

立法會
Legislative Council

Ref : CB2/PL/CA

LC Paper No. CB(2)62/14-15
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 21 July 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 Albert HO Chun-yan
Hon Emily LAU Wai-hing, JP
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, JP
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, SBS
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Hon Michael TIEN Puk-sun, BBS, JP
Hon James TIEN Pei-chun, GBS, JP
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon Gary FAN Kwok-wai
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
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, SBS, JP
Hon SIN Chung-kai, SBS, JP
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon Martin LIAO Cheung-kong, SBS, JP
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen, BBS

Members attending : Hon James TO Kun-sun
Hon WONG Kwok-hing, BBS, MH
Dr Hon LEUNG Ka-lau
Hon Claudia MO
Hon Kenneth LEUNG
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Dr Hon Fernando CHEUNG Chiu-hung
Hon POON Siu-ping, BBS, MH
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Members absent : Hon LEE Cheuk-yan
Dr Hon LAU Wong-fat, GBM, GBS, JP
Hon IP Kwok-him, GBS, JP

Public Officers attending : Item II

Mrs Carrie LAM CHENG Yuet-ngor
Chief Secretary for Administration

Mr Rimsky YUEN Kwok-keung, SC
Secretary for Justice

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

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

Mr Freely CHENG Kei
Principal Assistant Secretary for Constitutional and Mainland
Affairs

Item III

Miss Annie TAM Kam-lan
Permanent Secretary for Labour and Welfare

Ms Doris CHEUNG Mei-chu
Deputy Secretary for Labour and Welfare (Welfare) 1

Miss Fiona LI Wing-suen
Principal Assistant Secretary for Labour and Welfare (Welfare) 2

Ms Diana LAM Man-yee
Senior Government Counsel
Department of Justice

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

Ms Amy WONG Pui-man
Principal Assistant Secretary for Security C

Ms Queenie WONG Ting-chi
Acting Assistant Commissioner (Policy Support)
Labour Department

Mr FUNG Man-chung
Assistant Director of Social Welfare (Family and Child Welfare)
Social Welfare Department

Dr Joanna LEUNG Oi-shan
Senior Medical and Health Officer (Family Health Service)
Department of Health

Item IV

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

Miss Helen CHUNG Chi-ching
Principal Assistant Secretary for Constitutional and Mainland
Affairs

Miss LEE Sau-kong
Senior Assistant Solicitor General
Department of Justice

Attendance by : Item III
invitation

Mr LO Ho-yuen

Equal Opportunities Commission

Mr Ferrick CHU Chung-man
Head, Policy & Research

Justice Centre Hong Kong

Ms Victoria Wisniewski Otero
Advocacy Officer

Shatin Women's Association

Miss LAM Yuk-wa
Project Supervisor

Kowloon Federation of Associations

Ms LEUNG Fu-wing
Vice President

Tuen Mun District Women's Association Limited

Miss WONG Pan
Assistant Project Officer

Kowloon Women's Organisations Federation

Ms Ann SO
Chairman

Hong Kong Women Union

Ms Amy CHAN
Chairwoman

Hong Kong Women Development Association

Ms CHUNG Kwan-chun
Vice-chairperson

Ms YEUNG Lei-mui

Miss LAM Shuk-kwan

Ms ZHANG Jie-hong

Ms WU Yue-ti

The Democratic Party

Ms CHAN Shu-ying

The Association for the Advancement of Feminism

Miss CHAN Yuk-lam
Executive Committee

Progressive Labour Union of Domestic Workers

Ms Non Maria Veneranda M

Indonesian Migrant Workers Union

Ms Sringatin
Chairperson

Hong Kong Domestic Workers General Union

Ms CHUNG Bik-mui
Chairperson

Women Affairs Committee, Hong Kong Confederation of Trade Unions

Miss WONG Siu-woon
Organizing Secretary

Federation of Asian Domestic Workers Unions

Ms Alvarez Aida F

Mission for Migrant Workers

Ms Cynthia Caridad A. Tellez
General Manager

United Filipinos in Hong Kong

Ms Dolores Balladares
Chairperson

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

[LC Paper Nos. CB(2)1831/13-14(01), CB(2)1917/13-14 and CB(2)2062/13-14(01)]

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

- (a) letter dated 13 June 2014 from Hong Kong Human Rights Monitor to the Panel [LC Paper No. CB(2)1831/13-14(01)];
- (b) public consultation on provisional recommendations on boundaries and names of District Council ("DC") Constituency Areas for the 2015 DC Election [LC Paper No. CB(2)1917/13-14]; and

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- (c) annual declarations of interests made by Principal Officials under the Political Appointment System and Director of the Chief Executive's ("CE") Office [LC Paper No. CB(2)2062/13-14(01)].

II. The CE's Report to the Standing Committee of the National People's Congress ("NPCSC") and Consultation Report on the Methods for Selecting CE in 2017 and for Forming the Legislative Council ("LegCo") in 2016 ("Consultation Report")
[LC Paper Nos. CB(2)2054/13-14(01) and CB(2)2043/13-14]

Method for selecting CE in 2017

Procedures for nominating CE candidates

2. Mr Alan LEONG said that he had learnt from press reports the comments made by the Chief Secretary for Administration ("CS") on civic nomination, nomination by political parties and the "three-track nomination proposal" at a closed media briefing in May. He requested CS to state her views again in public regarding the proposals. CS said that as the Task Force on Constitutional Development ("Task Force") had reiterated during the five-month public consultation period, in dealing with the methods for selecting CE in 2017 and for forming LegCo in 2016, legal and political requirements as well as considerations in terms of actual operation had to be taken into account. For legal requirements, the proposal should be strictly in accordance with the Basic Law ("BL") and the relevant Interpretation and Decisions of NPCSC. CS said that proposals which were highly unlikely to conform to BL would not be included in the second phase of public consultation.

