

立法會
Legislative Council

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LC Paper No. CB(2)1061/17-18

(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Thursday, 4 January 2018, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

- Members present** : Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon CHAN Kin-por, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Claudia MO
Hon Steven HO Chun-yin, BBS
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon Alice MAK Mei-kuen, BBS, JP
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon IP Kin-yuen
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon LAM Cheuk-ting
Hon Tanya CHAN
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Hon Kenneth LAU Ip-keung, BBS, MH, JP
Dr Hon CHENG Chung-tai
- Member attending** : Hon SHIU Ka-chun

Members absent : Hon Holden CHOW Ho-ding (Deputy Chairman)
Hon Starry LEE Wai-king, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon MA Fung-kwok, SBS, JP
Dr Hon Helena WONG Pik-wan
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Alvin YEUNG
Hon Wilson OR Chong-shing, MH
Hon LAU Kwok-fan, MH

Public Officers attending : Item III

Mr Andy CHAN Shui-fu
Under Secretary for Constitutional and Mainland Affairs

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

Mr WONG See-man
Chief Electoral Officer
Registration and Electoral Office

Miss Candy MA Siu-hung
Principal Electoral Officer
Registration and Electoral Office

Item IV

Mr Andy CHAN Shui-fu
Under Secretary for Constitutional and Mainland Affairs

Mr D C CHEUNG
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Miss Cathy LI King-tsz
Assistant Secretary for Constitutional and Mainland
Affairs

Miss Ellen CHOW Yin-tung
Assistant Secretary for Constitutional and Mainland
Affairs

Mr Godfrey KAN Ka-fai
Senior Assistant Solicitor General
Department of Justice

Mr Andrew TSANG Yue-tung
Principal Assistant Secretary (Security) E
Security Bureau

Mr Billy WOO Tak-ying
Principal Assistant Secretary for Security (Review)
Security Bureau

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

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

**Attendance by : Item IV
invitation**

Session 1

Mr LEUNG Kwok-hung

Labour Party

Mr KWOK Wing-kin

同志公民

Mr LEE Tak-hung

Society for Community Organization

Miss Annie LIN

Mr John CHAN

Liberal Party

Mr WONG Ka-kei

Civil Human Rights Front

Mr AU Nok-hin

Democratic Alliance for the Betterment and Progress of
Hong Kong

Mr SIU Wai-chung

Mr HO Chi-yuen

HK Human Rights Monitor

Mr LAW Yuk-kai

Hong Kong Unison

Miss Phyllis CHEUNG

Society for Cultural Integration

Miss Kayla TAM

Civil Rights Observer

Mr Andrew SHUM Wai-nam

Demosisto

Mr WONG Chi-fung

Ms Emily LAU Wai-hing

Policy Research Unit

Ms CHAN Po-ying

Alliance Against NENT New Development Areas Planning

Mr Raphael WONG Ho-ming

Session 2

社記婦女組

Ms TSUI Ho-yee

人權捍衛

Mr LEUNG Sai-hong

Lab in Hong Kong

Mr Tommy CHEUNG Sau-yin

League of Social Democrats

Mr NG Man-yuen

Mr WONG Kai-yeung

Beyond the Boundary- Knowing and Concerns Intersex

Dr Small Ela LUK

Mr SZE Ching-wee

Mission For Migrant Workers

Miss TONG Hiu-yan

Hong Kong Confederation of Trade Unions

Mr WONG Hon-leung

Chosen Power (People First Hong Kong)

Mr HUI Wai-man

Ms FUNG Wai-ying
Assistant

Mr CHAN Tsun-kit

Mr Alex CHOW Yong-kang

Mr LAW Kwun-chung

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

Staff in attendance : Mr Kelvin LEE
Senior Assistant Legal Adviser 3

Mr Dennis HO
Senior Council Secretary (2) 3

Mrs Fonny TSANG
Legislative Assistant (2) 3

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I. Information paper(s) issued since the last meeting
[LC Paper No. CB(2)611/17-18(01)]

Members noted that a letter dated 22 December 2017 from Mr HUI Chi-fung to the Panel had been issued to members for information after the last meeting.

II. Items for discussion at the next meeting
[LC Paper Nos. CB(2)311/17-18(01) and (02)]

2. Members agreed to discuss the following items proposed by the Administration at the next meeting on 15 January 2018 at 2:30 pm:

- (a) promotion of the Basic Law; and
- (b) management of government records.

