

立法會 *Legislative Council*

LC Paper No. CB(2)1827/14-15

Ref. : CB2/PL/CA

Report of the Panel on Constitutional Affairs for submission to the Legislative Council

Purpose

This report gives an account of the work of the Panel on Constitutional Affairs during the 2014-2015 Legislative Council ("LegCo") session. It will be tabled at the Council meeting of 8 July 2015 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

The Panel

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000, 9 October 2002, 11 July 2007 and 2 July 2008 for the purpose of monitoring and examining Government policies and issues of public concern relating to implementation of the Joint Declaration and the Basic Law ("BL"), relations between the Hong Kong Special Administrative Region ("HKSAR") Government and the Central People's Government and other Mainland authorities, electoral matters, district organizations, human rights, personal data protection and press freedom. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 53 members, with Hon TAM Yiu-chung and Hon Paul TSE elected as Chairman and Deputy Chairman respectively. The membership list of the Panel is in **Appendix II**.

Major work

Constitutional development

Method for selecting the Chief Executive ("CE") in 2017

4. On 7 January 2015, the Administration published the Consultation Document on the Method for Selecting the Chief Executive by Universal Suffrage ("Consultation Document") for a two-month public consultation exercise. The Panel held three meetings to discuss the Consultation Document and received views from a total of 289 deputations/individuals.

5. The Administration emphasized that constitutional development must be built on the basis of BL and the Decision of the Standing Committee of the National People's Congress ("NPCSC") on 31 August 2014¹ ("the Decision"). Some members, however, considered that the Decision imposed a very restrictive framework on the method for selecting CE in 2017, which included that, when the selection of CE was implemented by the method of universal suffrage, the provisions for the composition of the nominating committee ("NC") would have to be made in accordance with the composition of the existing Election Committee ("EC"); NC would nominate two to three candidates; and each candidate must have the endorsement of more than half of all the members of NC. These members considered that the Decision throttled room for implementing "genuine universal suffrage". Any government proposal based on this framework would not comply with international standards of universal suffrage nor give voters a genuine choice. They took the view that the current-term Government should reactivate the "Five-step Process" as soon as possible. Some other members, however, emphasized the need to discuss the method for selecting CE in 2017 on the basis of the legal framework constituted by BL and the relevant Interpretation and Decisions of NPCSC. They considered that constitutional development should proceed in accordance with the principle of gradual and orderly progress.

6. The Administration stressed that the Decision was made strictly in accordance with BL and constitutional process, and was undisputedly legally effective. As far as constitutional procedures were concerned, the Government had already completed the second step of the "Five-step Process" for amending the method for selecting the CE. The next step was for the Government to introduce a constitutional reform proposal and secure the endorsement by a two-thirds majority of all Members. According to the Decision, if the proposal was rejected, the method for selecting CE in 2012 would continue to apply in 2017.

7. On 22 April 2015, the Administration published the Consultation Report and Proposals on the Method for Selecting the Chief Executive by Universal Suffrage. At its meeting on 24 April 2015, the House Committee agreed to set up the Subcommittee on Proposals on the Method for Selecting the Chief Executive in 2017 ("the Subcommittee") to study the Administration's proposals. The Subcommittee reported the outcome of its deliberations to the House Committee on 5 June 2015. The Government moved the motion concerning the Amendment to the Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region at the Council meeting of 17 June 2015. The motion was negated by LegCo.

¹ On 31 August 2014, NPCSC adopted the Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016.

