

立法會
Legislative Council

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LC Paper No. CB(2)2029/17-18
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 21 May 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 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 Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Paul TSE Wai-chun, 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
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
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
Dr Hon CHENG Chung-tai

Hon AU Nok-hin

Members attending : Dr Hon Elizabeth QUAT, BBS, JP
Hon HO Kai-ming
Hon SHIU Ka-chun

Members absent : Hon WONG Kwok-kin, SBS, JP
Hon MA Fung-kwok, SBS, JP
Hon CHUNG Kwok-pan
Hon LAU Kwok-fan, MH
Hon Kenneth LAU Ip-keung, BBS, MH, JP

Public Officers attending : Item IV

Mr Andy CHAN Shui-fu, JP
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

Item V

Mr Caspar TSUI, JP
Under Secretary for Labour and Welfare

Miss Leonia TAI Shuk-yiu
Deputy Secretary for Labour and Welfare (Welfare) 1

Mr D C CHEUNG
Principal Assistant Secretary for (Constitutional &
Mainland Affairs)5

Miss Winnie CHUI Hiu-lo
Principal Assistant Secretary for Security (Security) C

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

Ms Karyn CHAN Ching-yuen
Principal Assistant Secretary (Civic Affairs)2

Ms Christina CHONG Yau-ling
Principal Assistant Secretary for Development (Planning
& Lands)6

Mr Godfrey KAN
Senior Assistant Solicitor General
Department of Justice

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

Ms PANG Kit-ling
Assistant Director (Family and Child Welfare)
Social Welfare Department

Dr Rita HO Ka-wai
Principal Medical and Health Officer (Family Health
Service)
Department of Health

Ms Cynthia CHAN Chin-woon
Principal Education Officer (New Territories)
Education Bureau

Mr NG Shu-chung
Chief Manager/Management (Support Service) 2
Housing Department

Attendance by : Item V
invitation

Mr LEUNG Kwok-hung

Association Concerning Sexual Violence Against Women

Miss CHAN Suet-yee

民主黨性別平權委員會

Miss CHOW Wing-heng

Anti480-Anti Sexual Violence Resource Center

Mr WAN Chi-ho

New People's Party

Ms Dana LAU

Action for REACH OUT

Ms Kendy YIM

The Association for the Advancement of Feminism

Miss YEUNG Oi-mei

Labour Party

Miss Carol NG Man-yee

PathFinders Limited

Ms Paula GROGAN

Miss TSUI Ho-yee

Hong Kong Women Workers' Association

Ms WU Mei-lin

Hong Kong Ladies Kynamic Assonciation

Ms LAI Suet-ying

Ms LAU Kwai-yung

Rainlily

Ms Tiffany NG

The Hong Kong Federation of Trade Unions Women
Affairs Committee

姜淑敏女士

Oxfam Hong Kong

Mr Isaac CHAN Hoi-kin

Mr LAI Ming-chak

Stop Trafficking of People (STOP.)

Ms Jacqueline Carmen AU

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 Fanny TSANG
Legislative Assistant (2) 3

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I. Confirmation of minutes of meeting
[LC Paper No. CB(2)1398/17-18]

The minutes of the meeting held on 23 March 2018 were confirmed.

II. Information papers issued since the last meeting
[LC Paper Nos. CB(2)1424/17-18(01) and (02)]

2. The Panel noted that a letter dated 10 May 2018 from Mr HUI Chi-fung and the Administration's reply letter dated 18 May 2018 had been issued after the last meeting.

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III. Items for discussion at the next meeting

[LC Paper Nos. CB(2)1391/17-18(01) and (02)]

3. The Panel agreed to discuss the following items proposed by the Administration at the next regular meeting on 22 June 2018 at 10:45 am:

- (a) Discrimination Legislation (Miscellaneous Amendments) Bill; and
- (b) 2018 Voter Registration.

IV. Consultation Report on Review of Electoral Arrangements and proposed amendments to electoral legislation

[LC Paper Nos. CB(2)1406/17-18, CB(2)1391/17-18(03) and (04)]

4. The Under Secretary for Constitutional and Mainland Affairs ("USCMA") briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)1391/17-18(03)].

Discussion

Regulation of election advertisements published through the Internet (including social media)

5. Members in general expressed support for the Administration's proposal of introducing a targeted exemption of the criminal liability under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO") in respect of a third party (i.e. individuals or groups that were neither the relevant candidates whose elections were promoted or prejudiced nor their election expense agents) who incurred electricity and/or Internet access charges in publishing election advertisements ("EAs") on the Internet (including social media). Mr Alvin YEUNG enquired about the applicability of the proposed exemption to EAs that expressed support for certain candidate(s) and published via instant message applications (e.g. Whatsapp).

