

**立法會**  
**Legislative Council**

Ref : CB2/PL/CA

LC Paper No. CB(2)1818/17-18  
(These minutes have been seen  
by the Administration)

**Panel on Constitutional Affairs**

**Minutes of meeting**  
**held on Friday, 22 June 2018, at 10:45 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  
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 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  
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 CHEUNG Kwok-kwan, JP  
Hon HUI Chi-fung  
Hon LAU Kwok-fan, MH

Dr Hon CHENG Chung-tai  
Hon AU Nok-hin

**Member attending** : Dr Hon Elizabeth QUAT, BBS, JP

**Members absent** : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Dr Hon Helena WONG Pik-wan  
Hon Tanya CHAN  
Hon Kenneth LAU Ip-keung, BBS, MH, JP

**Public Officers attending** : Item III

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

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

Miss Ellen CHOW Yin-tung  
Assistant Secretary (Constitutional and Mainland  
Affairs) 5B

Mr David LEUNG, JP  
Commissioner for Rehabilitation  
Labour and Welfare Bureau

Ms Teresa CHAN Mo-ngan  
Principal Assistant Secretary (Education Commission &  
Planning)  
Education Bureau

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

Miss Grace CHAN Wing-han  
Acting Chief Labour Officer (Labour Relations)  
Labour Department

Item IV

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

Mr Ryan CHIU Pit-ming  
Principal Assistant Secretary for Constitutional and  
Mainland Affairs

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

Mr SHUM Nam-lung  
Deputy Chief Electoral Officer  
Registration and Electoral Office

**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

Mr Dennis HO  
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)1553/17-18(01) and (02)]

The Panel noted that a letter dated 16 May 2018 from Dr CHENG Chung-tai to the Chairman and the Panel Clerk's reply letter had been issued to members after the last meeting.

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

[LC Paper Nos. CB(2)1615/17-18(01) and (02)]

2. Members agreed to discuss and receive public views on "the third report of the Hong Kong Special Administrative Region under the International Convention on the Elimination of All Forms of Racial Discrimination" proposed by the Administration at the next meeting on 16 July 2018 at 2:30 pm.

**III. Discrimination Legislation (Miscellaneous Amendments) Bill**

[LC Paper Nos. CB(2)1599/17-18(01) and CB(2)1615/17-18(03)]

3. The Secretary for Constitutional and Mainland Affairs ("SCMA") briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)1599/17-18(01)].

Discussion

*Further examination of recommendation 18 of the Discrimination Law Review*

4. Ms Claudia MO asked about the reasons for taking out the proposal to provide protection from sexual, disability and racial harassment between tenants and/or sub-tenants occupying the same premise (recommendation 18 of the Discrimination Law Review ("DLR")), and the timetable for implementing the proposal. Ms Alice MAK echoed the same concerns. She said that many tenants and sub-tenants living in inadequate housing conditions (such as subdivided flats, bedspace apartments) were vulnerable to the above-mentioned harassment and these tenants could not afford to move to another place easily. She urged the Administration to sort out the definitions of tenants and / or sub-tenants through other measures.

5. SCMA explained that a number of issues had to be considered at greater length in collaboration with the Equal Opportunities Commission ("EOC") before taking forward recommendation 18 in the light of the variety of leases, premises and persons living in the same premises in Hong Kong. It was necessary to ensure that any proposed wrongful acts were clearly defined, so as to avoid confusion and unnecessary disputes which might follow. Apart from legislative measures, the Administration would also invite EOC to explore whether there were other measures that could be introduced to abate acts of sexual, disability and racial harassment.

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Furthermore, EOC would keep track of the details of enquiries and complaints received in order to provide a more in-depth analysis on protection from harassment between tenants and/or sub-tenants. The Administration planned to introduce the Discrimination Legislation (Miscellaneous Amendments) Bill into the Legislative Council ("LegCo") by end-2018 and would first proceed with the eight prioritised recommendations in order not to hold up the legislative amendment exercise.