2016 LegCo election

8. According to the Decision, the existing formation method and voting procedures for LegCo as prescribed in Annex II to BL will not be amended. The formation method and procedures for voting on bills and motions of the Fifth LegCo will continue to apply to the Sixth LegCo in 2016. In other words, the Sixth LegCo in 2016 should continue to consist of 70 Members, and the number of Members returned each by the geographical constituency ("GC") and functional constituency ("FC") elections is 35 respectively. The Panel was consulted on the proposed necessary technical amendments for the 2016 LegCo election, including technical amendments concerning the electorate of FCs, the name of an FC and counting procedures for the 2016 LegCo election. Some members pointed out that BL 68 provided that the method for forming the legislature had to be specified in the light of the actual situation in 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. They considered that the "principle of gradual and orderly progress" in BL 68 was contravened if the half-and-half ratio between Members returned by FCs and Members returned by GCs was to remain unchanged and no measure was introduced to enhance the democratic element of the electoral method. They pointed out 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 only a transitional arrangement, as BL provided that all LegCo Members would ultimately be returned by universal suffrage.

9. The Administration explained that according to the Decision, the existing formation method for LegCo as prescribed in Annex II to BL would not be amended; and the formation method of the Fifth LegCo would continue to apply to the Sixth LegCo in 2016. The Administration explained 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, as it was stipulated in BL 68 that "the actual situation in the Hong Kong Special Administrative Region" also had to be taken into account in considering whether Annex II to BL was to be amended.

10. Some members expressed concern about the criteria adopted by the Administration in considering requests from individual bodies for inclusion in certain FCs. The Administration explained that for a body to be added to an FC, it should be a representative one and was active in supporting the development of the sector concerned. The advice of the relevant bureaux/departments ("B/Ds") would be sought in consideration of whether individual bodies fulfilled such criteria.

11. The Administration also consulted the Panel on the Electoral Affairs Commission's ("EAC") provisional recommendations on the boundaries and the names of GCs for the 2016 LegCo election. Some members questioned why the numbers of Members to be returned for Hong Kong Island GC and Kowloon West GC were proposed to be changed from seven to six and from five to six respectively. They asked about the basis for the changes when the number of GCs and the upper and lower limits on the number of Members to be returned for each proposed GC would all remain unchanged. The Administration explained that as stipulated under the EAC Ordinance (Cap. 541), in the allocation of seats, EAC would have to ensure that the population in each proposed GC was as near as practicable to the number which resulted (i.e., "the resulting number") when the population quota was multiplied by the number of Members to be returned by that GC. In the delineation of GCs each time, EAC would also have to consider the allocation of LegCo seats among the proposed GCs having regard to their projected population.

12. Some members expressed concern that under the current proposal of allocating nine seats to New Territories West ("NTW") GC, there would be +10.82% of deviation from the resulting number for NTW, which, in their view, was quite large. The Administration advised that in accordance with section 19(2) of the Legislative Council Ordinance (Cap. 542) ("LCO"), the number of Members to be returned for each GC must not be less than five or greater than nine. Therefore, no more seats could be allocated to NTW. Moreover, the above rate of deviation was still within the permitted limit of deviation² under Cap. 541.

2015 District Council ("DC") election

Subsidy rate of the financial assistance for candidates and election expenses limit ("EEL")

13. The Administration consulted the Panel on its proposals to increase the subsidy rate of the financial assistance scheme for candidates of DC election from \$12 to \$14 for elections for the fifth term (from 1 January 2016 to 31 December 2019) and subsequent terms of office of DCs, and to raise EEL from \$53,800 to \$63,100 for candidates at elections for the fifth term and subsequent terms of office of DCs. The Administration explained that the proposed adjustments were made taking into account the cumulative increase in the Composite Consumer Price Index from 2012 to 2015 which was expected to be 17.3%.

14. Some members considered that the Administration should review the

² EAC shall ensure that the population in a proposed GC does not exceed or fall short of the resulting number applicable to that GC by more than 15%.

calculation of the amount of financial assistance payable to each eligible candidate and let candidates receive the highest, instead of the lowest, of the three amounts calculated in accordance with the existing formula³, so as to increase the subsidies for candidates and encourage more candidates to take part in the elections. They also suggested that the Administration should make reference to overseas experience and grant subsidy in accordance with the total number of valid votes received by the candidate. In this way, the candidate who performed well and managed to get more valid votes would receive more subsidies. They considered that this would better support election candidates and the development of political parties in Hong Kong. The Administration considered that as amendments to the calculation method were only endorsed by LegCo and implemented in 2011, and the method had been able to strike a reasonable balance between encouraging candidates to take part in the elections and ensuring prudent use of public funds, the Administration did not plan to alter the arrangements.

