discrimination on the ground of their nationality, citizenship, Hong Kong residency or related status.

*Foreign domestic helpers ("FDHs")*

11. Mr WONG Ting-kwong referred to the UNCESCR's recommendations about repealing the "two-week rule" and the "live-in requirement" and was concerned that the problem of frequent job-hopping of FDHs would become more acute after the removal of these requirements. He said that it might pose hardship to some employers who had to take care of elderly and children if the "live-in requirement" was removed. He enquired if the Administration was considering any room for relaxation.

12. Principal Assistant Secretary for Labour and Welfare (Welfare) ("PAS(LW)(W)") said that the "two-week rule" was necessary for maintaining an effective immigration control. He said that FDHs enjoyed equal statutory rights and benefits as local employees, and they were further protected by a Government-prescribed Standard Employment Contract. He added that the Administration considered it necessary to retain the "live-in requirement" for FDHs, given that the importation of FDHs was allowed against the background of a proven shortage of local live-in domestic helpers.

13. Mr WONG Ting-kwong said that instead of returning to their places of origin, some FDHs had departed for Macao, Shenzhen or other neighbouring places and then re-entered Hong Kong to work. He asked whether the Administration would strictly require FDHs to return directly to their places of origin within 14 days upon premature termination or completion of their contracts with the employers. Principal Assistant Secretary (Security) ("PAS(S)") said that the Immigration Department ("ImmD") processed employment visa applications of FDHs in a stringent manner. If ImmD suspected that there was abuse of the premature contract termination arrangement by FDHs, the application might be rejected.

*Right to work of refugees*

14. Mr YIU Si-wing requested the Administration to clarify whether refugees had access to the labour market and to tertiary or vocational training. PAS(S) advised that in February 2014, the Court of Final Appeal affirmed that non-refoulement claimants did not have any constitutional

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right to work. Nonetheless, the Director of Immigration might grant substantiated claimants permission to work as a matter of discretion on an exceptional basis.

15. As regards the reimbursement for Hong Kong's expenses incurred for maintenance of Vietnamese refugees, Mr YIU Si-wing asked what would be done to follow up the outstanding payments owed by the UN High Commissioner for Refugees. PAS(S) responded that the HKSAR Government had followed up the issue with the UN High Commissioner for Refugees and such efforts would continue. Mr YIU considered that the relevant UN Committee should visit Hong Kong and conduct site inspection in order to have a better understanding of the actual situation and to enable the UN Committee to come up with a fair assessment. He also requested the Administration to explain the relevant court judgment to the UN Committee. USCMA said that the Government had, before attending the hearing, provided its response to the "list of issues" raised by UNCESCR. He said that the HKSAR delegation had constructive dialogue with UNCESCR and provided detailed additional information to written and oral questions raised by UNCESCR.

*Employment protection and labour rights*

16. Miss Alice MAK expressed concern about issues relating to employees' rights such as standard working hours, statutory overtime pay and rest breaks, and protection against unfair dismissal. She enquired what measures would be taken by the Administration in these areas.

17. PAS(LW)(W) said that the Standard Working Hours Committee had been following up working hours issues through, among others, conducting a wide public engagement exercise to listen to the views of the community and a dedicated survey to collect detailed working hours statistics. PAS(LW)(W) said that the rights of employees' participation in trade unions were protected under the Hong Kong Bill of Rights Ordinance (Cap. 383) and the Employment Ordinance (Cap. 57). An employee who was unreasonably dismissed might claim remedies against his employer. PAS(LW)(W) said that to strengthen the protection for employees, the Government would introduce a bill to amend the Employment Ordinance to empower the Labour Tribunal to make a compulsory order for reinstatement or re-engagement of an employee who had been dismissed unreasonably and unlawfully. The Administration would report progress of work to the relevant Panel in due course.



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18. In response to Miss Alice MAK's concern about employees' right to collective bargaining, PAS(LW)(W) said that the Labour Department had encouraged and promoted voluntary and direct dialogue between employers and employees and their respective organizations at the enterprise and industry levels. The Government was of the view that for any dialogue or bargaining process to be successful and meaningful, it had to be voluntary. Collective bargaining between employers and employees' unions compelled by law might strain the relationship between employers and employees and thus be counter-productive.