*Proposal to introduce express provisions in the Sex Discrimination Ordinance prohibiting direct and indirect discrimination on the ground of breastfeeding, and to include expression of milk in the definition of breastfeeding (recommendation 5 of the Discrimination Law Review)*

6. While expressing support for the recommendation, Ms Alice MAK raised concern that, according to paragraph 7 of the Administration's paper, no positive obligation would be imposed on any person (such as employers) to provide reasonable accommodation (such as lactation breaks or facilities) to breastfeeding women. Mr LAU Kwok-fun enquired whether there were measures to further promote and support breastfeeding following the legislative amendments, such as requiring premises owners to set aside breastfeeding/babycare rooms in public and/or commercial premises. The Deputy Chairman supported strengthening public education and promotional efforts in the public and private sectors, adding that babycare facilities and lactation rooms should be provided in new Government and private premises.

7. SCMA said that the Government had been proactively promoting the provision of babycare facilities in Government premises and public venues. Principal Medical & Health Officer (Family Health Service) supplemented that the Department of Health ("DH") had been providing health information on breastfeeding for parents through workshops, production and distribution of educational materials such as booklets and videos, and webpage of the Family Health Service of DH. DH also provided guidance and skill support for breastfeeding mothers through the Maternal and Child Health Centres and the breastfeeding hotline. To provide more babycare facilities and lactation rooms for the public, the Government was working to include a mandatory requirement for the provision of lactation rooms and babycare facilities in the sale conditions of Government land sale sites for new commercial developments comprising office premises and/or retail outlets, eating places, etc. The Government would also take corresponding measures to mandate the provision of babycare facilities and lactation rooms in new Government premises.

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8. Mr HUI Chi-fung said that while acts of discrimination on ground of breastfeeding were covered in the current legislative proposal, there was however no specific provision to render harassment and/or vilification of breastfeeding women unlawful. The Deputy Chairman also expressed concern that whether the provisions on sexual harassment in the Sex Discrimination Ordinance (Cap. 480) ("SDO") were applicable to women who were breastfeeding.

9. SCMA said that the current proposal sought to provide protection from direct and indirect discrimination against women who were breastfeeding. He further said that depending on the circumstances, specific types of behavior which amounted to harassment could be dealt with under other legislation (e.g. disorder in public place, invasion of privacy by clandestine photo-taking activities, etc.). Mr HUI Chi-fung considered that the present proposal did not afford sufficient protection to breastfeeding women from being harassed or vilified. He urged the Government to also cover the acts of harassment, vilification and offensive behavior towards breastfeeding women in SDO.

10. Dr CHENG Chung-tai opined that protection against discrimination on ground of breastfeeding should more appropriately be dealt with in the context of family status discrimination under the Family Status Discrimination Ordinance (Cap. 527) ("FSDO"). SCMA explained that all breastfeeding mothers were women and breastfeeding was a gender-specific condition analogous to the protected characteristic of pregnancy under section 8 of SDO. The Administration therefore proposed to render direct and indirect discrimination against a woman on the ground of her breastfeeding unlawful by amending SDO. This prohibition would apply to all fields governed by SDO, such as employment, education, the provision of goods, services or facilities, disposal or management of premises, and activities of the Government.

11. Mr Jeffrey LAM said that the business sector supported breastfeeding in the workplace and enquired whether there were guidelines (e.g. frequency of lactation breaks and the duration of such breaks) for the reference by employers. SCMA said that the Committee on Promotion of Breastfeeding established in early April 2014 had promulgated work plans to enhance publicity and education on breastfeeding, and to further encourage the adoption of a breastfeeding friendly workplace policy and promote Breastfeeding Friendly Premises. The Administration would work in close collaboration with the business sector in supporting breastfeeding in the workplace.