3. Mr Alan LEONG further asked whether there was any plan to arrange meetings between pan-democratic Members and persons who had put forward proposals that complied with international standards with Mainland officials responsible for Hong Kong's constitutional development. CS said that as CE had said, the Administration would continue to strive to facilitate communication between Members and interested parties with the Central Authorities, and to this end, the duty visit of LegCo Members to Shanghai in April 2014 had been arranged.

4. Ms Claudia MO said that the suggestion made by some people that the Hong Kong community should first accept any constitutional reform

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package even though it had put in place "screening" procedures in the nomination mechanism and seek to refine it later was unacceptable, as refinements could hardly be made once the package was endorsed by LegCo. She asked whether civic nomination had already been ruled out and whether members of the Task Force would resign in case the package of proposals put forth by the Administration was voted down by LegCo. Dr KWOK Ka-ki said that civic nomination had long been practised in various geographical constituency ("GC") direct elections and did not see why it should be rejected. CS reiterated that electoral reform proposals would have to comply with BL and the relevant Interpretation and Decisions of NPCSC. According to BL 45, "The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures."

5. Dr Kenneth CHAN said that while the CE's Report to NPCSC mentioned that "The mainstream opinion is that Article 45 of the Basic Law has already made clear that the power to nominate CE candidates is vested in the NC only, and that the NC has a substantive power to nominate. Such power of nomination must not be undermined or bypassed directly or indirectly", CE also pointed out in his Report that "it is worth noting that there were still considerable views after the conclusion of the public consultation that the element of 'civic nomination' should be included in the nominating procedures of the universal suffrage for the CE election". Dr CHAN expressed dissatisfaction that the CE's Report, however, did not address these fundamental differences regarding the nomination procedures. He asked whether the Administration would only seek to secure four votes from the pan-democratic camp in order to have the package of proposals passed by a two-thirds majority of LegCo, while the aspiration of some 700 000 people for civic nomination was to be disregarded.

6. CS said that the Government aimed to come up with a proposal which could be implemented from the legal perspective and was supported by Hong Kong people. She said that to achieve this, the discussion had to be based on the legal framework constituted by BL, and reiterated that BL provided that the power to nominate was vested in the nominating committee ("NC") only, and that the power was a substantive one. The tasks ahead would be to forge consensus on the composition of NC and to enhance its representativeness.

7. Mr Charles MOK criticized that as seen from the Consultation Report, the Government had neither made any efforts to narrow the gap in views nor

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endeavored to compromise in its consideration of different proposals. CS explained that the purpose of the first round of public consultation was to facilitate CE to make a report to NPCSC on whether the methods for selecting the CE in 2017 and for forming the LegCo in 2016 should be amended. It was inappropriate for the Task Force to rule out, comment on or recommend any specific proposal in the Consultation Report.

8. Referring to paragraph 11(viii) of CE's Report regarding the number of CE candidates, Mr IP Kin-yuen queried why it was particularly mentioned twice the number of "two to three", while opinion polls revealed that "quite a number of respondents agreed that the number of CE candidates should be between three and five" as set out in paragraph 3.46 of the Consultation Report. CS said that the suggestion of setting the number of CE candidates at "two to three" was made by some people with a reason provided, i.e. the number of candidates in the past CE elections was also around two to three. It was considered that this reason might be worth mentioning in paragraph 11(viii) of CE's Report as a reference. CS added that other suggestions received were also set out in the appendices and footnotes of the Consultation Report.

9. Ms Emily LAU and Mr Frederick FUNG criticized that the CE's Report had toned down Hong Kong people's strong aspiration for "genuine universal suffrage" and described such views as merely views of "some organisations and individuals". CS said that different views had been received on the issue of how NC should nominate CE candidates in accordance with "democratic procedures" after the end of the public consultation period. The Task Force had not concluded that there was a mainstream opinion in this regard. However, these various views and suggestions had also been included in CE's Report to NPCSC.

10. Referring to Annex II to the Consultation Report, Ms Emily LAU said that certain organizations such as the pro-Beijing New Territories Association of Societies had met with the Task Force on four occasions, while she noted that others such as Hong Kong 2020 was not given such opportunity. Ms LAU asked for the number of organizations which had requested to meet with the Task Force but unable to during the consultation period and the reasons.

11. CS said that the Task Force was not able to meet with every single organization which had requested meeting with them due to limited time. However, relevant organizations were welcome to provide written

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submissions to the Task Force. She stressed that all the views and submissions received during the consultation period had been included in the Consultation Report. As regards the information requested by Ms LAU, CS said that the Constitutional and Mainland Affairs Bureau would follow up and provide the requisite information as far as possible.

(Post meeting note : The Administration's reply letter dated 17 September 2014 was issued vide LC Paper No. CB(2)2298/13-14(01).)

12. Mrs Regina IP and Mr Christopher CHUNG enquired about the Task Force's understanding of "genuine universal suffrage" and whether there was an international model with regard to the nomination procedures. They also asked whether it was possible that "screening" would not exist in any election. Mr WONG Kwok-kin considered that all forms of elections inevitably involved screening of varying degree. Mr NG Leung-sing requested the Administration to clarify whether Hong Kong's constitutional reform should be taken forward on the basis of "international standards" or on the basis of BL and the relevant Interpretation and Decisions of NPCSC.