15. After the Administration had consulted the Panel, the District Councils Ordinance (Amendment of Schedule 7) Order 2015 (the "Order") and the Maximum Amount of Election Expenses (District Council Election) (Amendment) Regulation 2015 (the "Amendment Regulation") were made by CE in Council to give effect to the proposed increases and were submitted to LegCo for scrutiny. The Order and the Amendment Regulation came into operation on 8 May 2015.

Practical electoral arrangements

16. The Administration briefed the Panel on the key electoral arrangements proposed by EAC for the 2015 DC Election and consulted members on the Proposed Guidelines on Election-related Activities in respect of the DC Election ("Proposed Guidelines") issued by EAC. Some of the major issues raised by the Panel are summarized below.

17. On the conduct of exit polls, some members expressed concern about the possible use of exit poll results by political parties to plan their electioneering activities before the close of poll. They urged the Administration to put in place effective measures to regulate the conduct of exit polls to ensure fairness of elections. The Administration explained that in regulating exit polls, it was also important to ensure the freedom of speech, of the press and of academic research.

³ Under the current scheme, a candidate who was elected or who received 5% of valid votes or more in a DC election is eligible for financial assistance, which would be the lowest of the following three amounts : (a) the amount obtained by multiplying the subsidy rate (currently \$12) by the total number of valid votes cast for the candidate (if the election is contested) or 50% of the number of registered electors for the constituency concerned (if the election is uncontested); (b) 50% of EEL; and (c) the declared election expenses of the candidate.

To forestall any possible public suspicion about the integrity of the persons or organizations conducting exit polls (or the pollsters), organizations or persons applying for the conduct of exit polls were required to sign an undertaking not to release the results of the exit polls before the close of poll to the specified parties. According to the Proposed Guidelines, EAC might also make a reprimand or censure in a public statement which would include the name of the person or organization who/which failed to comply with the terms of the undertaking/guidelines.

18. Some members considered that EAC should provide detailed guidelines on the regulation of election advertisements ("EAs") published through social networking or communication websites on the Internet. The Administration advised that in respect of EAs published through an open platform on the Internet (e.g., electioneering messages of interactive and spontaneous nature distributed through social networking websites like Twitter, Facebook and blogs), candidates would only need to post the hyperlinks to the relevant websites onto the Candidate's Platform (i.e. an open platform maintained by the candidate) or the Central Platform maintained by the Chief Electoral Officer in order to satisfy the public inspection requirement. The Administration agreed to consider providing more detailed guidelines in this respect.

19. Some members stressed the need for the Registration and Electoral Office ("REO") to make its best endeavours to facilitate electors with mobility difficulties to exercise their right to vote. The Administration informed members that in the 2015 DC Election, REO aimed to have at least 90% of the polling stations set up in accessible venues. Where circumstances permitted, REO would set up temporary ramps at the polling stations to facilitate electors with mobility difficulties or wheelchair users. These electors might also apply to REO five days before the polling day for re-allocation to a special polling station set up in an accessible venue should they find it difficult to access the allocated polling station.

Voter registration ("VR")

20. The Panel was briefed on the key statistics relating to the 2014 Final Register of electors and the checking measures taken in the 2014 VR cycle, as well as the preparatory work for the 2015 VR cycle. Some members expressed concern that over 100 000 eligible young people aged 18 to 20 had yet to be registered as electors. They suggested that the Administration should make use of new media platforms (e.g., YouTube and internet radio stations) which were popular among young people in addition to traditional publicity channels for disseminating VR message. The Administration explained that it had been placing advertisements on popular web-based platforms in recent years for more extensive and efficient dissemination of VR message. The Administration would continue to make use of popular new media to promote VR and appeal to young people to register early.