6. USCMA explained that the Administration proposed to introduce a

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targeted exemption of the criminal liability under ECICO in respect of a third party (including individuals and groups, except for the candidates whose election was being promoted or prejudiced and their election expense agents) who incurred merely electricity and Internet access charges in publishing EAs on the Internet (including social media). USCMA pointed that the definitions of EAs and election expenses under the existing legislation would remain intact.

7. Ms Claudia MO said that a person posting a self-made e-poster through the social media to promote the election of certain candidate(s) might incur only minimal production cost by using software applications to make the e-poster within a few minutes. She asked whether the production cost in this case would also be subject to the proposed exemption. USCMA responded that the types of election expenses eligible for the proposed exemption were restricted to electricity and Internet access charges. As regards other costs, whether a particular item of expenditure should be regarded as an election expense was a question of fact to be answered based on the circumstances of each case.

8. Ms Claudia MO asked whether exit poll results disclosed via the Internet (e.g. Telegram, WeChat, Twitter) on the polling day for the purpose of canvassing activities would be regarded as EAs and subject to regulation. USCMA said that the Electoral Affairs Commission ("EAC") had promulgated guidelines in relation to the conduct, publication and broadcast of exit polls conducted within No Canvassing Zones ("NCZs") ("the Guidelines") to avoid unfair interference with the election process by unduly influencing electors. Applicant organizations for conducting exit polls had to make a statutory declaration to abide by the relevant terms and the Guidelines on the conduct of exit poll. The statutory declaration required the applicant or applicant organization to undertake not to announce or disclose the result of the exit poll before the close of poll. Failure to abide by the relevant terms and the Guidelines could result in revocation of the approval of the conduct of exit poll by EAC. If applicants or applicant organization knowingly made a false statement on material particular in the statutory declaration, they might be subject to criminal liability. USCMA further said that any form of materials published for the purpose of promoting or prejudicing the election of a candidate at the election constituted an EA. However, under the current proposal, an exemption would be provided in ECICO, such that a third

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party incurring merely electricity and/or Internet access charges could be exempted from the criminal liability arising from incurring election expenses as a result of expression of views on the Internet (including social media) that constituted an EA.

Regulation of election surveys

9. Mr Christopher CHEUNG expressed disappointment that election surveys conducted on or prior to the polling day would not be banned despite the media reported that some organizations intended to use the results of election surveys to unduly affect the choice of electors. Noting that a "Project Storm" was reportedly being mooted by an academic, Mr CHEUNG and Mrs Regina IP enquired whether it was in breach of the legislation and guidelines relating to elections, and how the Administration would deal with the matter to ensure fairness in election.

10. USCMA said that according to available information in public domain at the present stage, the above-named project was not an election survey or EA, but a plan to recruit more people to run for future public elections. Mrs Regina IP enquired whether relevant expenses (e.g. sponsorship of an election survey) had to be declared according to the definition of "election expenses" under ECICO. USCMA advised that "election expenses" referred to expenses incurred or to be incurred, before, during or after an election, by or on behalf of the candidate for the purpose of promoting the election of the candidate or prejudicing the election of another candidate. The term "candidate" included a person who had publicly declared an intention to stand for election at any time before the close of nominations for the election. USCMA advised that if a third party sponsored the relevant cost of publishing EAs, the amount should be regarded as an election donation to the said candidate who should include this in his/her election return and the prior consent of the candidate should be sought. Mrs IP called on the Administration to keep the situation under review to ensure compliance with the requirements of the electoral legislation and consider legislative amendments to combat abusive practices in this regard. USCMA agreed to keep in view the relevant developments.

11. Ms Starry LEE expressed concern that the "ThunderGo" campaign which sought to influence electors' choice had allegedly manipulated

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election results, and enquired what action would be taken by the Administration to ensure fairness in future elections. USCMA said that according to the EAC report on the 2016 Legislative Council ("LegCo") Election, EAC had referred the concerned cases to relevant law enforcement agencies for follow-up and the investigation was still underway. He reiterated that the definition of EA was broad which covered any form of material published for the purpose of promoting or prejudicing the election of any candidates at an election. Relevant expenses should be counted towards the candidate's election expenses, and it required the prior written consent of the candidate.

12. Dr Priscilla LEUNG enquired about the Administration's policy to deal with certain campaigns to request certain candidates to abandon an election. USCMA explained that a candidate might not withdraw his/her candidature after the close of nomination under the existing legislation.

Polling hours

13. Dr Helena WONG said that Members belonging to the Democratic Party welcomed maintaining the status quo as voters might find it difficult to adapt to new changes to the polling hours. Mr AU Nok-hin said that electors who had to work on shift might be unable to vote if the polling hours were shortened, and in the absence of any alternative polling arrangement for these electors who were unable to cast their votes in person, the current polling hours should be maintained.

