

**立法會**  
**Legislative Council**

Ref : CB2/PL/CA

LC Paper No. CB(2)1398/17-18  
(These minutes have been seen  
by the Administration)

**Panel on Constitutional Affairs**

**Minutes of meeting**  
**held on Friday, 23 March 2018, at 8:30 am**  
**in Conference Room 1 of the Legislative Council Complex**

**Members present** : Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)  
Hon Holden CHOW Ho-ding (Deputy Chairman)  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon WONG Ting-kwong, GBS, JP  
Hon Starry LEE Wai-king, SBS, JP  
Hon CHAN Kin-por, GBS, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon WONG Kwok-kin, SBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Claudia MO  
Hon Steven HO Chun-yin, BBS  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Hon Alice MAK Mei-kuen, BBS, JP  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Dr Hon Helena WONG Pik-wan  
Dr Hon CHIANG Lai-wan, JP  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon CHUNG Kwok-pan  
Hon Alvin YEUNG  
Hon CHU Hoi-dick  
Hon Jimmy NG Wing-ka, JP  
Hon LAM Cheuk-ting  
Hon Wilson OR Chong-shing, MH  
Hon Tanya CHAN  
Hon CHEUNG Kwok-kwan, JP  
Hon HUI Chi-fung  
Hon LAU Kwok-fan, MH

Hon Kenneth LAU Ip-keung, BBS, MH, JP  
Dr Hon CHENG Chung-tai  
Hon AU Nok-hin

**Members attending** : Hon Michael TIEN Puk-sun, BBS, JP  
Hon WU Chi-wai, MH  
Hon YIU Si-wing, BBS  
Dr Hon KWOK Ka-ki  
Dr Hon Elizabeth QUAT, BBS, JP  
Hon SHIU Ka-fai  
Hon SHIU Ka-chun  
Hon CHAN Chun-ying  
Hon Jeremy TAM Man-ho  
Hon Gary FAN Kwok-wai

**Members absent** : Hon Dennis KWOK Wing-hang  
Hon IP Kin-yuen

**Public Officers attending** : Item III

Mr Patrick NIP Tak-kuen, JP  
Secretary for Constitutional and Mainland Affairs

Mr Roy TANG Yun-kwong, JP  
Permanent Secretary for Constitutional and Mainland  
Affairs

Miss Charmaine LEE Pui-sze, JP  
Deputy Secretary for Constitutional and Mainland  
Affairs

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

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

Miss Cindy 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 Nos. CB(2)903/17-18(01), CB(2)968/17-18(01) and (02)]

The Panel noted that the following papers had been issued to members after the last meeting:

- (a) the Administration's response to a joint letter dated 5 February 2018 from Dr Helena WONG and Mr LAM Cheuk-ting [LC Paper No. CB(2)903/17-18(01)]; and
- (b) another joint letter dated 23 February 2018 from Dr Helena WONG and Mr LAM Cheuk-ting to the Chairman and the Clerk's reply letter [LC Paper Nos. CB(2)968/17-18(01) and (02)].

2. Referring to the above-mentioned joint letters, Ms Claudia MO said that she considered it necessary to discuss the role of the Returning Officers in determining a candidate's eligibility in public elections as early as possible and preferably at the next meeting. In response, the Chairman said that two time sensitive items proposed by the Administration would need to be discussed at the next meeting. Besides, he considered that there was no imminent need to discuss the proposed subject in view of the relevant judicial proceedings as explained in the Clerk's reply letter [LC Paper No. CB(2)968/17-18(02)]. Nevertheless, he had directed that the subject be included in the Panel's list of outstanding item for discussion.

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

[LC Paper Nos. CB(2)1063/17-18(01) and (02)]

3. Members agreed to discuss and receive public views on the following items proposed by the Administration at the next meeting on 30 April 2018 at 2:30 pm:

- (a) outline of the third report of the Hong Kong Special Administrative Region ("HKSAR") for the United Nations Human Rights Council Universal Periodic Review; and
- (b) an outline of the topics in the second report of HKSAR under the United Nations Convention on the Rights of Persons with Disabilities.