13. CS advised that there was no specific international model for universal suffrage, and the design and establishment of any political structure of a particular place had to have regard to the historical background of that place, and with the constitutional basis and the characteristics of that place as the foundation. She further advised that the Hong Kong Special Administrative Region ("HKSAR") was a local administrative region of the People's Republic of China ("PRC"), and the Central Authorities had the constitutional powers and responsibilities to determine the systems to be implemented in HKSAR, including the model of political structure of HKSAR. The role of the Central Authorities in this regard was reflected in the enactment and implementation of, and amendments to BL. The Secretary for Constitutional and Mainland Affairs ("SCMA") said that to his understanding, the election of CE on the basis of one-person-one-vote by all registered electors of HKSAR and in conformity with BL and the relevant Interpretation and Decisions of NPCSC should by any standard be regarded as "genuine universal suffrage".

14. Referring to the statement "The community generally agrees that the CE should be a person who 'loves the Country and loves Hong Kong'" in paragraph 11(iv) of the CE's Report to NPCSC, Mr Kenneth LEUNG asked whether there was a legal definition for "loving the Country and loving Hong Kong" and what requirements had to be met.

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15. CS said that there was no need to provide a legal definition for the expression. She explained that according to BL, the method for selecting CE consisted of three main steps: nomination, election, and appointment. Whether a person was regarded as one who "loves the Country and loves Hong Kong" would be judged by NC members, registered voters who would elect CE on the basis of one-person-one-vote, and the Central People's Government ("CPG"), as the CE-elect had to be appointed by CPG as CE.

16. Dr Helena WONG criticized that the Consultation Report was biased and not scientific, and had distorted the public views. She considered it most unacceptable that the Consultation Report had concluded that the community generally agrees that CE should be a person who "loves the Country and loves Hong Kong". She said that such an additional requirement was not provided in BL. She asked CS whether the Administration had assessed the impact on the governance of Hong Kong if the package of constitutional reform proposals was voted down by LegCo for failure to comply with international standards.

17. CS reiterated that there was no specific international model for universal suffrage. She pointed out that relevant provisions in BL, including those regarding CE's role, duties and his relationship with the Central Authorities, etc. had already adequately reflected the said requirement. She believed that the community generally agreed that CE had to be one who "loves the country and loves Hong Kong" in order to effectively perform CE's role and duties as stipulated in BL.

18. With reference to a newspaper article in 1944, Mr LEUNG Kwok-hung said that the Chinese Communist Party had also advocated safeguarding people's rights to stand for election and to vote. He expressed strong dissatisfaction that the constitutional development of Hong Kong was being confined to a "bird cage".

19. Dr Fernando CHEUNG cautioned that the delay in democratic development of Hong Kong had driven many young people out of patience and they would resort to civil disobedience or drastic actions to fight for genuine democracy. CS responded that the Administration was committed to taking forward Hong Kong's constitutional development and would strive to work together to lay a milestone in the democratic development of Hong Kong by implementing universal suffrage for CE election in 2017. She said that when universal suffrage for CE election was implemented, CE would be elected through "one person, one vote" by over five million eligible voters in the territory.

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20. Mr WONG Kwok-hing expressed appreciation of the Consultation Report and enquired about the action to be taken by the Administration to narrow the differences amongst different sectors of the community prior to the NPCSC meeting in August 2014. CS said that to narrow differences in views, discussion on the methods for selecting CE and for forming LegCo should be conducted on the basis of the legal framework constituted by the relevant provisions in BL and the NPCSC Interpretation and Decisions. She advised that any proposal which deviated from this legal framework was unlikely to be passed by a two-thirds majority in LegCo and obtain the consent of CE and the approval of NPCSC.

Composition of NC and method for forming NC

21. Mr Jeffrey LAM queried whether NC could really pre-determine who would be elected as CE given that a certain number of candidates were to be nominated by a broadly representative NC for voters to vote on in the CE election in 2017. CS said that in accordance with BL 45, in selecting CE by the method of universal suffrage, a broadly representative NC was required to be formed and it would comprise members from various sectors of the community. All eligible voters could seek to be elected as members of NC so as to participate in the nomination of CE candidates.

22. Ms Cyd HO said that the existing method of selecting CE by the Election Committee ("EC") had long been criticized as a small-circle election and that EC was just used as a tool to ordain who was to be elected as CE. She said that people were now worried that NC, if formed by following the same framework of four sectors of EC, would also be used to ordain who could be the CE candidates for voters to vote on. She also pointed out that according to various opinion polls, 40 to 50% of the respondents did not accept that a constitutional reform package, even though it was unsatisfactory, should be accepted first. She asked whether these concerns and polling results had been reflected to the Central Authorities.

23. CS said that the Administration had been faithfully reflecting the views of Hong Kong people to the Central Authorities and would continue to do so in a timely manner. CS further said that EC comprised of members drawn from many different sectors and was regarded as broadly representative. It had enabled balanced participation of various strata and sectors, which was one of the four major principles on constitutional development under BL.

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24. Dr Priscilla LEUNG considered that there were merits in forming NC by following the same framework of the four sectors of EC in order to facilitate the development of the capitalist economy of HKSAR. She urged the Administration to state categorically that civic nomination was not consistent with BL. Mr Christopher CHEUNG also emphasized the need to discuss the methods for selecting CE in 2017 and for forming LegCo in 2016 on the basis of the legal framework constituted by BL and the relevant Interpretation and Decisions of NPCSC. He considered that constitutional development should proceed in accordance with the principle of gradual and orderly progress, and the electoral method for the CE election in 2017 would not be the ultimate model and could be further refined. Dr CHIANG Lai-wan shared the views and requested the Administration to explore innovative ways to promote understanding of BL and the fundamental principles of constitutional development.