21. In response to members' concern about measures to help elderly persons and ethnic minorities ("EM") register as electors or update their registration particulars, the Administration advised that the Home Affairs Department ("HAD") would assist in the distribution of publicity materials to district organizations like owners' corporations to promote the VR message. Besides, registration counters would be set up in large-scale activities to help eligible persons register as electors. The Administration advised that while the VR publicity documents were generally available in Chinese and English, promotional materials targeting EM were available in seven EM languages for distribution through non-governmental organizations. Moreover, EM eligible persons could obtain assistance in completing the application forms at the Centre for Harmony and Enhancement of Ethnic Minority Residents under Hong Kong Christian Service where interpretation service was provided.

22. Some members considered that the Administration had yet to explain clearly the VR eligibility of Hong Kong permanent residents who had moved to live in the Mainland but still came back to Hong Kong from time to time. The Administration explained that to be eligible to be registered as an elector in GCs, a person had to satisfy the Electoral Registration Officer that he/she ordinarily resided in Hong Kong and that the residential address provided was the person's only or principal residence in Hong Kong. The definition of "ordinarily resides in Hong Kong" was a complicated issue of both law and fact. Whether a person "ordinarily resides in Hong Kong" depended on the facts of each case and involved judgment on the specific circumstances of the case such as the concerned person's linkage or relation with Hong Kong. REO would need to consider relevant previous court judgments, if any, and seek legal advice if necessary.

23. Some members requested the Administration to strengthen the conduct of random sample checks on electors to enhance the accuracy of the information in the registers of electors. Some other members, however, expressed concern whether the checking measures were over-stringent and whether some electors (especially the elderly) might have lost their voting rights simply because they were not aware of REO's inquiry letters or the need to respond to such letters. The Administration advised that in the light of members' comments, REO had reviewed the various checking measures implemented and fine-tuned the strategy. REO acknowledged that random sample checks would unavoidably cause inconvenience to electors concerned and for this reason, such checks would normally be conducted in a modest scale in non-election years but the scale would expand appropriately in an election year. On the other hand, checking measures should be more targeted, which included checks on multiple electors or multiple surnames of electors registered with the same residential address, and checks on addresses with incomplete information, commercial addresses or suspected non-residential addresses. Besides, ongoing efforts were made to verify electors' registered residential addresses through cross-matching of data

with the Housing Department ("HD"), the Hong Kong Housing Society ("HKHS") and HAD. In the 2015 cycle, about 1.6 million electors' registered particulars were covered in the relevant checking measures, of whom 1.5 million were checked through full-scale cross-matching of the records of HD and HKHS. Based on the checking results and in accordance with the relevant electoral laws, REO had initiated the inquiry process for about 80 000 electors because REO had reasonable grounds to believe that their registered addresses were no longer their only or principal residence in Hong Kong.

Electoral legislation

Public Consultation on Disqualification of Candidates with Unserved Prison Sentences and other Related Matters

24. On 21 July 2014, the Administration published the Consultation Paper on Disqualification of Candidates with Unserved Prison Sentences and other Related Matters ("the Consultation Paper") to solicit public views on the disqualification of persons with unserved prison sentences as candidates at a LegCo election and other related matters. At the Panel meetings on 21 July and 20 October 2014, the Administration consulted the Panel on its initial recommendations in the Consultation Paper. The Administration further briefed members of the consultation outcome and the proposed way forward on 17 November 2014.

25. Some members expressed opposition to the Administration's proposal of maintaining section 39(1)(d) of LCO, which disqualified a person who was serving a sentence of imprisonment on the date of nomination (or of the election) from being nominated (or being elected). These members considered that a person's right to stand for election was a constitutionally guaranteed fundamental right and was protected under BL 26, which provided that "Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law." They considered that as long as the voters who voted for the person were fully aware of the fact that the person was serving a sentence of imprisonment, allowing such a person to be nominated and stand for election would not go against the objective of maintaining public confidence in LegCo. These members shared the view expressed by the Hong Kong Bar Association that the Administration failed to justify maintaining section 39(1)(d) as a proportionate restriction of the constitutionally guaranteed fundamental right of HKSAR permanent residents to stand for elections.