III. Practical arrangements for the 2018 Legislative Council By-election
[LC Paper Nos. CB(2)547/17-18(01) and CB(2)602/17-18(03)]

3. With the aid of PowerPoint, the Under Secretary for Constitutional and Mainland Affairs ("USCMA") and the Chief Electoral Officer ("CEO") briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)547/17-18(01)].

(Post-meeting note: the PowerPoint presentation materials were issued vide LC Paper No. CB(2)644/17-18(01) on 5 January 2018.)

Discussion

Polling date

4. Mr Jeffery LAM, Dr CHIANG Lai-wan and Dr Priscilla LEUNG criticized that it would not be ideal for the polling day of the 2018 Legislative

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Council ("LegCo") By-election to clash with the meetings of the National People's Congress and the Chinese People's Political Consultative Conference to be held in Beijing during the same period, and opined that this should be avoided as far as possible in the future. Dr CHIANG supplemented that as there might be another LegCo By-election in the near future in light of two other possible vacancies, the two by-elections should be held in one go in order to save trouble for electors. Dr LEUNG enquired about the role of the Constitutional and Mainland Affairs Bureau in setting the polling date.

5. Making reference to public remarks made earlier by the Chief Executive, USCMA noted that the clash of the two events would cause some inconvenience. Nevertheless, the Government respected the decision of the Electoral Affairs Commission ("EAC") on the date of the By-election.

Polling and vote counting arrangements

6. Ms Tanya CHAN and Mr Jeffery LAM considered that the electoral arrangements should be reviewed to avoid a recurrence of what had happened in the 2016 LegCo General Election where a large number of electors were still queuing at some polling stations to cast their votes after the close of poll at 10:30 pm. In particular, Ms CHAN considered it unacceptable that in that election, some ballot boxes were opened before the closure of all polling stations in some of the geographical constituencies. She pointed out that in such circumstances, the ballot boxes at all polling stations within the same geographical constituency should be kept closed.

7. USCMA replied that the Administration had critically reviewed the relevant arrangements and, to avoid overcrowding, additional ballot paper issuing desk(s) and voting compartment(s) would be set up at certain polling stations in the upcoming By-election. In addition, the Registration and Electoral Office ("REO") would take proactive steps to replace venues for some other polling stations with more spacious ones, set up additional polling stations, as well as reallocate electors to other station(s). In reply to Ms Claudia MO's enquiry, CEO said that some polling stations that were relatively smaller in size (e.g. those set up in kindergartens) would be replaced with larger ones to be set up in sports centres and primary/secondary schools for the By-election.

8. In reply to Mr Jeffery LAM's enquiry about the revised identity document requirement for application for a ballot paper, USCMA said that, if an elector lost his/her Hong Kong Permanent Identity Card on the polling day, one alternative measure would be to produce a document evidencing a report

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to a police officer of the loss of the person's Hong Kong Permanent Identity Card, together with the original of a valid passport or similar travel document (e.g. a passport other than the Hong Kong Special Administrative Region Passport or the Home Return Permit) showing his/her name and photograph, and a copy of his/her Hong Kong Permanent Identity Card in paper form. Ms Claudia MO asked whether a driving licence would also be accepted as a valid identity document for application for a ballot paper. USCMA explained that as a driving licence did not bear a photograph of the licensee concerned, it would not be accepted as a valid identity document for the purpose of voting.

Confirmation Form and validity of nomination

9. Ms Tanya CHAN, Mr LAM Cheuk-ting and Ms Claudia MO questioned the legal basis of the continued use of a Confirmation Form in the 2018 LegCo By-election. Dr CHIANG Lai-wan considered that the Administration should clearly explain the impact of signing/not signing a Confirmation Form on the eligibility of the person concerned who was seeking candidature.

10. USCMA said that the Confirmation Form was prepared by EAC to facilitate the Returning Officers' ("ROs") discharge of their duties under the nomination procedure to ensure that all candidates fully understood the legal requirements, and on such basis, were bona fide when signing the declaration in the nomination form. USCMA supplemented that ROs would exercise their statutory power to process all nominations in accordance with the legal requirements and relevant procedures. Depending on the actual circumstances of each case, ROs might seek legal advice and according to the law request the candidate to provide additional information that they considered necessary. Ms Tanya CHAN further asked whether there was a timeframe for ROs to reach a decision on the validity of a nomination. USCMA replied that ROs would decide whether a person was validly nominated as a candidate in strict accordance with the law as soon as practicable.

11. Mr Dennis KWOK enquired about the eligibility of persons who had been ruled by the court to be disqualified from assuming the office of member of LegCo and intended to run for the By-election. USCMA reiterated that according to the Legislative Council Ordinance (Cap. 542) and the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D), ROs were required to decide whether a nomination was valid according to the law.