14. Dr CHIANG Lai-wan said that the existing polling hours which lasted for 15 hours was unduly long. She expressed disappointment at the current proposal as she had, over the years, called for shortening the polling hours. Noting that the written submissions received by the Administration indicated an overwhelming majority of views opposing the shortening the polling hours, Dr CHIANG and Mr CHEUNG Kwok-kwan pointed out that while more than 15 000 written submissions were received from the public, a vast majority (i.e. over 99%) were from a template generating website.

15. Mrs Regina IP said that any improvements to the polling arrangements should be made as soon as possible for implementation in the upcoming LegCo By-election, 2019 District Council ("DC") election

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and 2020 LegCo election. However, it was disappointing to note that various suggestions (such as advance polling and overseas polling arrangements) had not been adopted by the Administration. In her view, voters would be able to adjust their voting habit to adapt to shortened polling hours.

16. USCMA said that the Administration was still in the course of studying a host of relevant issues, including studying the use of information technology in the vote counting process, and formulating alternative arrangements for electors who were unable to go to polling stations in person on the polling day to vote due to the shortening of polling hours, etc. Mrs IP requested the Administration to undertake that it would make known the Government's concrete timetable on shortening the polling hours of LegCo and DC elections. The Administration agreed to provide supplementary information in writing.

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(Post-meeting note: The Administration's response was issued vide LC Paper No. CB(2)1592/17-18(01) on 12 June 2018.)

17. Mr CHEUNG Kwok-kwan enquired whether arrangements would be made to enable those civil servants who served as polling staff, or some electors who were outside Hong Kong on the polling day, to cast their votes in advance. He urged the Administration to put forward concrete proposals on alternative polling arrangements alongside the proposal of shortening the polling hours within the current-term Government. Ms Starry LEE and Dr Priscilla LEUNG suggested that the Government should also make arrangements to enable eligible electors who were Hong Kong permanent residents working or residing on the Mainland to cast their votes, and enquired whether such studies could be completed expeditiously so that the relevant arrangements could be implemented in the 2019 DC election and 2020 LegCo election.

18. USCMA advised that during the public consultation, the Administration also received proposals from political parties and LegCo Members on arranging advance polling for civil servants who served as polling staff on the polling day. The Administration would critically examine the various operational details and legal issues involved. Dr Priscilla LEUNG suggested that the Administration should examine the definition of "ordinarily residing in Hong Kong" and should

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take proactive measure to publicize voter registration among Hong Kong people who resided in the Mainland and help them get registered as electors.

Classification of certain ballot papers as clearly invalid to streamline the counting process

19. Referring to the Administration's proposal to stipulate in the legislation for LegCo and DC elections that a ballot paper with vote recorded for a candidate list with the only candidate(s) on the list deceased or disqualified was to be treated as clearly invalid and not to be counted, Mr Alvin YEUNG enquired what if at least one candidate on the list was not the deceased or disqualified. USCMA said that the relevant ballot paper would be counted provided that the electors' choice on the ballot paper was sufficiently clear.

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20. Dr Helena WONG expressed reservation about the proposal to introduce provisions that overmarked ballot papers in the Chief Executive ("CE") election were to be treated as clearly invalid and not to be counted. She said that as the CE election only had 1 200 eligible voters and a candidate would need to obtain 601 votes in order to get elected, every single vote would be very important. She stressed that there should be a transparent process for the handling of questionable ballots. USCMA explained that the existing arrangement which allowed candidates and their agents to inspect questionable or clearly invalid ballot papers would remain unchanged. Mr AU Nok-hin enquired about the rationale for the proposal in paragraph 32 of the Administration's paper. Owing to the shortage of time, the Chairman requested the Administration to provide a written response.

(Post-meeting note: The Administration's response was issued vide LC Paper No. CB(2)1592/17-18(01) on 12 June 2018.)

Improving the objection mechanism

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21. Referring to paragraph 26 of the Administration's paper which stated that "it is the duty of the claimant or objector to provide sufficient particulars relevant to the case", Mr AU Nok-hin enquired about the meaning of this provision and requested the Administration to clarify the

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relevant standard of proof and whether the Administration would specify the relevant standard of proof in the amendment Bill; and if so, how it would be specified. At the request of Mr AU, the Administration undertook to give a written reply.

(Post-meeting note: The Administration's response was issued vide LC Paper No. CB(2)1592/17-18(01) on 12 June 2018.)

V. An outline of the topics to be covered in the Fourth Report of the Hong Kong Special Administrative Region under the United Nations Convention on the Elimination of All Forms of Discrimination against Women
[LC Paper Nos. CB(2)1391/17-18(05) and (06)]

Meeting with deputations and the Administration

22. Members noted that an outline of the topics to be included in the fourth report of the Hong Kong Special Administrative Region ("HKSAR") under the United Nations Convention on the Elimination of All Forms of Discrimination against Women ("the fourth report") was issued by the Government on 1 March 2018 for public consultation until 31 May 2018 [LC Paper No. CB(2)1391/17-18(05)]. The Under Secretary for Labour and Welfare ("USLW") said that the Administration would carefully consider the views received in drafting the report.