26. The Administration considered that allowing an imprisoned person timeout from imprisonment, as well as frequent visits and other forms of outside contacts, for the purpose of conducting election campaigns would put the person in a privileged position as compared to other prisoners in custody. On the other hand,

there were views that restrictions that affected an imprisoned person's ability to conduct a campaign might be considered to go against the fair and equal treatment principle. The Administration considered that the justifications underpinning the long-existed section 39(1)(d) of LCO remained sound and valid, and that the right to stand for election was not absolute and could be subject to reasonable and justifiable restrictions which satisfied the proportionality test. Some other members expressed support for the Administration's proposal and considered that a person who had been convicted of certain offences and sentenced to imprisonment should be disqualified from being nominated as a candidate or being elected to avoid uncertainty in the electoral process.

Operation of the Elections (Corrupt and Illegal Conduct) Ordinance ("ECICO")

27. In the last legislative session, the Panel discussed the operation of ECICO and some members suggested simplifying certain requirements for the declaration of election expenses and submission of election returns ("ERs") provided that the integrity of elections would not be affected. After review, the Administration came up with the following improvement measures to assist candidates in complying with the requirements on ERs set out in ECICO and to reduce the number of cases with minor breaches that would need to be referred to the Independent Commission Against Corruption ("ICAC") for follow up –

- (a) extending the period allowed for ER submission for uncontested candidates in LegCo elections so that it would end on the same date as that for contested candidates of the election;
- (b) providing more specific written guidance on completing ERs for candidates, their agents and electioneering staff; and
- (c) enhancing the training for the staff of REO, thereby avoiding potential misunderstandings in giving reference information.

28. Members in general expressed support for the above improvement measures. Some members pointed out that as a lot of documents were involved in ERs and the requirements were strict, sometimes candidates and their electioneering staff wished to obtain appropriate guidance for completion of ERs. The Administration advised that according to the proposal in (b) above, samples of invoice and receipt would be provided for reference by candidates, so that candidates could submit invoices and receipts with requisite details as required under section 37(2)(b)(i) of ECICO. In response to members' concerns about the reporting of expenses incurred in ERs (e.g., telephone canvassing calls made for electioneering purpose) and apportionment of relevant expenses with other candidates, the Administration agreed to provide appropriate guidance in the light of operational experience.

29. Some members also expressed the view that sometimes election expenses were in small amounts, and hence prone to errors in declaration. As the existing limits under the de minimis arrangement⁴ ("the DM limit") were not high relative to EELs, ERs with only minor breaches were still referred to ICAC for follow up, which might have added to ICAC's burden of work. It was suggested that the Administration should raise the DM limit, so that cases involving minor breaches would be handled by REO. This would also help ICAC focus its resources on handling cases with more serious breaches. The Administration advised that as a matter of fact, among the some 60 ERs for the 2012 LegCo election which were not granted relief under the de minimis arrangement, more than half of them involved an aggregate error value that exceeded the applicable DM limit by 10 times. The Administration considered that substantially raising the limit for errors and omissions across the board would go against the original intent of the de minimis arrangement. As the de minimis arrangement was only introduced in 2011, the DM limit should not be revised at this stage.

Equal Opportunities Commission ("EOC") and anti-discrimination work

Progress of Discrimination Law Review ("DLR") by EOC

30. The Panel received a briefing on the progress of DLR by EOC. The public consultation phase of DLR took place from 8 July to 31 October 2014. EOC aimed to submit the review findings and recommendations to the Government by the end of 2015. Having regard to recent incidents targeting Mainland tourists in Hong Kong, some members urged EOC to make recommendations for tackling the problem of discrimination against Mainland tourists. Some members also sought EOC's views on the need to amend the Race Discrimination Ordinance ("RDO"). EOC acknowledged that during DLR, a large number of submissions had been received on the topic of the possible extension of protection from discrimination under RDO to nationality, citizenship, residency or related status. EOC opined that the aforementioned incidents, however, could not be tackled simply by anti-discrimination laws which only provided for civil claims to be made to seek remedies. EOC suggested that the Administration might have to tackle the problems by inter-departmental efforts and through the co-operation of different sectors of the society.