Method for forming LegCo in 2016

25. Mr WONG Yuk-man said that BL did not stipulate that the election of all Members of LegCo by universal suffrage could only be implemented after CE was selected by universal suffrage, and it was only the Decision of NPCSC in 2007 that had set such a pre-condition. Mr WONG took the view that the functional constituencies ("FCs") should be abolished in 2016, and the Decision of NPCSC should be amended in order to meet the aspiration of the general public for implementing universal suffrage for LegCo election in 2016. He also queried whether CE's recommendation not to amend Annex II to BL had contravened the "principle of gradual and orderly progress" stipulated in BL 68 if the number of LegCo seats and the half-and-half ratio between Members returned by FCs and Members returned by GCs were to remain unchanged in the following term.

26. Mr Ronny TONG, Dr KWOK Ka-ki and Mr SIN Chung-kai expressed disappointment that the two reports had concluded that Annex II to BL regarding the method for forming LegCo was not to be amended, and queried the basis of the conclusion. Mr SIN said that a mainstream view in the community was abolition of all FC seats in 2016 and, if not, some FCs to be abolished first in 2016 in order to comply with the "principle of gradual and orderly progress" stipulated in BL 68.

27. Mr SIN Chung-kai further said that without amending Annex II to BL, it also meant that the split voting system was to remain intact. He pointed out that in the current and the last terms of LegCo, quite a number of

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important motions had been voted down simply because they could not obtain a simple majority vote in each of the two groups of Members present. He strongly urged the Administration to take heed of the public aspiration for abolition of FCs and the split voting system. Mr Ronny TONG also said that Members of the pan-democratic camp had been in strong demand for the abolition of the split voting system. He said that in accordance with the Decision of NPCSC in 2007, the procedures for voting on bills and motions in LegCo only had to remain unchanged for the current term of LegCo. Considering that there was only a slim chance for achieving universal suffrage for CE election in 2017, Mr TONG asked whether the Administration would consider submitting a further report to NPCSC after August to request NPCSC to reconsider allowing Annex II to BL to be amended. He hoped that this would enable slight progress to be made with the method for forming LegCo while universal suffrage could not be achieved for the CE election.

28. CS advised that the recommendation not to amend Annex II to BL was based on the views collected during the five-month public consultation period. CS said that in fact, very few people had expressed views on the method for forming LegCo in 2016 during the some 200 consultation and district events. Among the views received in this regard, it was raised that since the successful implementation of universal suffrage for the CE election in 2017 was a pre-condition for the election of all Members of the LegCo by universal suffrage, efforts should be focused on the proper handling of universal suffrage for the CE election in 2017. It was also raised that given the substantial changes introduced to the LegCo election in 2012, there was no need to amend Annex II to BL regarding the method for forming the LegCo in 2016. CS added that "the principle of gradual and orderly progress" did not mean that substantial changes had to be made to the method for forming LegCo in each of its terms.

29. Ms Claudia MO asked whether the Administration would put forth transitional arrangements for LegCo election in 2016, e.g. expanding the electorate base of FCs and abolishing certain FCs. CS advised that certain issues regarding the LegCo electoral arrangements in 2016 could still be dealt with by amending the relevant local legislation provided that such amendments were in compliance with Annex II to BL.

30. Mr CHAN Chi-chuen pointed out that in the 2012 LegCo Election, all candidates who belonged to political parties in the pan-democratic camp had called for, at least, reducing the number of FC seats, if not immediate

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abolition of all FC seats. The opinion survey conducted by the University of Hong Kong also found that 47% of the respondents agreed to abolish FCs in 2016, and many participants of the July 1 Rally called for the same. He queried why these views were not included in the Consultation Report or the CE's Report.

31. CS said that relevant opinion polls were covered in the Consultation Report, including the findings of the survey referred to by Mr CHAN, and those of the poll conducted by the Hong Kong Research Association which had found that 74% of the respondents agreed to deal with the method for selecting CE by universal suffrage first, to be followed by method for forming LegCo by universal suffrage. She added that many LegCo Members also opined that the method for forming LegCo in 2016 should not be substantially amended.

32. Mr Albert HO said that BL 68 provided that the method for forming the legislature had to be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress, with the ultimate aim of the election of all the Members of LegCo by universal suffrage. He recalled that the HKSAR's report submitted to the relevant United Nations ("UN") Committee under the International Covenant on Civil and Political Rights in 1999 had made it clear that the FC system was a transitional arrangement, as BL provided that all LegCo Members would ultimately be returned by universal suffrage. Mr HO considered that according to the principle of gradual and orderly progress, and to materialize what the Administration had told the UN Committee in 1999, the number of GC seats should be gradually increased while the number of FC seats should be gradually reduced with a view to attaining abolition of all FC seats. He queried why nothing had been done over the years to pave the way for the abolition of all FC seats.