23. The Panel received views from 18 deputations/individuals on the outline of the topics in the fourth report of HKSAR under the United Nations Convention on the Elimination of All Forms of Discrimination against Women. A record of the 18 deputations/individuals and the submissions received are in the **Appendix**.

Administration's response to deputations' views

24. In response to the views expressed by the deputations on issues under the purview of the Labour and Welfare Bureau, USLW made the following points:

- (a) on promoting women rights, the Women's Commission ("WoC") was established in 2001 to promote women's rights and

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well-being in Hong Kong. WoC had adopted a three-pronged strategy, namely the provision of an enabling environment, empowerment of women through capacity building, and public education. On promoting gender mainstreaming, in 2015, the Government accepted the WoC's recommendations that all bureaux and departments should refer to the Gender Mainstreaming Checklist and apply gender mainstreaming when formulating major policies and initiatives. In response to deputations' concern about the work of WoC, the Administration had strengthened support for its work, and a budget of \$38 million was earmarked for women's interest in 2017-2018;

- (b) the number of Parents/Relatives Resources Centres to provide community support for the parents and relatives/carers of persons with disabilities would be increased from six to 13 from 2018-2019 in phases, and with the ultimate aim of providing a total of 19 centres. On child care services, apart from providing a total of about 300 additional places in aided standalone child care centres in North District, Kwun Tong, Kwai Tsing and Sha Tin starting from 2018-2019, the Administration launched the Special Scheme on Privately Owned Sites for Welfare Uses to allow non-governmental organizations ("NGOs") to establish work-based child care centres when using their own sites for redevelopment, expansion or new development. The Government was also exploring, on a pilot basis, the feasibility of providing about 100 NGO-operated child care places for staff members in the proposed Government Complex in Tseung Kwan O. Provision of public facilities within private developments would be proposed in land sale and/or lease conditions to meet public needs;
- (c) on retirement protection, in 2017, the Administration announced a series of measures to strengthen the retirement protection system, which included strengthening support of the social security pillar for the needy elderly persons and enhancements to Higher Old Age Living Allowance ("OALA"). In the next five years, the Administration would be spending

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HK\$60 billion every year on OALA. Meanwhile, the Government was pursuing the subject of abolishing the "offsetting" arrangement under the Mandatory Provident Fund ("MPF") System. A public annuity scheme would be launched in mid-2018 and the Administration would consider how this policy would complement other welfare policies in enhancing services for the elderly;

- (d) on combating sexual violence cases, the Social Welfare Department ("SWD") provided a wide range of preventive, supportive and specialized services to support victims of sexual violence. SWD would continue to enhance public education to raise public awareness on sexual violence, and step up training for frontline workers;
- (e) on family-friendly employment measures, apart from encouraging employers to be flexible in work arrangements, the Government was proceeding with a proposal to increase statutory paternity leave ("PL") from three to five days with the support of the Labour Advisory Board ("LAB"). The Government was also conducting a review of statutory maternity leave and aimed to work out a preliminary proposal by the second half of 2018;
- (f) since the implementation of Statutory Minimum Wage in May 2011, statistics showed that female workers had contributed to a significant increase in total employment. In response to concerns about the protection of employees engaged by government service contractors, an inter-bureaux/departamental working group had been set up to explore feasible options to improve the government outsourcing system with a view to enhancing the protection of these non-skilled employees in respect of their employment terms and conditions as well as labour benefits. It was hoped that the review would be completed in the third quarter of 2018;
- (g) as regards employees engaged not under a continuous contract, there were 148 300 persons in 2009 who were working less than 18 hours a week and/or less than four weeks, with about

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51% of them being male employees. The Labour Department ("LD") would seek the assistance of the Census and Statistics Department to conduct a new round of survey to obtain the latest employment data to facilitate consideration of the way forward;

- (h) there were about 370 000 foreign domestic helpers ("FDHs") in Hong Kong, and they enjoyed labour protection under the Government-prescribed Standard Employment Contract as well as labour laws. To provide better protection to job seekers including FDHs, legislative amendments had been made to the Employment Ordinance ("EO") by virtue of the Employment (Amendment) Ordinance 2018 to raise the maximum penalties for the offences of overcharging and unlicensed operation by employment agencies; and
- (i) Hong Kong addressed trafficking in persons ("TIP") through various pieces of local legislation. The conduct of TIP as defined in the Palermo Protocol was covered and effectively prohibited by various pieces of legislation in Hong Kong, encompassing offences such as physical abuse, human organ transplant, child abduction, child pornography and exploitation of children, illegal employment, etc. The Administration would keep the situation under review and consider legislative amendments to combat abusive practices where necessary.