31. Some members expressed support for combining the four existing anti-

⁴ A de minimis arrangement was introduced in 2011 to deal with minor errors or false statements in ER. A specified de minimis limit for each candidate or list of candidates had been set for each of the different elections as set out below –

(a) CE election : \$5,000; (b) LegCo DC (second) FC election : \$5,000; (c) LegCo GC election : \$3,000; (d) Election for LegCo FC other than DC (second) FC : \$500; (e) EC subsectors election : \$500; (f) DC election : \$500; (g) Heung Yee Kuk election : \$200; (h) Election for the Chairman or Vice-Chairman or a member of the Executive Committee of a Rural Committee : \$200; and (i) Rural Representatives election : \$200.

discrimination laws into one single ordinance, and expanding the coverage of the combined ordinance to deal with discriminatory acts on various grounds, such as sexual orientation and age. EOC advised that it would be the Government's responsibility to consider extending the scope of legal protection under the existing law to cover discriminatory acts on new grounds. The purpose of the current review was on the need for combining the laws into one with a view to rectifying inconsistencies.

32. Some members expressed concern on whether or not the definition of "disability" under the Disability Discrimination Ordinance ("DDO") should be refined as any such changes might affect the provision of services to some chronically ill patients. Some other members pointed out that the definition of "disability" for the Disability Allowance was outdated and had excluded people with injuries not falling within the specified types. EOC explained that there were discrepancies in the definition of "disability" between DDO and those adopted in overseas jurisdictions, e.g., whether it should be refined to require substantial and/or longer term impairments similar to the relevant legislation in the United Kingdom. The Chairperson of EOC would further brief members on an update of EOC's work at the regular meeting of the Panel in July 2015.

Progress of work of the Advisory Group on Eliminating Discrimination against Sexual Minorities ("Advisory Group")

33. The Panel received a briefing by the Administration on the work of the Advisory Group. The Administration informed members that, on the advice of the Advisory Group, it had commissioned a consultant to conduct a study on discrimination experienced by sexual minorities, with a view to ascertaining, inter alia, whether sexual minorities were discriminated against in Hong Kong and, if so, the discrimination they experienced and the areas of needs for support. The study report was expected to be completed by the second quarter of 2015. It would provide a solid basis to facilitate the Advisory Group's further discussion of recommendations on strategies and measures to eliminate discrimination against sexual minorities. Some members urged for the enactment of legislation against discrimination on the grounds of sexual orientation and gender identity. They were strongly of the view that the Administration should not postpone legislating against such discrimination. They pointed out that the relevant UN Committee had expressed concern in 1999 about the absence of legislation in HKSAR explicitly prohibiting discrimination on the basis of sexual orientation, and the concern was reiterated in March 2013. Some other members, however, considered that legislation was not the only means to address the issue of discrimination on the ground of sexual orientation. They considered that administrative measures and public education were equally effective in combating discriminatory acts in this regard.

34. The Administration advised that the issue of outlawing discrimination on the ground of sexual orientation was controversial and public views were diverse. The Administration would continue to promote the message of equal opportunities for people of different sexual orientations and gender identities through public education and publicity. The Advisory Group had rendered advice on the Administration's publicity measures to promote equal opportunities on the grounds of sexual orientation and gender identity, which included, inter alia, the key messages to be included in a new series of Announcement in the Public Interest to promote the message of non-discrimination against and equal opportunities for people of different sexual orientations and transgender. Besides, when the Advisory Group's recommendations were available, the Administration would, in close liaison with different stakeholders, consider how the recommendations should be followed up.