33. CS said that the ultimate aim and timetable of achieving dual universal suffrage was clearly provided in the Decision of NPCSC in 2007, and according to which the selection of CE by universal suffrage was a pre-condition for the election of all Members of LegCo by universal suffrage. CS advised that BL 68 did not require that the LegCo electoral method had to be amended in each term in order to achieve universal suffrage. In fact, after the package of constitutional reform proposals put forth by the Administration was voted down by LegCo in 2005, no amendments could be made to the methods for selecting CE and for forming LegCo as stipulated in Annexes I and II to BL at that time also. Mr Albert HO said that if Annex

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II to BL was not to be amended this time, the result would be that not one single FC seat had ever been reduced from 2008 to 2020.

34. Mr Frederick FUNG queried the reason for the Task Force to state that "as relatively substantial amendments had been made to the method for forming the LegCo in 2012...there is no need to amend Annex II to the Basic Law regarding the method for forming the LegCo in 2016". He said that notwithstanding the "substantial amendments" made, the half-and-half ratio of Members from FCs and those from GCs through direct elections had actually remained unchanged. He also considered that it would run counter to the "principle of gradual and orderly progress" if Annex II to BL was not to be amended.

35. The Secretary for Justice said that apart from the principle of "gradual and orderly progress", it was clearly stipulated in BL 68 that "the actual situation in the Hong Kong Special Administrative Region" had to be taken into account as well in considering whether Annex II to BL was to be amended. He also pointed out that as stipulated in Annex II to BL, amendments would be made to the method for forming LegCo "if there is a need to amend". However, based on the views received during the public consultation period, the majority view was that there was no need to amend Annex II to BL.

36. Mr Steven HO considered that FC system had its value and should be retained. He suggested that the Administration should come up with proposals which sought to refine, not to abolish, the FC system. Mr Paul TSE considered that implementing universal suffrage for the LegCo elections did not necessarily mean that FC seats had to be abolished and only direct GC elections were held. He said that when LegCo elections were implemented by the method of election of all Members by universal suffrage, FCs could be retained provided that the principles of universality and equality were complied with in the design of how Members should be returned through FC elections.

Other issues

37. Dr KWOK Ka-ki and Mr Kenneth LEUNG criticized the use of vague expressions such as "some views", "generally agrees", "mainstream opinion" and "relatively more views" in the Consultation Report. Ms Starry LEE, however, considered that the Consultation Report had truthfully reflected the views received. She enquired about the number of submissions received

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and the proportion of them which expressed support for conducting constitutional reform on the basis of BL.

38. CS advised that the approach of compilation of the Consultation Report was in line with the established practices adopted in the previous two constitutional reform exercises, and the work had been conducted in a professional and meticulous manner. The full texts of the views received during the public consultation period had also been uploaded to the relevant official website. SCMA said that the views received were not presented in the Report on a quantified basis as the Report aimed to consolidate the views received from LegCo Members, the some 200 consultation and district events, the some 124 000 submissions from different groups and individuals, as well as the results of various opinion polls. He stressed that regarding implementation of universal suffrage for CE election in 2017, it was clear from the views received that there was a sufficiently strong basis for CE to kick-start the "Five-step Process". The views also reflected that the community generally agreed that discussion on constitutional development should be made on the basis of BL and the relevant Interpretation and Decisions of the NPCSC.

39. Mr CHUNG Kwok-pan requested the Administration to provide a timetable on "Five-step Process" in relation to any amendment to the method for selecting CE in 2017. SCMA said that after NPCSC had made the decision in end of August 2014 that amendments could be made to the method of selection, another round of public consultation exercise would be launched in the fourth quarter of 2014. Based on the views received, the Administration would formulate a package of proposals for the method for selecting CE in 2017. Upon completion of the study of the package by the relevant LegCo committee, the Administration would move a motion to amend Annex I to BL and seek to obtain the endorsement by a two-thirds majority of all Members of LegCo. The relevant amendments to the annex to BL, if endorsed by LegCo and was given consent by CE, would be reported to NPCSC for approval, followed by the introduction of the relevant bill to prescribe the electoral arrangements. He added that the Interpretation of NPCSC in 2004 and the Decision in 2007 also stipulated that if no amendment was made to the method for selecting CE in accordance with the legal procedures, the method for selecting CE used for the preceding term shall continue to apply. If that was the case, whether amendments would need to be introduced to the local legislation (i.e. the CE Election Ordinance) would depend on whether technical amendments were required to be made and whether there were issues that could be dealt with by amending the local legislation.

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40. In reply to Mr WONG Kwok-kin, CS said that the Consultation Report only included views received during the five-month public consultation period. As there were still considerable views put forward after the end of the consultation period, CE had included them in paragraphs 13 and 14 of his Report to NPCSC.

41. Dr LAM Tai-fai and Mr NG Leung-sing expressed dissatisfaction that some people had resorted to foreign influences in a bid to steer the constitutional reform, thus causing a split in the community. CS requested Members to note that the Office of the Commissioner of the Ministry of Foreign Affairs of the PRC in HKSAR had stated that constitutional development of Hong Kong was China's domestic affairs. CPG was firmly opposed to interference in any form by any country.

42. Referring to paragraph 14 of the opening remarks of CS at the special House Committee meeting on 15 July 2014, Mr James TO requested CS to explain further her view that "We should have the courage and wisdom to forge consensus in political crevices". CS said that the successful implementation of universal suffrage hinged on whether we were able to formulate specific proposals on the basis of BL and the relevant Interpretation and Decisions of NPCSC. She advised that the senior Mainland officials had recently reiterated that the Central Authorities sincerely hoped that universal suffrage could be achieved for CE election on schedule in 2017 and hoped that all sectors of the community could forge consensus on the basis of BL.