25. In response to deputations' concerns on issues relating to sexual offences, the Principal Assistant Secretary for Security (Security) E advised that the Law Reform Commission ("LRC") was conducting a review on sexual offences and a three-month public consultation on miscellaneous sexual offences was being conducted until mid-August 2018. The Administration would follow up when law reform proposals of LRC were available.

26. In response to deputations' concerns on sex education, the Principal Education Officer (New Territories) of the Education Bureau ("EDB") made the following points:

- (a) since the introduction of curriculum reform in 2001, EDB had

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been advocating a holistic learning experience and encouraging schools to plan their curricula and other learning activities holistically and systematically for implementing values education, including sex education. Taking cultivation of students' positive values and attitudes as the direction, schools should co-ordinate the learning elements and learning activities in values education across different subjects for strengthening their connection, so as to provide students with holistic learning experiences conducive to their whole-person development;

- (b) learning elements related to sex education such as personal development, hygiene, puberty, making friends, dating, marriage, protecting the body and gender equality were included in the Key Learning Areas, subjects and the curricula of moral and civic education of primary and secondary schools. Social atmosphere also exerted influence on values and sex education. Hence, schools were encouraged to adopt life events as the major learning contents and engage students in exploring issues like dating and falling in love, establishing a meaningful connection between students' learning and their experience in personal growth; and
- (c) to support schools in implementing sex education, EDB had been producing web-based learning and teaching resources on various subjects. For example, it had commissioned the Family Planning Association of Hong Kong to produce sex education animation resources and lesson plans, covering topics such as gender equality, prevention of sexual abuse and sexual harassment among peers. EDB had also commissioned/invited tertiary institutions, relevant government departments and organizations/bodies (e.g. the Equal Opportunities Commission ("EOC")) to co-organize related courses/seminars/workshops, etc. on a range of themes such as "How to Promote Sex Education Effectively in Primary/Secondary Schools", "Mass Media, Gender Role and Gender Equality Education" and "Gender Equality Education and Prevention of Sexual Harassment and Dating Violence", etc. EDB would continue to enhance its support to schools, including developing learning and teaching resources and organizing professional development programmes

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for teachers to keep them abreast of the development of sex education, such as the latest issues and pedagogy.

Discussion

Political rights, sex discrimination and sexual harassment

27. To enhance political participation of women, Mr CHAN Chi-chuen called for the abolition of the functional constituencies ("FCs") elections in LegCo as most of the candidates contesting in elections of traditional FCs were male or with no female candidate at all. To address issues relating to the discrimination against lesbian, transsexual and transgender women, he suggested broadening the scope of the Sex Discrimination Ordinance (Cap. 480) ("SDO") to outlaw discrimination on the grounds of sexual orientation and gender identity. He also drew the Administration's attention to EOC's request for inclusion in the fourth report the latest plan and timeline for introducing a comprehensive gender recognition law and anti-discrimination legislation for lesbian, transsexual and transgender women.

28. Dr Priscilla LEUNG said that according to overseas experience, issues relating to gender recognition were controversial and she did not see the need to set a timetable for legislation. She added that schools teaching related topics would need to take into account the prevailing circumstances in Hong Kong and the perception of local people.

29. Noting that different departments/public authorities such as the Hospital Authority, Security Bureau, EDB and SWD had adopted various standards and mechanisms for collecting statistics of sexual harassment incidents occurred at hospitals, disciplinary forces, schools and residential care homes, Mr CHAN Chi-chuen requested the Administration to include in the fourth report statistical data of sexual harassment incidents occurred in the abovementioned departments/public authorities using the legal definition of sexual harassment stipulated in SDO, and to oblige those departments/public authorities to report all sexual harassments incidents and publish the statistics regularly.

30. Mr CHAN Chi-chuen raised concern about sexual harassment against promoters at restaurants (e.g. beer promoters) while at work who

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were not in an employment relationship with the restaurants, hence creating a gap in liability for sexual harassment as the promoters' employers (e.g. the beer company) would not be vicariously liable under the existing scope of SDO. He suggested that legislative amendments should be made to make employers liable where an employee had made a complaint to the employers but the employers failed to take practicable steps to prevent the harassment.

Trafficking in persons

31. Mr Dennis KWOK urged the Administration to address paragraphs 56 and 57 of the Concluding Observations with regard to the Palermo Protocol and the Administration's efforts in combating trafficking in women and girls and exploitation of women for the purpose of prostitution. He said that specific measures had been recommended by the relevant UN Committee under paragraph 57(b) to (d) which included, inter alia, adopting a comprehensive anti-trafficking legislation. In this connection, he had submitted a draft private bill to CE and relevant bureau for consideration, and enquired whether the Administration would respond to it positively.