Work of the Office of the Privacy Commissioner for Personal Data ("PCPDO")

35. The Panel received a briefing by the Privacy Commissioner for Personal Data ("the Privacy Commissioner") on an update of PCPDO's work. Some members expressed concern about the need to step up the regulation of person-to-person telemarketing calls ("P2P calls"). The Privacy Commissioner advised that PCPDO was also very concerned about the nuisance caused by P2P calls as revealed in the survey commissioned by PCPDO in 2014. PCPDO had proposed expanding the Do-not-call registers administered by the Office of the Communications Authority to include P2P calls. The Administration advised that the Commerce and Economic Development Bureau was about to commission a consultant to conduct a survey with a view to soliciting the views of the public, the business sector and the industry on the regulation of P2P calls, as well as the employment and business situations of the industry. It was expected that the survey would be completed in the first half of 2015.

36. Some members expressed grave concern about the slow progress in bringing section 33 of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") into operation to regulate the transfer of data outside Hong Kong. Members stressed the need for expeditious implementation of section 33 to guard against the transfer of data to places outside Hong Kong. The Privacy Commissioner advised that at present, the transfer of personal data to places outside Hong Kong was regulated in some respects under the relevant data protection principles ("DPPs") of PDPO. The Privacy Commissioner agreed that section 33 of PDPO, which provided a very stringent and comprehensive regulation of the transfer of data outside Hong Kong, should be implemented as early as possible. In this connection, PCPDO had compiled a white list of places of high privacy standards to which data transfer could be made legitimately, and guidance for the organizations to follow in the event that section 33 was put into effect. The Administration advised that it had been in close liaison with PCPDO

on the work pertaining to the implementation of section 33, and would consider engaging a consultant to conduct a business impact study to look at the possible impact on the relevant sectors and ensure their readiness for the implementation of section 33 of PDPO.

37. Some members expressed concern about the large increase in the number of complaints concerning cyber-bullying from six in 2013 to 34 in 2014. The Privacy Commissioner advised that the increase was principally attributable to the increasing popularity of social networking and the prevalent use of the Internet. PCPDO had published an information leaflet called "What you need to know about cyber-bullying" in 2014 to raise public awareness of the precautionary measures to protect privacy on social network platforms and the remedies that victims of cyber-bullying might consider. Where there was contravention of DPP of PDPO, PCPDO could serve an enforcement notice on the data user to remedy the contravention.

Access to information

38. The Ombudsman released a direct investigation report in March 2014 on the access to information regime in Hong Kong. The Administration briefed the Panel on the follow-up actions taken pursuant to the recommendations by The Ombudsman in the report. Some members expressed support for The Ombudsman's recommendations that consideration be given to introducing legislation to underpin the right of access to information and setting up an independent body with enforcement powers to implement the legislation. They pointed out that over 100 overseas jurisdictions had put in place such legislation. The Administration advised that the Law Reform Commission ("LRC") was conducting a comprehensive study on the relevant systems and laws in overseas jurisdictions, with a view to considering whether and, if so, what measures should be implemented to improve the access to information regime in Hong Kong. The Administration considered it appropriate to consider the way forward after the conclusion of LRC's study.

39. Some members suggested that the Administration should provide more information (e.g., reasons of refusal cases and B/Ds involved) on the website of the Code on Access to Information ("the Code") so as to enhance the transparency of the implementation of the Code. The Administration advised that it was making preparations for adding to the Code's website statistics of information requests handled by individual B/Ds and the suggestion would be considered. Some members considered that the Administration should also enact archival legislation to ensure proper management of Government's records for public access. The Administration advised that The Ombudsman had published two direct investigation reports on the access to information regime and the Government's records management system respectively in March 2014. The

Administration Wing of the Chief Secretary for Administration's Office, which oversaw the management of Government's records, would follow up with the recommendations on the Government's records management system.