III. Third Report of HKSAR under the UN Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW")

[LC Paper Nos. CB(2)2054/13-14(02) and (03)]

Presentation of views by deputations/individuals

Mr LO Ho-yuen

43. Mr LO Ho-yuen expressed concern about the low employment rate of disabled women (42.5%) as opposed to that of disabled men (69.4%). He called on the Administration to address the perpetuation of gender stereotypes through enhancing public education and publicity. He considered that the respite service for disabled persons should be enhanced and the Women's Commission should include women with a disability as representatives.

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Equal Opportunities Commission ("EOC")
[LC Paper No. CB(2)2054/13-14(04)]

44. Mr Ferrick CHU Chung-man presented the views of EOC as detailed in its submission. EOC made a number of suggestions regarding legislative and other measures to tackle discrimination issues.

Justice Centre Hong Kong
[LC Paper No. CB(2)2112/13-14(01)]

45. Ms Victoria Wisniewski Otero presented the views of Justice Centre Hong Kong as detailed in its submission. She elaborated the challenges faced by women who were non-refoulement protection claimants in Hong Kong, including the lack of support measure to address their housing needs. She called on the Administration to protect the human rights of these women.

Shatin Women's Association

46. Miss LAM Yuk-wa considered that the Administration should allocate more resources to public hospitals in the New Territories to meet the large service demands from women of low-income groups. She also proposed extending the opening hours of public maternal and child health centres, and asked for free medical and health checks for women of low-income groups be organized.

Kowloon Federation of Associations

47. Ms LEUNG Fu-wing called on the Administration to provide cervical cancer vaccine/screening and breast cancer screening for free or at a low cost. She also called on the Administration to explore the feasibility of extending the period of statutory paid maternity leave, encourage breastfeeding and enhance the provision of child care services to meet the needs of working women.

Tuen Mun District Women's Association Limited
[LC Paper No. CB(2)2112/13-14(02)]

48. Miss WONG Pan presented the views of Tuen Mun District Women's Association Limited as detailed in its submission. She proposed

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introducing legislation on paternity leave, extending the paid maternity leave period to 12 weeks, and enhancing the provision of child care services, etc.

Kowloon Women's Organisations Federation
[LC Paper No. CB(2)2112/13-14(03)]

49. Ms Ann SO presented the views of Kowloon Women's Organisations Federation as detailed in its submission. She called on the Administration to promote public education on gender equality, tackle domestic violence, and facilitate participation of women in various policy consultative committees.

Hong Kong Women Union
[LC Paper No. CB(2)2112/13-14(04)]

50. Ms Amy CHAN presented the views of Hong Kong Women Union as detailed in its submission. She proposed that the Administration should implement the "Hong Kong Women's Development Goals" formulated by the Women's Commission and provide an implementation timetable.

Hong Kong Women Development Association
[LC Paper No. CB(2)2112/13-14(05)]

51. Ms CHUNG Kwan-chun presented the views of Hong Kong Women Development Association as detailed in its submission. She called on the Administration to be more proactive in promoting family-friendly employment practices in the workplace.

Ms YEUNG Lei-mui

52. Ms YEUNG Lei-mui gave an account of her experience in seeking help from social workers. She said that, as a victim of domestic violence, she should be entitled to apply for temporary housing under the Conditional Tenancy Scheme even though she might not meet certain requirements. She considered the support service provided by the Administration to victims of domestic violence was grossly inadequate.

Miss LAM Shuk-kwan
[LC Paper No. CB(2)2112/13-14(07)]

53. Miss LAM Shuk-kwan presented the views of the Forthright Caucus as detailed in her submission. She pointed out that the Administration

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failed to take measures to implement the recommendations made by the UN Committee on the Elimination of Discrimination against Women.

Ms ZHANG Jie-hong

54. Ms ZHANG Jie-hong told the meeting about her experience of seeking assistance under the "Victim Support Programme for Victims of Family Violence". She expressed disappointment that the Social Welfare Department ("SWD") failed to exercise discretion to exempt her from the seven years' residency requirement under the Conditional Tenancy Scheme.

Ms WU Yue-ti

55. Ms WU Yue-ti expressed concern about the lack of support and assistance for victims of domestic violence. She said that she was arranged rehousing after staying in the refuge centre but at the same time, her application for comprehensive social security assistance was rejected due to failure to meet the seven years' residency requirement. She considered that the support provided by the Administration to victims of domestic violence was grossly inadequate.

The Democratic Party

56. Ms CHAN Shu-ying urged the Administration to provide a timetable for implementing measures to ensure that indigenous women enjoyed equal rights as indigenous men under the Small House Policy. She also urged the Administration to step up tackling domestic violence issues and set up a specialized court to deal with such cases. She further called on the Administration to abolish traditional FCs which in her view had hindered the participation of women in the work of LegCo.

The Association for the Advancement of Feminism

57. Miss CHAN Yuk-lam expressed concern that the electoral system of FCs might constitute indirect discrimination against women and urged for the abolition of FCs. She also considered that the Women's Commission should be directly under the CS' Office and authorized to oversee the implementation of CEDAW in HKSAR.

Progressive Labour Union of Domestic Workers

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58. Ms Non Maria Veneranda M urged the Administration to waive the cost of visa extension for foreign domestic helpers ("FDHs") who were seeking redress for infringement of their labour rights, and to provide them with support service such as accommodation, interpretation and food while seeking redress. She also urged the Administration to abolish the "live-in requirement" and review the Labour Tribunal's claim adjudication processes to ensure that no FDHs were pressurized to settle their claims.