32. USLW said that the Government was committed to combatting TIP and protecting FDHs through multi-faceted measures. Hong Kong addressed TIP through various pieces of local legislation. The Principal Assistant Secretary for Security (Security) C ("PAS(S)C") advised that in March 2018, a high-level inter-bureau/departmental Steering Committee, chaired by the Chief Secretary for Administration, to tackle TIP and to enhance protection of FDHs in Hong Kong was established. The Government had also promulgated an Action Plan which outlined various measures covering areas including victim identification, investigation, enforcement, prosecution, victim protection and support, prevention, and partnership with different stakeholders. In response to Mr KWOK's further enquiry, PAS(S)C said that the draft private bill submitted by Mr KWOK with various suggestions incorporated was being studied by relevant B/Ds.

Gender mainstreaming and child care services

33. Echoing the concerns raised by deputations on the work of WoC,

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Admin Dr Helena WONG suggested that WoC should be put under the Chief Secretary for Administration's Office to better promote gender mainstreaming in the policy formulation process. Mr SHIU Ka-chun urged the Administration to consider adopting gender mainstreaming in its policies relating to retirement protection as many women were either housewives or engaged in casual jobs, hence affecting their contribution to MPF. He enquired about the Administration's position in this regard. Due to insufficient time, the Chairman requested the Administration to provide a reply in writing.

Admin 34. Dr Helena WONG pointed out that there was an acute shortage of subsidized child care services as currently there was only one full-time child care place for every 148 young children (aged 0 to 2) according to the figures quoted by the deputations. She pointed out that owing to the need to take care of their children, many women had to leave the workplace and run into poverty, and they had difficulty to find a job later. Noting that the target for child care service was 33% in the European Union, Dr WONG enquired whether the Administration would set targets with regard to the provision of child care services (say, at least 30%). The Chairman requested the Administration to provide a written response after the meeting.

Maternity protection for female employees and paternity leave for male employees

35. Dr Helena WONG suggested that legislative amendments should be made to increase maternity leave to 14 weeks with full pay, and that PL should be increased to seven days with full pay. USLW said that LD had consulted LAB on the outcome of its review of statutory PL and would soon submit a legislative proposal to increase the statutory PL for LegCo's scrutiny.

36. Mr HO Kai-ming considered that more should be done to enhance maternity protection for female employees, including extending the period of employment protection for pregnant employees against unreasonable dismissal during pregnancy to a "post-natal care period" upon resumption of duty from maternity leave, and providing maternity leave for pregnant female employees who had less than 40 weeks' service or were employed not under a continuous contract. Echoing the

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concerns raised by Mr HO Kai-ming, Ms Alice MAK said that the statutory maternity leave of 10 weeks in Hong Kong was well below international standard and was lower than the 14 weeks recommended by the International Labour Organization. She further criticized that pregnant women were currently entitled to four-fifths of their wages during maternity leave period, which was the same as that for sickness allowance, was inappropriate. She added that the suggestion for extending the period of employment protection enjoyed by pregnant employees during pregnancy to the "post-natal care period" should warrant further discussion in the community.

37. USLW said that some 95% of employees in Hong Kong were engaged under continuous contract. LD would continue to publicize proactively the maternity protection provisions under EO to employers, employees and the general public through publicity and promotional activities. On the review of statutory maternity leave, the Government was currently conducting a study and aimed to work out a preliminary proposal by the latter half of 2018 for submission to LAB for consultation. In response to Ms Alice MAK's concern, USLW advised that in considering whether amendments should be made to the relevant legislative provisions, the Government would take into account the needs of working women and the affordability of enterprises, as well as making reference to the relevant international standards and the statutory maternity leave arrangements in other places, and whether there was wide consensus across different sectors.

(At 5:05 pm, the Chairman directed that the meeting be extended up to 15 minutes to allow sufficient time for discussion)

38. Dr Priscilla LEUNG suggested that the Administration should take the lead to consider adopting alternative work arrangements for female employees having regard to the practices adopted in overseas countries, for example, retaining the position for pregnant employees for up to a certain period to facilitate their resumption of their former positions in the workplace, exploring job types for pregnant employees to work at home, providing facilities to support breastfeeding women in the workplace, etc. USLW said that the Government would take measures to mandate the provision of baby care facilities and lactation rooms in new Government premises.

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39. Dr Elizabeth QUAT suggested that measures should be taken to encourage more women to give birth, including, for example, providing reproductive health services and treatment, enhancing child care services which were in acute shortage, and increasing the period of statutory PL.