19. In response to Miss Alice MAK's suggestion of counting of meal breaks towards working hours, PAS(LW)(W) said that working hours and meal breaks, like other terms of employment, were determined by employment contracts but subject to the relevant statutory requirements. Neither the Minimum Wage Ordinance nor the Employment Ordinance prescribed that meal breaks should be paid or not.

20. Miss Alice MAK considered the non-alignment of labour holidays with the general holidays an unfair and discriminatory policy against employees engaged in relevant industries and was in contravention of Article 7 (right to enjoy just and favourable conditions of work) of ICESCR. PAS(LW)(W) agreed to provide supplementary information after the meeting to address members' concern in this area.

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*(Post-meeting note: The Administration's supplementary information was issued vide LC Paper No. CB(2)2046/13-14(01) on 14 July 2014.)*

*Public mental health services*

21. Referring to paragraph 50 of the concluding observations issued by UNCESCR (Annex B to LC Paper No. CB(2)1758/13-14(03)), Dr CHIANG Lai-wan expressed concern about the lack of a comprehensive mental health policy in Hong Kong and the shortage of doctors in public hospitals. She noted that while there were only 300-odd doctors (including psychiatrists) in the psychiatric departments of the Hospital Authority ("HA"), the number of new cases for psychiatric services ran up to 30 000 in 2012-2013. She also noted with concern about the long waiting time for psychiatric services, e.g. about 15 weeks in the Kowloon West Cluster. She enquired about the staff-to-patient ratio in psychiatric units, and the provision of care and support services to discharged mental patients and

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their carers. She also asked whether the Administration would conduct a comprehensive review on the services currently available to psychiatric patients to identify room for improvement.

22. Principal Assistant Secretary for Constitutional and Mainland Affairs ("PAS(CMA)") said that the Administration attached great importance to the mental well-being of the public and had been providing comprehensive mental health services for persons in need including prevention, early identification, timely intervention, treatment and rehabilitation. The Administration sought to provide multi-disciplinary and cross-sectoral services to persons with mental health problems through collaboration by a number of policy bureaux and departments. To further strengthen efforts on this front, the Review Committee on Mental Health ("Review Committee") was set up in May 2013 under the chairmanship of the Secretary for Food and Health and its members included healthcare professionals, service providers, academics, LegCo Members, as well as representatives from EOC, the Hong Kong Council of Social Service and patient and carer groups. The Review Committee would study the existing policy on mental health with a view to mapping out the future direction for development of mental health services. The relevant findings would be published once available.

23. PAS(CMA) further advised that apart from an intake of 420 medical students each year by the medical faculties of the two universities, HA had started the recruitment of non-local doctors to practise with limited registration since 2012 to address the manpower shortage.

**IV. Progress of following up on the Law Reform Commission ("LRC")'s proposal on Stalking**

[LC Paper Nos. CB(2)1758/13-14(05) and (06)]

24. At the invitation of the Chairman, USCMA briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)1758/13-14(05)]. Members noted the updated background brief prepared by the LegCo Secretariat [LC Paper No. CB(2)1758/13-14(06)].

25. Ms Claudia MO said that the media and press organizations welcomed the Administration's recommendation not to pursue the introduction of an anti-stalking legislation in view of the possible adverse impacts on news-gathering activities as set out in paragraphs 11 and 15 of the

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Administration's paper. She also expressed support for this recommendation for reasons as she had elaborated at previous discussions on this subject. In reply to Ms MO's enquiry as to the way forward, USCMA said that the Administration would take into account members' views expressed at this meeting and make a final decision on the matter.

26. Ms Claudia MO further asked why the Administration considered that the "specified relations" approach, i.e. to criminalize stalking in certain specific relations only, namely, in the domestic context, between landlords and tenants, and between money lenders and borrowers, should not be pursued. She considered that stalking behaviours related to domestic violence could also be dealt with by this approach. Mr WONG Yuk-man said that he also opposed enacting an anti-stalking legislation, but he suggested that the "specified relations" approach should be considered. He further proposed that the existing criminal provisions regulating specific types of stalking behaviour should be reviewed (e.g. expanding the scope of the relevant offences and imposing a more severe penalty for breaches). Besides, consideration could be given to providing civil remedies to victims of stalking.