Indonesian Migrant Workers' Union
[LC Paper No. CB(2)2112/13-14(08)]

59. Ms Sringatin presented the views of Indonesian Migrant Workers' Union as detailed in its submission. She gave a number of examples of overcharging of placement fees by employment agencies.

Hong Kong Domestic Workers General Union

60. Ms CHUNG Bik-mui expressed concern that local part-time domestic helpers were not entitled to any employment benefits (e.g. paid sick leave). She called on the Administration to review existing legislation and enhance protection for these workers.

Women Affairs Committee, Hong Kong Confederation of Trade Unions
[LC Paper No. CB(2)2139/13-14(01)]

61. Miss WONG Siu-woon presented the views of Women Affairs Committee, Hong Kong Confederation of Trade Unions as detailed in its submission. She considered that the existing policies did not provide sufficient support services to working women who had to take care of their families. She pointed out that the provision of child care services was grossly inadequate.

Federation of Asian Domestic Workers Unions

62. Ms Alvarez Aida F urged the Administration to tackle illegal practices of employment agencies which collected excessive fees from FDHs in Hong Kong. She also called on the Administration to abolish the "two-week rule"; include FDHs under the scope of protection of statutory minimum wage; and ensure that FDHs received equal treatment as other workers in accordance with the International Labour Organization Domestic Workers Convention, 2011 (No. 189).

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Mission for Migrant Workers

[LC Paper No. CB(2)2112/13-14(09)]

63. Ms Cynthia Caridad A. Tellez presented the views of Mission for Migrant Workers as detailed in its submission. She called on the Administration to repeal the "live-in requirement".

United Filipinos in Hong Kong

[LC Paper No. CB(2)2112/13-14(10)]

64. Ms Dolores Balladares presented the views of United Filipinos in Hong Kong as detailed in its submission. She considered that all employees in Hong Kong including FDHs should be equally protected under the statutory minimum wage regime. She also considered that the working hours of FDHs must be regulated.

65. Members noted the submissions provided by individuals/organizations not attending the meeting [LC Paper Nos. CB(2)2112/13-14(06), CB(2)2054/13-14(05) and CB(2)2082/13-14(01)].

Discussion

Domestic violence

66. Ms Emily LAU requested the Administration to give an account of the measures taken to protect victims of domestic violence. Mr CHAN Chi-chuen said that some of the domestic violence cases involved cohabitants who were sexual minorities and that the Administration should also provide the same support measures and assistance to the victims in such cases. Dr Fernando CHEUNG considered that the decrease in domestic violence cases was just due to the new policy adopted by the Police on the classification of domestic violence cases. He expressed strong views on the introduction of the new category of "Domestic Incident".

67. The Permanent Secretary for Labour and Welfare ("PS(LW)") responded that the Administration attached great importance to tackling the issues of domestic violence and a range of preventive, supportive and specialised services for domestic violence victims and families in need were provided. She said that the provision of relevant support services would be further strengthened in the light of operational experience. As regards the individual cases cited by the deputations on housing arrangements for domestic violence victims, PS(LW) said that SWD would follow up as

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appropriate after the meeting and requested the deputations concerned to provide relevant details for follow-up by SWD.

Treatment of FDHs

68. On the protection of FDHs' rights, Ms Emily LAU enquired what measures had been taken by the Administration to combat illegal practices of employment agencies and to protect FDHs from abuses by their employers. Dr Fernando CHEUNG pointed out that the Administration had yet to respond to some of the recommendations made by the UN Committee concerned after its consideration of the HKSAR's second report in 2006, e.g. demand to abolish the "two-week rule".

69. PS(LW) acknowledged the significant contributions by FDHs and local domestic helpers to the community. She said that the Labour Department ("LD") conducted regular inspections to employment agencies to ensure compliance with the law. She added that FDHs enjoyed the same employment rights and benefits provided under the labour laws as local workers, and were further protected by a standard employment contract where they enjoyed the minimum allowable wage which would be reviewed annually. Should there be any FDHs who were suspected of being abused, they were encouraged to report their cases to LD for follow-up.

70. Echoing the concerns raised by the Justice Centre Hong Kong and Mission for Migrant Workers, Mr Kenneth LEUNG enquired about the rationale of the continued adoption of the "live-in requirement" for FDHs given that some FDHs had complained that they were not provided with reasonable living condition and had very long working hours. He was also concerned about the problem of overcharging of placement fees and asked what measures were taken to tackle the illegal practices of employment agencies.

71. PS(LW) explained that the "live-in requirement" formed the cornerstone of Hong Kong's policy of importing FDHs. It had been an established policy that priority in employment should be given to the local workforce, and importation of workers should only be allowed where there was proven manpower shortage in specific trades that could not be filled by local workers. She advised that a prospective employer had to demonstrate to the Immigration Department that he/she was able to provide "suitable accommodations and reasonable privacy" in his/her application for employment of FDHs. On the regulation of employment agencies, she said

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that according to the Employment Ordinance ("EO"), a worker only had to pay at most 10% of his/her first month salary to the employment agencies. Regarding the huge debts incurred by some FDHs due to the high level of fees and commissions charged by the employment agencies or recruiters in their home countries, PS(LW) said that the Government was concerned about the problem and had thus proactively brought the matter to the attention of relevant Consulates General in HKSAR and their senior officials, and had urged them to bring the problem to the attention of their respective Governments to tackle the issue at source.