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Handling of personal data

12. Ms Tanya CHAN enquired about the improvement measures which would be implemented in the By-election in the light of the experience gained from the computer theft incident of REO in March 2017. CEO replied that REO had stepped up its training for electoral staff with regard to the handling of personal data. He added that REO would strictly follow the internal physical and technical security guidelines governing the handling and safekeeping of computer equipment and personal data used in the By-election. The use of personal data would be restricted to staff on a "need-to-know" and "need-to-use" basis. Due to shortage of time, CEO was requested to provide supplementary information in writing.

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(Post-meeting note: The Administration's written response was issued vide LC Paper No. CB(2)1014/17-18(01) on 9 March 2018.)

Paper consumption

13. Noting that a validly nominated candidate might post, free of postage, one letter to each elector of the constituency for which he/she was nominated, Mr Kenneth LAU expressed concern about the potentially large paper consumption that these election mails might involve. He enquired whether the Administration had any measures to reduce paper consumption on election-related materials and any statistical information on the paper consumption in past elections (including paper used for printing election advertisement materials and ballot papers).

14. CEO replied that REO had all along attached great importance to environmental protection. While each candidate would be provided upon request with a set of address labels pertaining to the electors in the constituency concerned, REO would continue to implement green measures by offering candidates the choice to select between address labels printed on a household basis (i.e. one address label for one household) and address labels printed on an individual basis (i.e. one address label for each individual elector) except those who had provided REO with their email addresses, to which electronic election mails would be sent instead. CEO added that REO would also continue to adopt various measures to reduce paper consumption on election-related materials.

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IV. An outline of the topics in the fourth report of the Hong Kong Special Administrative Region in the light of the International Covenant on Civil and Political Rights

[LC Paper Nos. CB(2)446/17-18(01), CB(2)547/17-18(02) and CB(2)602/17-18(04)]

15. Members noted that an outline of the topics to be included in the fourth report of the Hong Kong Special Administrative Region ("HKSAR") in the light of the International Covenant on Civil and Political Rights ("ICCPR") ("the fourth report") was issued by the Government on 1 December 2017 for public consultation until 12 January 2018 [LC Paper No. CB(2)446/17-18(01)]. The public was invited to submit their views on the implementation of ICCPR in respect of those topics, and to suggest any additional topics that should be included in the report. The Under Secretary for Constitutional and Mainland Affairs ("USCMA") said that the Administration would carefully consider the views received in drafting the report. He further said that the HKSAR's fourth report would be submitted to the United Nations ("UN") through the Central People's Government ("CPG") by the end of March 2018, and the related UN hearing on the fourth report would be held in due course.

16. The Panel received views from 30 deputations/individuals on the outline of the topics for inclusion in the fourth report. A record of the 30 deputations/individuals and the submissions received are in the **Appendix**.

Administration's response to deputations' views

17. In response to the views expressed by the deputations on issues under the purview of the Constitutional and Mainland Affairs Bureau, USCMA made the following points:

- (a) the Administration was committed to facilitating the integration of ethnic minorities ("EMs") into the community. The Administration's key initiatives in this area included:
 - (i) in accordance with the Administrative Guidelines on Promotion of Racial Equality issued by the Administration in 2010, relevant government bureaux and departments and public authorities ("relevant authorities") had drawn up checklists of measures within their respective policy and programme areas that would assist in the promotion of racial equality, equal access to key public services and

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transparency of their work. Over the years, the scope of application of the Guidelines had been extended from 14 to 23 relevant authorities; and

- (ii) in 2017-2018, an allocation of \$3 million had been provided to the Equal Opportunities Commission ("EOC") to embark on a series of initiatives for the purpose of promoting equal opportunities for EMs;
- (b) to eliminate discrimination on grounds of sexual orientation and gender identity, the Administration had been implementing the following measures:
 - (i) public education and publicity had been enhanced to promote the message of non-discrimination for example through the broadcast of a new television programme produced by Radio Television Hong Kong to promote the message of "eliminate discrimination, embrace inclusion";
 - (ii) training resources would be developed for personnel in specific fields such as social workers, teachers, medical practitioners, etc. to enhance their knowledge of and sensitivity towards sexual minorities; and
 - (iii) a charter of non-discrimination of sexual minorities would be drawn up for voluntary adoption by organizations; and
- (c) as announced in the Chief Executive's 2017 Policy Address, the Administration would set up a Commission on Children. To this end, a preparatory committee, chaired by the Chief Executive was established to draw up the terms of reference, the roles and functions and work priorities for the Commission on Children.