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4. Referring to his letter dated 22 December 2017 to the Panel [LC Paper No. CB(2)611/17-18(01)], Mr HUI Chi-fung suggested that more time should be allowed for the next meeting as he expected that a number of deputations/individuals would sign up to give views. The Chairman said that the meeting would be extended to 5:30 pm to allow sufficient time for discussion. Ms Tanya CHAN enquired whether invitation letters would be issued to relevant organizations. The Chairman replied that in line with the established practice, the 18 District Councils would be invited to give views. Members who would like to propose any organizations for invitation were requested to inform the Clerk.

**III. Local legislation to implement the National Anthem Law**  
[LC Paper Nos. CB(2)1063/17-18(03) and (04)]

5. At the invitation of the Chairman, the Secretary for Constitutional and Mainland Affairs ("SCMA") introduced the Administration's paper [LC Paper No. CB(2)1063/17-18(03)] and took members through the outline of the proposed content of the National Anthem Bill ("the Bill") in Annex 2 to the Administration's paper. SCMA said that the local legislation sought to implement the Law of the People's Republic of China on the National Anthem ("the National Anthem Law").

Discussion

*Proposed content of the National Anthem Bill*

6. Mr Jeffrey LAM said that the Bill should be introduced as soon as possible as the national anthem was the symbol of the nation and should be respected. Noting that some people in the community had expressed grave concern about the impact of the proposed national anthem legislation on the freedom of speech and whether people might violate the law inadvertently, Mr LAM suggested that the Administration should step up public education and publicity to dispel doubts in this regard.

7. Ms Starry LEE said that the Administration had a constitutional duty to enact local legislation to implement the National Anthem Law in Hong Kong and there was a pressing need to do so in order to tackle incidents like booing the national anthem during football matches. She requested the Administration to clarify whether people passing by a stadium or a large outdoor television ("TV") with the national anthem being played would have

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to stand still. Ir Dr LO Wai-kwok asked whether diners at restaurants would have to stand up when the national anthem was played on TV. Ms Claudia MO asked what if people rolled their eyes when the national anthem was played or sang the national anthem in Cantonese in public. Mr CHEUNG Kwok-kwan considered that a person who took a knee, as what some American Super Bowl players did, during the performance and singing of the national anthem would only be regarded as contravening Article 7 of the National Anthem Law which did not carry penalties as proposed by the Administration in the Bill.

8. SCMA said that as far as Article 7 of the National Anthem Law was concerned, it was proposed that under the corresponding provision of the Bill, persons who took part in, or were present at, the occasion where the national anthem was performed or sung, must stand and deport themselves respectfully. Passersby and diners at restaurants, who were not participating in such an event, were not to be covered by the provision. SCMA further said that the Bill would contain a provision based on Article 15 of the National Anthem Law, specifying that it would be a criminal offence to publicly and wilfully alter the lyrics or score of the national anthem, perform or sing it in a distorted or derogatory manner, or insult it in any other way. He stressed that the Bill would only target people who showed wilful intent to insult the national anthem. He explained that it would be impossible to define what constituted an insult to the national anthem by giving an exhaustive list in the Bill. The courts would consider each case based on objective facts and decide whether a particular case violated the law based on evidence. The law enforcement agency would collect evidence for investigation, and prosecution would be made subject to circumstances and evidence.

9. Noting that no penalties were provided for under Article 7, the Deputy Chairman asked whether the relevant provision would be implemented just by persuasion. SCMA said that Article 7 served to provide guidance whereas Article 15 carried penalties for non-compliance.

10. Mr Michael TIEN expressed concern that some persons with ulterior motive might play the national anthem on occasions (e.g. during a filibuster at the Legislature, a rally or a march) which were neither those prescribed by the Chief Executive nor those prohibited under Article 8. He asked whether people present would have to stand still on those occasions. He further suggested that those who played the national anthem with ulterior motive on inappropriate occasions should be subject to a fine at level 5 (\$50,000) to prevent the above-mentioned misuse of the national anthem. SCMA

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responded that a person would commit an offence if he or she publicly and wilfully insulted the national anthem.