Labour rights

72. Dr Fernando CHEUNG said that many female employees took up fragmented jobs and casual work. However, these employees were not entitled to the rights and benefits under EO because of not meeting the "4-18" requirement for a continuous contract and were not protected under the mandatory provident fund scheme. Dr CHIANG Lai-wan said that the Democratic Alliance for the Betterment and Progress of Hong Kong also considered that the Administration should conduct a review so as to afford better protection to these employees.

73. Dr CHIAN Lai-wan further said that the introduction of paid paternity leave had been shelved and she was worried that the issue might be held up for a protracted period of time. Dr Helena WONG considered that the Administration should strive to introduce paid paternity leave but that the leave period of three days proposed by the Administration was too short. Dr WONG pointed out that there was also room for improvement with the existing system of paid maternity leave. She further said that many women were the "unpaid carers" of their family members with chronic diseases. She urged the Administration to enhance relief support services for these women carers and strengthen residential care services.

Protection of sex workers

74. Referring to paragraph 11 of the List of issues raised by the UN Committee which stated that there were reports that women in prostitution in Hong Kong were forced to work alone in isolated settings where they were exposed to higher risk of abuse, exploitation and even life-threatening violence at the hands of the clients owing to legislative provisions, Mr CHAN Chi-chuen asked whether the Administration would consider relaxing the existing policy of prohibiting more than one sex worker working at the same premises. PS(LW) explained that the current

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legislation prohibiting more than one sex worker working at the same premises struck a reasonable balance, taking account of the human rights and privacy of sex workers, the well-being of other members of the community as well as the prevailing moral values of the community.

Gender mainstreaming

75. Dr CHIANG Lai-wan considered that the Administration should take measures to enhance women's participation in public and political affairs. She said that, e.g., the number of female Members was only 11 in the Fifth LegCo. She hoped that the minimum proportion of female members of the future NC would reach 25%. Mr IP Kin-yuen further pointed out that none of the current 30 Members returned by the traditional FCs were female Members. He considered that the FC system had hindered the participation of women in the work of LegCo and should be abolished.

76. Dr Helena WONG enquired about the implementation of the Gender Mainstreaming Checklist ("the Checklist") by bureaux and departments and the training provided to civil servants in this area. PS(LW) responded that gender mainstreaming was one of the important areas of government policies and, currently, some 50 policy and programme areas had applied the Checklist. She said that apart from providing training to frontline staff, ongoing training was provided to senior officials to facilitate the incorporation of gender mainstreaming concepts in the formulation of government policies.

77. Concluding the discussion, PS(LW) assured members of the Administration's commitment to fulfilling its obligations under CEDAW. She said that every effort would be made to advance the status of women in Hong Kong, and meet their diversity of needs at different stages of their development.

IV. Disqualification of candidates with unserved prison sentences and other related matters

[LC Paper Nos. CB(2)2054/13-14(06)-(07), and CB(2)2094/13-14]

78. At the invitation of the Chairman, the Deputy Secretary for Constitutional and Mainland Affairs ("DSCMA") took members through the salient points of the Consultation Paper on Disqualification of Candidates with Unserved Prison Sentences and other Related Matters. The consultation period would end on 30 September 2014.

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79. In response to Ms Cyd HO's enquiry on the timetable for the relevant legislative amendment exercise, DSCMA advised that depending on the responses received during the public consultation, the Administration planned to submit the legislative amendment proposal to LegCo by the end of 2014. Ms HO considered that there was a rising trend of instituting political prosecution against participants of public meetings and processions. She asked whether such persons would be disqualified from being nominated as a candidate at a LegCo election and from being elected as a LegCo Member. DSCMA disagreed that there was political prosecution in Hong Kong. He explained that one of the current recommendations was to maintain that any person serving a sentence of imprisonment be disqualified, regardless of the type of offences committed by the person.

80. Noting that the Administration was inclined not to disqualify a convicted person who was released under supervision, Mr CHAN Chi-chuen asked whether legislative amendments would be required to make this clear. DSCMA acknowledged that there was uncertainty in the existing laws regarding such circumstances. Senior Assistant Solicitor General ("SASG") recapitulated that on 21 June 2012, the Court of First Instance ("CFI") handed down its written judgment in a judicial review that section 39(1)(b) of the Legislative Council Ordinance ("LCO") was inconsistent with Articles 26 and 39 of the Basic Law as well as Article 21 of the Hong Kong Bill of Rights. CFI commented, but made no ruling, on the constitutionality of section 39(1)(d) of LCO which restricted a person serving a sentence of imprisonment from standing for a LegCo election. Therefore, the existing section 39(1)(d) of LCO remained valid. On the other hand, CFI struck down section 39(1)(b) of LCO as a whole. However, because the applicants of the judicial review in question were persons convicted and sentenced to imprisonment but released on bail pending appeal, CFI's ruling left open for argument that the disqualification of persons with unserved sentences (e.g. convicted person who was released under supervision) but not in exactly the same circumstances as the applicants of the judicial review in question might still be justifiable.

81. Mr CHAN Chi-chuen further enquired whether the existing law already provided that a person who was serving detention in or who had escaped from Detention Centres, Training Centres, Drug Addiction Treatment Centres, Rehabilitation Centres or a Correctional Services Department Psychiatric Centre was disqualified from being nominated as a candidate at a LegCo election and from being elected as a LegCo Member.

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SASG responded that while these institutions were custodial in nature similar to the prison regime, these institutions were not "prisons" as such. The Administration was of the view that clarification was required for this point for the avoidance of doubt.

V. Any other business

82. There being no other business, the meeting ended at 6:25 pm.

Council Business Division 2
Legislative Council Secretariat
14 October 2014