18. On issues which fell under the purview of the Security Bureau, the Principal Assistant Secretary (Security) E ("PAS(S)E") made the following points:

- (a) Hong Kong residents enjoyed the freedom of assembly, procession and demonstration under the Basic Law. It was the established policy of the Police to strike a balance between facilitating the smooth conduct of lawful and peaceful public order events and reducing the impact of such events on the public

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and road users, and to ensure public safety and public order. Participants of public order events had to abide by the law, behave in a peaceful and orderly manner in the events, and refrain from illegal or violent acts. The Police had the responsibility to maintain public safety and public order and protect the lives and properties of the public. Should there be any illegal or violent acts, the Police would, irrespective of the backgrounds of the offenders or victims, handle the matters in accordance with the law in a fair, just and impartial manner;

- (b) the Police had strict guidelines for the use of force , and the force to be used shall be the minimum force necessary for achieving a lawful purpose. The Police would not have to resort to the use of force if protesters expressed their views in a peaceful and rational manner, and did not stage any violent charging or illegal acts; and
- (c) there had been a healthy growth in the number of societies in Hong Kong. The number of societies which had either been registered or been exempted from registration under the Societies Ordinance since the establishment of the HKSAR increased from over 23 000 as at the end of May 2010 to over 38 900 as at the end of August 2017.

19. On labour issues, the Assistant Commissioner (Policy Support) of the Labour Department made the following points:

- (a) the Labour Department ("LD") would continue to take rigorous enforcement actions to safeguard the labour rights of all workers, including foreign domestic helpers ("FDHs"), who enjoyed the protection under the labour laws as well as additional protection, such as free accommodation, free food and free medical care by employers, as well as the Minimum Allowable Wage, under the Standard Employment Contract ("SEC");
- (b) LD did not tolerate any abuse of FDHs and spared no effort in clamping down on offenders, by investigating promptly into any complaints, and taking out prosecution where there was sufficient evidence. Between 2010 and 2017, LD secured 190 convicted summonses against employers of FDHs for wage offence. Among the convicted employers, eight were sentenced to

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perform community service for up to 240 hours while four were sentenced to imprisonment to up to four months. The Immigration Department ("ImmD") would take into account these records when processing future applications for FDHs from the convicted employers concerned;

- (c) the "live-in" requirement formed the cornerstone of Hong Kong's policy of importing FDHs. It had been the Government's established policy that, as in many other jurisdictions in the world, priority in employment should be given to local workforce, and importation of workers should only be allowed where there was confirmed manpower shortage in a particular trade that could not be filled by the local workers. Against this principle, FDHs had been imported since the early-1970s to meet the shortfall of local live-in domestic workers. This "live-in" requirement had been made known to FDHs before their admission into Hong Kong, and specified in SEC which was signed by both the employer and the FDH concerned beforehand. If an FDH felt that his/her employer did not provide him/her with suitable accommodation, the FDH concerned could report the case to LD or ImmD;
- (d) since 2014, LD had taken various measures to strengthen the regulation of employment agencies ("EAs"), which included, increasing the annual inspection target from 1 300 to 1 800 inspections per year, promulgating the Code of Practice of EAs in January 2017, and introducing the Employment (Amendment) (No.2) Bill 2017 in June 2017 which sought to raise the maximum penalty for the offences of overcharging job-seekers and unlicensed operation of EAs, expand the scope of application of the overcharging offence, and provide a legal basis for the issue of Codes of Practice for EAs; and
- (e) regarding the suspension of issue of the Overseas Employment Certificates by the Philippines Government in November 2017, it was confirmed that the measure was applicable to all overseas markets and was not meant to target Hong Kong. Nonetheless, to combat illegal activities of EAs by placing FDHs to bogus job vacancies overseas, LD conducted a joint operation with the Police and ImmD in November 2017 and set up a dedicated team to handle the relevant complaints.

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20. In response to concerns expressed by the deputations over the "two-week rule" for FDHs, the Principal Assistant Secretary for Security (Review) ("PAS for S (R)") supplemented that the main purpose of the "two-week rule" was to allow sufficient time for FDHs to prepare for their departure; and it helped prevent FDHs from job-hopping and taking up illegal work in Hong Kong after contract termination. Under exceptional circumstances where the employer was unable to continue with the contract, owing to, for example, the employer's external transfer, migration, death or economic difficulty, or where there was evidence that the FDH had been abused or exploited, FDH could apply for change of employer in Hong Kong without first returning to their places of origin. As such, there was sufficient flexibility under the "two-week rule" to cater for deserving cases under exceptional circumstances. Moreover, ImmD would allow individual FDHs to extend their stay on a case-by-case basis should a need arise.