11. Ms Claudia MO requested the Administration to consider removing the penalty clauses or making them as lenient as possible in the Bill, adding that there were no national anthem laws in the United States ("US") and Canada, and that the maximum penalty in the relevant legislation in France was only six months' imprisonment. In response, SCMA said that it was necessary to provide for penalties in order to achieve deterrent effect. The Administration had made reference to the relevant provisions of the existing National Flag and National Emblem Ordinance in proposing the current level of penalties under the proposed legislation. SCMA added that the Administration would also step up efforts in education and publicity to promote respect for the national anthem.

12. Mrs Regina IP pointed out that the US did not have a national anthem law but adopted a Flag Code specifying the etiquette during the performance and singing of the national anthem and when the national flag was displayed. She asked whether the Administration would consider specifying the appropriate etiquette by way of subsidiary legislation to let people know how they should behave during the performance and singing of the national anthem in Hong Kong. SCMA said that the Administration had no plan to do so. The Permanent Secretary for Constitutional and Mainland Affairs supplemented that there had been provisions specifying certain etiquette for specified groups (such as the People's Armed Police should salute with the hand) during the performance and singing of the national anthem in the first draft of the National Anthem Law. Such provisions no longer appeared in the final version of the National Anthem Law which was passed by the Standing Committee of the National People's Congress.

13. Ms Tanya CHAN expressed concern that Articles 1 and 3 of the National Anthem Law were proposed to be suitably incorporated into the Preamble of the Bill, whereas no such arrangement was made for the National Flag and National Emblem Ordinance. She questioned the different arrangement and queried whether the proposed arrangement for the Bill would deviate from the law drafting practice in Common Law. She further highlighted that Article 1 of the National Anthem Law stipulated "practise the core values of socialism", which was inconsistent with Article 5 of the Basic Law ("BL 5") which stipulated that "[t]he socialist system and policies shall not be practised in the Hong Kong Special Administrative Region".

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14. Ms Tanya CHAN also expressed concern that the Bill would include a provision stipulating that "Secondary and primary schools shall teach students to sing the national anthem, and to understand the history and spirit of the national anthem...". She noted that similar provisions were not found in the National Flag and National Emblem Ordinance even though schools had been teaching the national flag and national emblem as required by curriculum guidelines and syllabus issued by the Education Bureau ("EDB"). She considered that the relevant provision under the Bill was in contravention of BL 137 which stipulated that "[e]ducational institutions of all kinds may retain their autonomy and enjoy academic freedom". Mr Alvin YEUNG said that Members of the Civic Party would object to the proposed national anthem legislation if Hong Kong people's freedom of speech and of thought would be compromised under the legislation.

15. SCMA said that the Administration would ensure that the Bill was in conformity with the Basic Law, including the provisions concerning human rights. He stressed that the legislative principle was to maintain the purpose and intent of the National Anthem Law to fully reflect its spirit and to preserve the dignity of the national anthem, so that Hong Kong citizens would respect the national anthem, whilst taking into account the common law system and local circumstances.

16. SCMA further said that the Court of Final Appeal had ruled that the freedom of speech and expression was not without boundaries. As ruled by the court, restrictions on freedom of speech and expression that were proportionate to the legitimate interests in protecting the national flag as the unique symbol of the nation could be imposed. The restrictions imposed were considered reasonable, as they only limited the ways of expression and not the content expressed.

17. Regarding Article 15 of the National Anthem Law and the corresponding provision of the Bill, Mr Alvin YEUNG enquired what the expression "in any other manner" specifically referred to. He expressed grave concern that the scope was too wide and people might breach the law inadvertently. Mr CHU Hoi-dick and Mr HUI Chi-fung asked whether a person would be considered as insulting the national anthem "in any other manner" and breach Article 15 of the law if he or she remained seated or walked away during the performance and singing of the national anthem at large-scale events. Mr Charles Peter MOK expressed concern that there would be white terror as it remained unclear what the expression "in any other manner" specifically referred to.