27. USCMA said that the Administration considered that introducing legislative measures that offered protection for only selected victims would treat other victims less favourably even though they were in comparable situations. These victims would challenge the measures as unfair and did not provide adequate legal protection to their right to privacy. USCMA pointed out that in some cases, the stalkers were not related to the victims. He also pointed out that the relevant legislation of all the jurisdictions which the Consultant studied did not make a distinction as regards the relationship between the stalker and the victim.

28. Mr IP Kwok-him considered that in view of the serious nuisances that could be caused to victims of stalking, the Administration should explore ways to tackle specific problems relating to, e.g. harassment by ex-spouses, former lovers and abusive debt collectors. Mr MA Fung-kwok said that the performing arts sector would be disappointed with the Administration's view as they had been calling for stalking to be criminalized for years. He enquired how specific problems relating to the intrusion into the private life of performing artistes would be tackled in the absence of an anti-stalking legislation. Mr Christopher CHEUNG said that he had received a complaint from a securities company about the nuisances caused by offensive phone calls from debt collectors because an ex-staff member of the

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company had failed to repay debts. Mr CHEUNG called on the Administration to strengthen enforcement against abusive debt collection activities. He also enquired about the number of cases involving debt collection-related harassment in recent years.

29. USCMA advised that certain aspects of stalking behaviour were actually covered by certain criminal offences, such as the offence of offensive phone calls or messages, and a stalker would be prosecuted if his act fell within the scope of such criminal offences. Regarding improper debt collection practices, USCMA said that a money lender had to apply for a licence under the Money Lenders Ordinance (Cap. 163) and be subject to the regulatory control under it. In 2011, an additional new licensing condition was introduced which prohibited money lenders and their debt collection agencies from harassing any person when locating their debtors and from adopting illegal or improper debt collection practices. USCMA advised that the new measure had proven to be effective, as seen from the following figures -

- (a) the number of criminal debt collection-related harassment cases reported to the Police dropped from 2 017 in 2009 to 1 538 in 2013; and
- (b) the number of non-criminal debt collection-related harassment cases dropped from 16 186 in 2009 to 8 796 in 2013.

30. The Chairman pointed out that the Privacy Commissioner for Personal Data ("the Privacy Commissioner") had earlier said that in the absence of an anti-stalking legislation, complaints on privacy problems not strictly falling within the area of personal data protection might not be fully addressed under the Personal Data (Privacy) Ordinance (Cap. 486), citing the example of a media intrusion case lodged with the Privacy Commissioner in 2011 involving the act of photography of the activities of three performing artistes within their private residences by covert photographers outside their residences over a period of three to four days. The Chairman noted that although enforcement notice had been issued by the Privacy Commissioner directing the deletion of such photos by the media organization concerned, the matter was still not yet settled. The Chairman requested the Administration to explore with the Privacy Commissioner any other feasible option to tackle serious privacy intrusions which could not be addressed under the existing laws. Mr WONG Yuk-man also requested the Administration to keep the situation under review having regard to members'

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Admin concerns that the existing laws could not address adequately all types of stalking. USCMA agreed to relay members' views to the Administration for consideration.

31. Mr CHAN Chi-chuen asked whether the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) was able to tackle stalking by ex-cohabitants. USCMA explained that the former Domestic Violence Ordinance (now renamed Domestic and Cohabitation Relationships Violence Ordinance) had been amended to cover former spouses, former heterosexual cohabitants and their children, and other immediate and extended family members, as well as existing and former same-sex cohabitants and their children. He said that the Ordinance provided for civil remedies in the form of injunctions to protect victims of domestic violence against molestation by the other party. USCMA reiterated that the existing criminal laws already covered certain aspects of stalking behaviour.

**V. Any other business**

32. There being no other business, the meeting ended at 4:10 pm.

Council Business Division 2  
Legislative Council Secretariat  
8 October 2014