Discussion

Co-location arrangement at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link

21. With reference to paragraph 5 of the Concluding Observations on the previous report [Annex to LC Paper No. CB(2)547/17-18(02)], Mr LAM Cheuk-ting requested the Administration to include in the fourth report the decision of the Standing Committee of the National People's Congress ("NPCSC") approving the co-operation arrangement between the Mainland and Hong Kong to implement the co-location arrangement. He said that the decision of NPCSC violated Article 18 of the Basic Law under which national laws could not be applied to Hong Kong. He took the view that the decision was ruining the independence of the Judiciary of HKSAR. Noting that the Government of the People's Republic of China had not yet ratified ICCPR, Mr Dennis KWOK considered it also necessary to include in the fourth report that, under the co-location arrangement, a part of HKSAR would become the Mainland Port Area subject to the jurisdiction of the Mainland and would no longer be subject to the implementation of ICCPR. Dr Priscilla LEUNG expounded her view that the NPCSC's decision on the co-location arrangement had solid legal basis and the legitimacy of the decision should not be questioned. She disagreed that the rule of law in Hong Kong had been undermined.

22. USCMA said that members' views were noted. USCMA explained that the fourth report would cover information as set out in paragraph 11 (a)-(c)

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of the Administration's paper [LC Paper No. CB(2) 446/17-18(02)]. He said that information which fell within the scope as explained and related to Articles 1 to 27 of ICCPR would be covered in the fourth report as appropriate.

Tackling discrimination on the grounds of sexual orientation and gender identity

23. Mr CHAN Chi-chuen pointed out that back in 1999, UN Human Rights Committee ("HRC") had expressed concerns in its Concluding Observations on the HKSAR's initial report in the light of ICCPR about the absence of legislative remedies in HKSAR to individuals in respect of discrimination on the ground of sexual orientation, and HRC had recommended then the enactment of necessary legislation. In the Concluding Observations on the previous report issued in March 2013, HRC had expressed concern again about the absence of legislation explicitly prohibiting discrimination on the basis of sexual orientation. Mr CHAN also highlighted that according to the EOC Report on Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status in January 2016, there was a significant increase of public support for legislating against discrimination on such grounds in the past 10 years from 28.7% to 55.7%. EOC recommended that the Government should consider launching a public consultation exercise with a view to legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status. Mr CHAN criticized the Administration for making little progress in this respect. He also enquired about the progress of preparing the draft sensitivity training resources for personnel in specific fields as recommended by the Advisory Group on Eliminating Discrimination against Sexual Minorities.

24. Dr Priscilla LEUNG considered that the Administration should strive to foster mutual respect among people regardless of whether or not they supported enacting legislation to prohibit discrimination against sexual minorities. USCMA said that the Administration would carefully consider the views of the community on enactment of legislation to prohibit discrimination against sexual minorities and handle the subject with caution given that it was very controversial in nature. He added that the Administration would continue its efforts in publicity and public education (e.g. producing Television Announcement in the Public Interest and sensitivity training resources as well as drawing up a charter) to foster in the community the culture and values of inclusiveness and mutual respect and promote equal opportunities for people of different sexual orientation and gender identity.

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Persons in custody

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25. Mr SHIU Ka-chun took the view that the fourth report should mention that the complaint mechanism of the Correctional Services Department ("CSD") was not effective in protecting the rights of prisoners and juvenile offenders against unfair treatment and abuse by CSD officers. He said that despite the wide media coverage of a number of such cases, CSD did not take concrete action to tackle the problem. He further said that in the absence of a mechanism to protect the identity of the complainants and an independent investigation mechanism, the persons in custody were not provided with the right to lodge complaints against CSD without fear of retaliation. Due to the shortage of time, the Chairman requested the Administration to provide a written response to the issues raised by Mr SHIU after the meeting.

(Post-meeting note: A letter dated 4 January 2018 from Mr SHIU to the Secretary for Constitutional and Mainland Affairs, which was copied to the Panel, and the Administration's response to Mr SHIU's letter were issued in electronic form to members vide LC Paper Nos. CB(2)930/17-18(01) and (02) respectively on 27 February 2018.)