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18. SCMA said that it was not possible to give an exhaustive list as to what constituted an insult to the national anthem. He said that performing or singing the national anthem in a distorted or derogatory manner, or insulting it in any other manner would be caught by Article 15. Whether an act would be considered as an offence would depend on the intention and whether it was carried out in public. The law enforcement agency would gather the relevant evidence, and the decision to prosecute or not would depend on circumstances and evidence. In response to Mr YEUNG's enquiry on whether playing Mr Hacken LEE's Cantonese pop song "Adventure of a football fan" ("球迷奇遇記") in public would breach the law after the enactment of the proposed legislation, SCMA said that he did not see any problem with the song.

19. Dr Priscilla LEUNG enquired whether it was the Administration's position that a song involving alterations to the national anthem just for fun without any malice, and was created before the passage of the Bill, would not be caught by the law. If that was case, she further asked whether it was true that after the passage of the Bill, a person who broadcast the song on the Internet would also not be caught by the law. On the other hand, she wished to confirm that songs involving malicious alterations of the national anthem and created before the passage of the Bill would not be caught by the law, whereas after the passage of the Bill, the public would be advised not to broadcast such songs. Mr YIU Si-wing expressed the same concerns. Mr MA Fung-kwok was concerned that some people might contravene the legislation unintentionally in the course of film production or artistic creation. He suggested that the relevant sectors should be consulted in the legislative process.

20. SCMA said that while each case would have to be considered on a case-by-case basis taking into account all the objective facts and evidence, it was clear that publicly and wilfully altering the lyrics or the score of the national anthem or performing or singing the national anthem in a distorted or derogatory manner would not be allowed under Article 15. As for the publication of derivative work of the national anthem, including broadcasting such work online, the provision in Article 15 would also be applicable. In general, laws in the physical world were applicable to the cyber world based on actual circumstances. SCMA further said that whilst there would be reasonable restrictions imposed on the freedoms of creation and expression under the law, one would not breach the law if one respected the national anthem and did not insult it in a public and wilful manner.



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21. Dr CHENG Chung-tai considered that based on what SCMA had said, the standards to be applied in law enforcement would be subject to interpretation as to what constituted "insults" to the national anthem. He took the view that the Administration failed to explain why the national anthem was not required to be performed and sung during the ceremonies of oath-taking by the Legislative Council ("LegCo") Members/judges in Hong Kong, and why Article 9 would not be included in the Bill.

22. Mr CHU Hoi-dick said that according to BL 18(3), "[l]aws listed in Annex III to this Law shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by this Law". He asked why the National Anthem Law fell outside the autonomy of HKSAR. SCMA replied that the national anthem was the symbol and hallmark of the nation. The National Anthem Law was a national law clearly outside the autonomy of HKSAR.

23. Mr HUI Chi-fung considered that the inclusion of a provision in the Bill stating that primary and secondary schools had to teach students to sing the national anthem, and to understand the history and spirit of the national anthem, would bring undue pressure to teachers as they might be worried that they did not teach enough or failed to meet the requirements under this provision. Mr Charles Peter MOK asked whether international schools in Hong Kong would be covered by the Bill and what would be done with non-Chinese speaking students in local schools. He was concerned whether the proposed legislation would set a precedent to mandate by law on what should be taught in school curriculum.

24. SCMA said that the relevant provision aimed to reflect the requirement in Article 11 of the National Anthem Law that the national anthem should be included in primary and secondary education. He pointed out that most local schools were already teaching students about the national anthem. In fact, EDB had indicated that the learning contents of the national anthem had already been incorporated into the subject curricula at primary and secondary levels and in Moral, Civic and National Education. Hence, no additional requirement would be imposed on schools under the law. SCMA added that EDB would discuss with the international schools to map out the appropriate way forward.