Improvement to women welfare

40. On protection of the health of sex workers, Mr SHIU Ka-chun pointed out that as the Police would seize condoms during law enforcement and produce such seized items in certain cases as evidence for prosecution of sex work-related offences, sex workers might be reluctant to store or use condoms for fear of prosecution. PAS(S)E advised that the subject matter was also raised at the meeting of the Panel on Health Services in February 2018. According to a discussion paper for that meeting, from the Department of Justice's point of view, investigation of a criminal offence was the responsibility of the law enforcement agencies and it would be impracticable to instruct the on-site front-line officers not to seize the condoms from the vice establishments as these items might be relevant evidence. Therefore, it was reasonable and appropriate for the investigation officers to seize relevant exhibits according to the established guidelines.

41. Dr Fernando CHEUNG urged the Administration to improve women welfare in the following areas which were long-standing issues, including, labour protection for casual workers whose employment was not under continuous contracts, support for FDHs, women's shelter service for victims of domestic violence which was in acute shortage, support for ethnic minority women of low-income families who had difficulties to access public services owing to language barrier, as well as support for carers as the current living allowance for carers was nominal in nature. Dr CHEUNG requested the Administration to provide a reply in writing.

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42. Dr Elizabeth QUAT requested the Administration to expedite its work with regard to the review on miscellaneous sexual offences to enhance protection for victims of sexual offence. She pointed out that the review should also include protection for victims of sexual harassment in the workplace, public places, public transport, etc.

Action

VI. Any other business

43. There being no other business, the meeting ended at 5:20 pm.

Council Business Division 2
Legislative Council Secretariat
26 September 2018

Panel on Constitutional Affairs

Meeting on Monday, 21 May 2018, at 2:30 pm

Meeting to receive views on "An outline of the topics to be covered in the Fourth Report of the Hong Kong Special Administrative Region under the United Nations Convention on the Elimination of All Forms of Discrimination against Women"

Summary of views and concerns expressed by deputations/individuals

No.	Name of Deputation/individual	Submission / Major views and concerns
1.*	Mr LEUNG Kwok-hung	<ul style="list-style-type: none"> • The Government should strengthen the mandate of the Women's Commission and delegate it with more power to step up efforts on promoting women's rights. According to the Oxfam's "Report on Women and Poverty" published in 2016, the number of women living in poverty in Hong Kong reached 614 100. Another survey conducted by the Hong Kong Federation of Women's Centres in 2016 also reflected that of the 640,000 persons doing unpaid family care work, 97% of them were women and they would not have mandatory provident fund to support their living after retirement and many of them had to live in poverty. Besides, two-thirds of the senior citizens living in poverty were women. • According to the Hong Kong 2016 Population By-census, the monthly median income of employed women was only \$12,000 which was lower than that of men (i.e. \$16,890). The Administration was urged to set up a universal retirement protection scheme, regulate equal pay for work of equal value, and reduce outsourcing of government services.
2.	Association Concerning Sexual Violence Against Women	<ul style="list-style-type: none"> • LC Paper No. CB(2)1443/17-18(01)
3.*	民主黨性別平權委員會	<ul style="list-style-type: none"> • The Government should increase the number of childcare places so that women had more incentive to go back to the labour market. Currently, the service of aided standalone childcare centres in various districts were in acute shortage, with only 738 places in 12 districts whereas five districts did not have any aided standalone childcare centres. The average monthly fee of these childcare places was HK\$5,537 which was expensive and the fee of private childcare places was even higher. Affordable and accessible quality childcare provision was important for working parents. • The labour force participation rate of married women over the years was consistently below 70%. The Government should increase the number of occasional childcare places and the number of places of Neighbourhood Support Child Care Project, and extend the operation hours and service scopes (e.g. centres

No.	Name of Deputation/individual	Submission / Major views and concerns
		<p>providing such services should include picking up children from schools).</p> <ul style="list-style-type: none"> The percentage of children with childcare services in Hong Kong was only 13%, which was on the low side compared with some developed countries (such as Denmark, Iceland, Portugal, France) and ranked 29 out of the 32 member countries of the Organisation for Economic Co-operation and Development. The importance of providing childcare services had also been recognised at the European Union ("EU") level and explicit targets were defined since 2002 with regard to the provision of childcare services (e.g. members states of EU would strive to provide childcare to at least 33% of children under three years of age).
4.	Anti480-Anti Sexual Violence Resource Center	<ul style="list-style-type: none"> LC Paper No. CB(2)1429/17-18(01)
5.*	New People's Party	<ul style="list-style-type: none"> Victims of sexual assault had often chosen to be silent because of the grey areas in the law. For example, it was very difficult to convict a person of indecent assault under the Crimes Ordinance (Cap. 200) as the intimate nature of evidence imposed a burden upon a testifying complainant. The Sex Discrimination Ordinance (Cap. 480) ("SDO") only provided protection against sexual harassment in specific fields such as education, employment and provision of goods, facilities and services, etc. The Government was requested to review the deficiencies in the law and widen the scope of protection. These should be done without delay.
6.	Action for REACH OUT	<ul style="list-style-type: none"> LC Paper No. CB(2)1410/17-18(01)
7.	The Association for the Advancement of Feminism	<ul style="list-style-type: none"> LC Paper No. CB(2)1510/17-18(01)
8.*	Labour Party	<ul style="list-style-type: none"> The deputation welcomed the Government's proposal to extend the maternity leave period to 14 weeks to bring it in line with those recommended by the International Labour Organization. However, many women were engaged in casual work or who worked part-time and were entitled to very limited employment protection. There were cases that some women were dismissed or did not have their contract renewed immediately following their notification to the employer of their pregnancy, or some were dismissed in less than a month after they had resumed duty from maternity leave. Besides, there were many women being casual workers and not entitled to paid maternity leave under the Employment Ordinance. The Government should amend the