Human rights report

40. After consideration of the HKSAR's third report under the Convention on the Elimination of All Forms of Discrimination against Women at its hearing, the UN Committee concerned adopted the concluding observations on 7 November 2014. The Panel discussed the concluding observations with the Administration and sought its response to the concerns raised by the UN Committee. Some members expressed dissatisfaction with the Administration's lack of action to address several issues reiterated by the UN Committee, namely the non-applicability of the Palermo Protocol to HKSAR, the lack of a comprehensive anti-trafficking legislation and the existing policy of prohibiting more than one sex worker working at the same premises. On the non-applicability of the Palermo Protocol to HKSAR, the Administration explained that given Hong Kong's densely populated nature and its socio-economic situation, there were difficulties to allow the victims of human trafficking to settle in Hong Kong. The Administration pointed out that although Hong Kong did not have a single piece of legislation to cover the criminal offences targeted by the Palermo Protocol, the relevant trafficking-related acts were prohibited under various pieces of legislation such as the Crimes Ordinance (Cap. 200), the Immigration Ordinance (Cap. 115) and Offences against the Person Ordinance (Cap. 212). The prescribed penalties were up to a maximum of 10 years' to life imprisonment.

41. Some members also shared the UN Committee's concern 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 violence by clients. The Administration explained that the current 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.

42. Some members shared the concern expressed by the UN Committee about the impact of the FC system on the equal participation of women in politics. They considered that FC elections were dominated by men, as seen from the fact that only two female Members were returned through the DC (Second) FC and no female Member was returned through the traditional FCs in the 2012 LegCo election. These members pointed out the FC system represented interests of major professions/industries and it rendered some women (e.g., housewives) ineligible to stand for FC elections. They urged the Administration to immediately abolish the FC system and that all LegCo seats should be returned by direct elections to enable women to have equal rights to stand for elections

irrespective of their occupations. The Administration pointed out that women and men enjoyed the same rights to vote and to stand for elections, including elections of FCs of LegCo. The legislation governing the eligibility of candidates in FCs did not have any differential treatment on the grounds of gender. The Administration advised that EC constituted in 2012 had 180 female members, representing an increase of 71 when compared with EC of the previous term.

43. In response to strong calls from members to enhance protection of foreign domestic helpers ("FDHs") against abuses by their employers and to combat illegal practices of employment agencies, the Administration advised that it would take stringent enforcement and prosecution action against any malpractice of employers and employment agencies. Various publicity and promotional efforts were taken by the Labour Department ("LD") to enhance FDH's awareness of their rights and benefits and the means of seeking assistance. The Government had also strengthened its collaboration with the relevant Consulates General in HKSAR in this regard. On the regulation of employment agencies, LD had increased the number of regular and surprise inspections to employment agencies from 1 300 to 1 800 this year and would consider issuing a Code of Practice for the industry. In response to members' concern on this issue, the Administration agreed to formulate proposals on regulation of employment agencies and consult the Panel on Manpower on the proposals as early as possible.

Meetings

44. From October 2014 to end of June 2015, the Panel held a total of 12 meetings.

Legislative Council

Panel on Constitutional Affairs

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to implementation of the Joint Declaration and the Basic Law, relations between the Hong Kong Special Administrative Region Government and the Central People's Government and other Mainland authorities, electoral matters, district organizations, human rights, personal data protection and press freedom.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

Panel on Constitutional Affairs

Membership list for 2014-2015 session

Chairman Hon TAM Yiu-chung, GBS, JP

Deputy Chairman Hon Paul TSE Wai-chun, JP

Members

Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon LEUNG Yiu-chung
Dr Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, GBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon WONG Kwok-hing, BBS, MH
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
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 CHEUNG Kwok-che
Hon WONG Kwok-kin, SBS
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-yea, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Hon Claudia MO
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 WU Chi-wai, MH
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 Kenneth LEUNG (up to 21 October 2014)
Hon Alice MAK Mei-kuen, JP
Dr Hon KWOK Ka-ki
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
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

(Total : 53 members)

Clerk Ms Joanne MAK

Legal Adviser Mr Kelvin LEE

Date 24 October 2014