25. Presenting a towel with wording similar to the first sentence of the lyrics of the national anthem, Mr SHIU Ka-chun asked whether his act would be deemed to have committed an offence under the law. SCMA considered

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that Mr SHIU was just expressing his views, not performing or singing the national anthem. Mr SHIU further asked whether students would also be taught about the tragic death of Mr TIAN Han, the writer of the lyrics of the national anthem, who was persecuted till death in the Cultural Revolution. Mr AU Nok-hin enquired whether the teaching of the history regarding the persecution of Mr TIAN Han would be considered as an act that "insults the national anthem in any other manner". SCMA said that the history and spirit of the national anthem was already being taught in schools as part of their curriculum, and teachers were free to exercise their professional judgment in their teaching. Mr LAM Cheuk-ting suggested that EDB should include in the curriculum the historical background of the national anthem, particularly how the Communist Party had taken the opportunity of the Japanese invasion to expand its power in the Northwest China.

26. Mr LAU Kwok-fan enquired whether community groups could play the national anthem during celebration of the National Day after the enactment of the proposed local legislation. SCMA said that there would be no problem provided that when the national anthem was played on such occasions, people attending should stand and deport themselves respectfully.

27. Noting that Article 1 of the National Anthem Law included "to promote patriotism", Dr Helena WONG expressed a strong view against incorporating exactly the same wordings into the Preamble of the Bill. She stressed that the Basic Law should be adhered to in enacting the relevant local legislation. Mr Jeremy TAM questioned whether it was appropriate to incorporate such ideological text into the Preamble of the Bill.

28. SCMA reiterated that the legislative principle was to maintain the purpose and intent of the National Anthem Law to fully reflect its spirit and to preserve the dignity of the national anthem, whilst taking into account the common law system and the actual circumstances in Hong Kong. As such, the Administration would suitably incorporate Article 1 into the Preamble of the Bill with suitable modifications of the wordings. He explained that the Preamble would follow the Long Title in the Bill and would serve to provide background information to enhance understanding of the purpose of the Bill. Mr Jeremy TAM said that the National Flag and National Emblem Ordinance, however, did not contain a preamble to state its purpose.

29. Mr Gary FAN said that people should not be forced to respect the national anthem through a draconian law and punishment. He opposed having sanctions under the Bill. He said that to tackle incidents like booing

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the national anthem during football matches, the Administration should have looked into the relevant causes instead of resorting to legislation. Mr SHIU Ka-fai said that the dignity of the national anthem should be upheld and protected. He believed that the majority of Hong Kong people would not object to enacting the proposed legislation. He considered that students studying in international schools in Hong Kong should also be required to respect the national anthem and observe the etiquette during the performance and singing of the national anthem. Mr Steven HO said that the national anthem of any country should be respected. Given the repeated incidents of booing the national anthem during football matches in Hong Kong, it was necessary to enact the proposed legislation to tackle the issue. He considered that the Administration should introduce a blue bill as soon as possible. Mr YIU Si-wing also considered that Hong Kong had the constitutional duty to enact the proposed national anthem legislation as soon as possible.

*Public consultation*

30. Mr CHAN Chi-chuen and Ms Claudia MO expressed dissatisfaction that the Chief Executive had dismissed calls for a public consultation on the Bill. Mr CHAN stressed that public consultation for such a contentious bill was needed, and there would be sufficient time to do so before the introduction of the Bill in July 2018. Mr Gary FAN questioned why the "Guidelines on Public Consultation" published by the Constitutional and Mainland Affairs Bureau in 2003, which set out the general guiding principles in undertaking public consultation, were not followed in the current legislative exercise. Mr WU Chi-wai considered that the Administration should issue a white bill setting out the detailed legislative provisions for public consultation. SCMA said that there were many ways for people to express their views. The Administration would take into consideration members' views in drafting the legislative proposal. Moreover, when the bill was introduced into LegCo, members would have time to discuss it in detail.

31. Members agreed that the Panel should receive public views on this subject. The Chairman informed members that the meeting venues on 28 April 2018 and 5 May 2018 had been reserved for the purpose.

*(Post-meeting note: Members were informed of the meeting arrangements vide LC Paper No. CB(2)1121/17-18 on 27 March 2018.)*

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**IV. Any other business**

32. There being no other business, the meeting ended at 10:29 am.

Council Business Division 2  
Legislative Council Secretariat  
15 May 2018