No.	Name of Deputation/individual	Submission / Major views and concerns
		<p>labour law to provide adequate protection for women.</p> <ul style="list-style-type: none"> • Women still earned a lot less than men and the median salary of women was lower than that of men by nearly HK\$4,000. The Government should take measures to narrow down the gender pay gap. • The Government was urged to take measures to extend the two-week rule upon termination of their contract, such that foreign domestic helpers would have sufficient time to look for other employment; and to revise the live-in requirement to make it an optional arrangement.
9.	PathFinders Limited	<ul style="list-style-type: none"> • LC Paper No. CB(2)1391/17-18(07)
10.*	Miss TSUI Ho-yee	<ul style="list-style-type: none"> • The average salary of women at work was lower than that of men by nearly 40%. Women living in poverty were often found in low-paying and insecure jobs, such as outsourced cleaning jobs, and barely earned minimum wage. They were not entitled to paid maternity leave as they did not work under continuous contracts. The Government should improve the relevant labour law, review the statutory minimum wage rate and provide protection for employees whose employment were not under continuous contracts. • The Government should also provide affordable childcare services for women to join the labour market. She hoped that the Government should accept the views of concern groups and implement the relevant revised policies.
11.*	Hong Kong Women Workers' Association	<ul style="list-style-type: none"> • The Government should increase the maternity leave period to 14 weeks with full pay. • The average salary of women at work was lower than that of men. Most of the women were employed not under a continuous contract as defined under the Employment Ordinance (Cap. 57) and hence the women were working-poor and not protected under the Employment Ordinance. • SDO should be extended to cover "dispatch workers" such as supermarket promoters, since the venue management of their workplace did not have vicarious liability for sexual harassment happened to "dispatch workers" in the workplace under the existing ordinance.
12.*	Hong Kong Ladies Kynamic Assonciation	<ul style="list-style-type: none"> • The Administration was urged to: (a) review women health policy and provide comprehensive women health services such as physiological, psychological, community and work support services, etc. because the present women health services were

No.	Name of Deputation/individual	Submission / Major views and concerns
		only a branch of family health services and lacked elements from the women's perspective; (b) set up comprehensive women health centres in the community to provide one-stop support services; and (c) extend the provision of women health services to all the Maternal and Child Health Centres in order to cover women resided in various districts.
13.*	Ms LAU Kwai-yung	<ul style="list-style-type: none"> The Administration was urged to: (a) extend the statutory maternity leave period to 14 weeks at the earliest opportunity; (b) introduce a six-month protection period of postnatal employment; (c) strengthen childcare services in the community; (d) formulate family friendly policy; (e) align statutory holidays with general holidays; (f) set the standard working hours; and (g) review the policy on women health and protection of women at work in order to attain the international standards.
14.	Rainlily	<ul style="list-style-type: none"> LC Paper No. CB(2)1443/17-18(02)
15.	The Hong Kong Federation of Trade Unions Women Affairs Committee	<ul style="list-style-type: none"> LC Paper No. CB(2)1467/17-18(01)
16.	Oxfam Hong Kong	<ul style="list-style-type: none"> LC Paper No. CB(2)1467/17-18(02)
17.*	Mr LAI Ming-chak	<ul style="list-style-type: none"> The Administration should attach more importance to promoting gender equality and introduce legislation to grant paid menstrual leave at least one day per month. As regards family friendly policy, the Administration should (a) extend the statutory maternity leave period to 14 weeks or more; (b) provide more childcare facilities and formulate a ratio of the population to childcare centres, and provide more resources to childcare services; (c) amend the law to require enterprises to provide a certain number of facilities for breastfeeding in workplace, and consider imposing the requirement of provision of separate babycare rooms in government and private buildings; and (d) provide additional translation services in various frontline government departments, hospitals and clinics etc. to enable ethnic minority women to participate in economic activities, and proactively reach out to ethnic minority women to provide them with information on how to seek assistance when needed.
18.	Stop Trafficking of People (STOP.)	<ul style="list-style-type: none"> LC Paper No. CB(2)1391/17-18(08)

* No submissions provided for this meeting

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26 September 2018