26. Dr CHENG Chung-tai raised concern that the restrictions on distributing newspapers and publications to persons in custody were not consistently implemented across different correctional institutions. He also expressed concern that two persons in custody had been diagnosed with stage III and IV cancer respectively due to delayed diagnosis and treatment. Besides, he considered that the suicide case of a suspect in custody at Sau Mau Ping Police Station in May 2017 was highly suspicious. He urged the Administration to address public concerns over the lack of a fully independent mechanism to monitor and handle complaints about the inappropriate use of force or other abuse of power by the Police in relation to persons in Police custody.

Human trafficking

27. With reference to paragraph 20 of the Concluding Observations on the previous report, Mr Dennis KWOK considered that legislation should be enacted to criminalize human trafficking in all forms. In this connection, he had submitted a draft private bill to the Chief Executive and Directors of Bureaux concerned for consideration. He sought the Administration's response in this regard. PAS for S (R) said that the Government attached great importance to combating human trafficking. The draft private bill submitted by Mr KWOK was receiving attention and being studied by relevant bureaux and departments.

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Immigration control on entry into Hong Kong by visitors

28. Referring to several incidents in the past year involving refusal of entry of certain persons (including human rights activists) from the United Kingdom and Taiwan into Hong Kong, Mr CHAN Chi-chuen expressed concern whether the number of such cases was on the rise and requested the Administration to provide the relevant figures. He considered that the Administration should include such figures in the fourth report.

29. PAS for S (R) said that he did not have the information on hand. He explained that, in addition to considering whether each visitor satisfied normal immigration requirements, ImmD also considered whether to allow entry in the light of the individual circumstances of each case in accordance with laws and prevailing policies.

Political right

30. Dr Fernando CHEUNG considered that the Government failed to fulfil the obligations under ICCPR. He said that Hong Kong people who exercised their civil and political rights in taking part in peaceful demonstrations to express their views had been subjected to suppression in the past few years. Further, duly elected LegCo Members had been disqualified through the interpretation of laws with retrospective effect. He stressed that the report must not be lopsided and just praised the policies of the Government. He considered that the diverse views expressed by the deputations at this meeting should be reflected in the fourth report. He also suggested for the Chairman's consideration that a summary of the views expressed at this meeting be prepared and submitted by the Panel to UN for reference. Mr Dennis KWOK enquired whether the Administration would consult LegCo on the draft fourth report before submission to HRC.

31. USCMA replied that the fourth report would be published after UN had received it. HRC would then issue a List of Issues to be taken up in connection with the consideration of the fourth report. The HKSAR Government would provide response to HRC through CPG and would publish HKSAR's its response after HRC had received it. He added that interested parties would still have ample opportunities to express views and comments to HRC.

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V. Any other business

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

Council Business Division 2
Legislative Council Secretariat
16 March 2018

Panel on Constitutional Affairs

Meeting on Thursday, 4 January 2018, at 2:30 pm

Meeting to receive views on "An outline of the topics in the fourth report of the Hong Kong Special Administrative Region in the light of the International Covenant on Civil and Political Rights"

Summary of views and concerns expressed by deputations/individuals

No.	Name of deputation / individual	Submission / Major views and concerns
<u>Session One</u>		
1.*	Mr LEUNG Kwok-hung	<ul style="list-style-type: none"> • The disqualification of elected Legislative Council ("LegCo") Members undermined citizens' rights to vote and to be elected. • Decisions of and Interpretations of the Basic Law by the Standing Committee of the National People's Congress ("NPCSC") violated Article 39 of the Basic Law ("BL 39"). • Legislating for BL 23 would compromise the freedom of speech among Hong Kong people.
2.*	Labour Party	<ul style="list-style-type: none"> • As a result of the Decision of NPCSC adopted on 31 August 2014 ("the 2014 Decision of NPCSC"), the right to stand for election under Article 25 of the International Covenant on Civil and Political Rights ("ICCPR") was deprived as such right would be subject to unreasonable restrictions. The right to vote under BL 26 was also undermined. However, the current-term Government lacked commitment to re-activate the political reform. • The decision of NPCSC approving the Co-operation Arrangement between the Mainland and HKSAR to implement the co-location arrangement at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link violated the Basic Law. • The Public Order Ordinance (Cap. 245) ("POO") undermined the freedom of procession and assembly. Besides, the mechanism for handling complaints lodged by prisoners against abuse by the Correctional Services Department was not functioning effectively.
3.*	同志公民	<ul style="list-style-type: none"> • Sexual minorities (especially transgenders) in Hong Kong were being severely discriminated against. The community also lacked sensitivity towards sexual minorities. • Legislation against discrimination on the grounds of sexual orientation and gender identity should be introduced.
4.	Society for Community Organization	<ul style="list-style-type: none"> • LC Paper No. CB(2)602/17-18(05)
5.	Mr John CHAN	<ul style="list-style-type: none"> • LC Paper No. CB(2)602/17-18(05)

No.	Name of deputation / individual	Submission / Major views and concerns
6.*	Liberal Party	<ul style="list-style-type: none"> Expressed concern that some pro-independence political bodies had deliberately misinterpreted Article 1 of ICCPR to demand the right of self-determination to be applied to Hong Kong. This violated the principle of "one country, two systems". It was the political turmoil in recent years and the uncompromising actions by the pan-democratic camp which delayed the achievement of universal suffrage in Hong Kong.
7.*	Civil Human Rights Front	<ul style="list-style-type: none"> There was a lack of progress in promoting the civil and political rights for Hong Kong people since 2013. In the Hong Kong Special Administrative Region's ("HKSAR") fourth report, the Administration should mention the reasons for refusing entry of democracy and human rights activists into Hong Kong in recent years. Raised concern that more participants of public meetings and processions had been prosecuted under POO than before. Moreover, video recording capturing the activities inside the compartments of police vehicles was not made available for arrestees when they requested for it.
8.*	Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB")	<ul style="list-style-type: none"> The rights of the public under Article 21 of ICCPR were well protected, and the participants of public meetings and processions should, under the premise of observing the Hong Kong law and without affecting public order, proceed in a peaceful and orderly manner. With a view to safeguarding the rights under Article 25 of ICCPR, DAB welcomed the Administration's plan to appoint more young people to selected advisory boards and committees. The Administration should also encourage people from other sectors to give views on policy matters. To ensure the rights under Article 27 of ICCPR, the Administration should step up support for ethnic minorities ("EMs"), especially in education, and seek ways to eliminate misunderstanding about EMs in the community.
9.*	Mr HO Chi-yuen	<ul style="list-style-type: none"> The 2014 Decision of NPCSC, the adoption of the Confirmation Form in public elections, the disqualification of elected LegCo Members, and the amendment of the Rules of Procedures of LegCo violated Article 25 of ICCPR.
10.*	HK Human Rights Monitor	<ul style="list-style-type: none"> Although the application of ICCPR should not be affected by a transfer of sovereignty, the rights and freedom of Hong Kong people as protected by ICCPR had deteriorated since the Reunification. Expressed concern that, under the co-location arrangement, the relevant rights and freedom under ICCPR enjoyed by Hong Kong people would be compromised and ICCPR would not be implemented in the proposed Mainland Port Area established at West Kowloon Station.

No.	Name of deputation / individual	Submission / Major views and concerns
11.	Hong Kong Unison	<ul style="list-style-type: none"> ● LC Paper No. CB(2)680/17-18(01)
12.*	Society for Cultural Integration	<ul style="list-style-type: none"> ● The Race Discrimination Ordinance (Cap. 602) ("RDO") should be amended by providing that it was unlawful for the Government to discriminate in performing its functions or exercising its powers and by repealing the exemption provisions regarding vocational training and education in relation to modifying or making different arrangements for medium of instruction. ● The Administration should conduct public consultation on the Equal Opportunities Commission's ("EOC") proposal to introduce protection from discrimination on grounds of nationality under RDO. ● The scope of work and the complaints mechanism of EOC should be reviewed and reformed.
13.	Civil Rights Observer	<ul style="list-style-type: none"> ● LC Paper No. CB(2)612/17-18(01)
14.*	Demosisto	<ul style="list-style-type: none"> ● The sentence review of the three student leaders involved in the "Occupy Movement" was politically motivated. Moreover, certain people were deprived of their rights to run in recent public elections. These cases reflected that the Government had violated Articles 15, 21 and 25 of ICCPR and were an impeachment of democracy. ● Prisoners were not treated with dignity and humanity and were not provided with a fair channel to lodge relevant complaints. This had violated Article 10 of ICCPR. ● The refusal of entry of certain activists into Hong Kong due to their political background was in breach of Article 12 of ICCPR.
15.	Ms Emily LAU Wai-hing	<ul style="list-style-type: none"> ● LC Paper No. CB(2)680/17-18(02)
16.*	Policy Research Unit	<ul style="list-style-type: none"> ● The Administration should include these issues in HKSAR's fourth report: the 2014 Decision of NPCSC and the prosecution of protesters who took part in the "Occupy Movement". ● NPCSC's Interpretations of the Basic Law undermined the independence of the judiciary.
17.*	Alliance Against NENT New Development Areas Planning	<ul style="list-style-type: none"> ● In the fourth report, the Administration should fully respond to the concerns and recommendations raised in the Concluding Observations on the previous report. ● The proposed national anthem legislation, if it had retrospective effect, would be in breach of Article 15 of ICCPR. ● The sentence review involving certain convicted protesters was politically motivated.

No.	Name of deputation / individual	Submission / Major views and concerns
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18.*	社記婦女組	<ul style="list-style-type: none"> Children living in sub-divided flats were facing serious safety and health hazards in their poor growth environment. The Administration should increase the supply of public rental housing ("PRH") to speed up the waiting time for allocation of PRH. Without universal suffrage and a democratic government, poverty alleviation policy formulated would not benefit the poor.
19.*	人權捍衛	<ul style="list-style-type: none"> In recent years, the Police used excessive force in handling demonstrators, which was in breach of Articles 4, 15 and 23 of ICCPR. In HKSAR's fourth report, the Administration should mention that the Police did not improve on its abusive use of force and its training on the principle of proportionality when using force, and that the Administration was in breach of relevant Articles of ICCPR on the rights of peaceful assembly and freedom of opinion and expression.
20.*	Lab in Hong Kong	<ul style="list-style-type: none"> The Administration did not observe Article 21 of ICCPR on the right of peaceful assembly in imposing more restrictions on demonstrations under POO. The Administration had also imposed more restrictions on the registration of societies, which went against Article 22 of ICCPR on the freedom of association.
21.*	League of Social Democrats	<ul style="list-style-type: none"> The 2014 Decision of NPCSC, the disqualification of elected LegCo Members and selective prosecution of demonstrators were examples of how the Government was undermining the civil and political rights of Hong Kong people under ICCPR. Moreover, the press freedom was deteriorating and the media could not effectively monitor the Government.
22.*	Mr WONG Kai-yeung	<ul style="list-style-type: none"> The outline of the fourth report should include public's grave concerns about the sentence review of the three student leaders involved in the "Occupy Movement". As required by BL 39, the HKSAR Government was obliged to review and amend Hong Kong legislation to ensure compliance with ICCPR.
23.	Beyond the Boundary-Knowing and Concerns Intersex	<ul style="list-style-type: none"> LC Paper No. CB(2)680/17-18(03)

No.	Name of deputation / individual	Submission / Major views and concerns
24.*	Mr SZE Ching-wee	<ul style="list-style-type: none"> ● The upcoming enactment of national anthem law in Hong Kong would further undermine the freedom of opinion and expression of Hong Kong people. ● The recent events, such as students being kicked out of their graduation ceremony after refusing to stand when the national anthem was played during the ceremony, showed that the rights of Hong Kong citizens were not protected by ICCPR.
25.	Mission For Migrant Workers	<ul style="list-style-type: none"> ● LC Paper No. CB(2)602/17-18(06)
26.	Hong Kong Confederation of Trade Unions	<ul style="list-style-type: none"> ● LC Paper No. CB(2)602/17-18(06)
27.	Chosen Power (People First Hong Kong)	<ul style="list-style-type: none"> ● LC Paper No. CB(2)680/17-18(04)
28.	Mr CHAN Tsun-kit	<ul style="list-style-type: none"> ● LC Paper No. CB(2)680/17-18(05)
29.*	Mr Alex CHOW Yong-kang	<ul style="list-style-type: none"> ● Although the Human Rights Committee ("HRC") of the United Nations expressed concern in the concluding observations in 2013 that the power of interpretation of the Basic Law by NPCSC may weaken and undermine the rule of law and the independence of the judiciary, the Administration did not address such concern in the outline of the fourth report. ● As pointed out by HRC in the Concluding Observations on the previous report, Articles 2, 25 and 26 of ICCPR were not observed by the Government. Subsequent developments, such as the adoption of the Confirmation Form for LegCo elections, the 2014 Decision of NPCSC, and the prosecution of protesters, confirmed the worries of HRC and showed how the Government imposed restrictions on the civil and political rights of Hong Kong citizens.
30.*	Mr LAW Kwun-chung	<ul style="list-style-type: none"> ● Recent events, such as the disqualification of elected LegCo Members and the jailing of himself and two other student leaders involved in the "Occupy Movement", showed that the Administration did not respect the civil and political rights of Hong Kong people. ● The Government should take necessary measures to implement universal and equal suffrage conforming with ICCPR, as stated in the HRC's Concluding Observations on the previous report.

* No submissions provided for this meeting