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12. Dr Elizabeth QUAT pointed out that most enterprises in Hong Kong were small and medium enterprises ("SMEs") and they did not include in their employment contracts how relevant issues relating to sexual harassment and breastfeeding should be dealt with in the workplace. She was worried that disputes and misunderstanding might arise in the implementation of the legislative proposal. SCMA said that EOC would step up its promotional and publicity efforts to facilitate implementation of the legislative proposal. Dr QUAT further suggested that legislative provisions should be introduced to mandate employers to provide or publicize relevant guidelines and policies to employees in relation to sexual harassment and discrimination in the workplace to ensure protection of employees. SCMA said that EOC had published a booklet on "Preventing Sexual Harassment in the Workplace – Tips for SMEs" to help SMEs develop and improve their sexual harassment workplace policies and measures.

*Proposal to provide protection from disability and racial harassment between service providers and customers where the acts of harassment take place outside Hong Kong but on Hong Kong registered aircraft and ships in the Race Discrimination Ordinance and the Disability Discrimination Ordinance (recommendation 17 of the Discrimination Law Review)*

13. Mr CHAN Chi-chuen enquired whether under this recommendation, racial/disability harassment between service providers and customers that occurred on cross-border land-based transport means (e.g. the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL")) while operating outside Hong Kong would not be covered.

14. SCMA explained that the proposal aimed to afford protection to victims of disability and racial harassment which occurred on a Hong Kong registered ship while sailing in the open sea or on a Hong Kong registered aircraft flying in the international airspace governed by no jurisdiction. The policy intent was the same as that behind the amendments previously made to SDO by virtue of the Sex Discrimination (Amendment) Ordinance 2014 regarding protection from sexual harassment of service providers on Hong Kong registered aircraft and ships. In response to Mr CHAN Chi-chuen's enquiry, SCMA said that the West Kowloon Station Mainland Port Area, which was established under the "Co-operation Arrangement between the Mainland and the Hong Kong Special Administrative Region on the Establishment of the Port at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link for Implementing Co-location Arrangement", was subject

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Admin to the jurisdiction of the Mainland; and the compartments of XRL, which were regarded as part of the Mainland Port Area, were subject to the jurisdiction of the Mainland. At the request of Mr CHAN, the Administration undertook to provide supplementary information on the legal protection against disability and racial harassment in the Mainland.

15. In reply to Mr CHU Hoi-dick's enquiry, Principal Assistant Secretary (Constitutional and Mainland Affairs) 5 said that in case where the harassment took place on a Hong Kong registered aircraft or ship which had entered into territory within another jurisdiction, the victim might seek redress with the local authorities or lodge a complaint with EOC after returning to Hong Kong.

*Proposal to replace the references to "near relative" in the Race Discrimination Ordinance with references to "associate" (recommendation 7 of the Discrimination Law Review)*

16. Referring to the definition of "associate", Ir Dr LO Wai-kwok considered that the meaning of "another person who is in a business, sporting or recreational relationship with the person" was too broad and vague, which might cover all acquaintances of the person concerned. Mr Jeffrey LAM echoed Ir Dr LO's concerns. He said that this definition might apply even in the situation of a sports game where a player got emotional and uttered on impulse criticism against a friend of another player of a different racial background. He expressed concern that many people could breach the law inadvertently. He added that many people had raised objection to this proposal during the consultation conducted by EOC. SCMA explained that at present, there was only protection from discrimination by association in relation to disability. The current proposal aimed to align the Race Discrimination Ordinance (Cap. 602) ("RDO") with the Disability Discrimination Ordinance (Cap. 487) ("DDO") in protection. He said that the Administration would consider members' concerns in drafting the relevant provisions.

Admin 17. Mr CHU Hoi-dick enquired whether the definition of "business relationship" would include the persons working in a non-governmental organization as a service provider and its service users. He further enquired whether same-sex couples in cohabitation would be covered under the definition of "associate". Due to the shortage of time, the Chairman requested the Administration to provide a written response after the meeting.

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*Proposal to repeal provisions in the Sex Discrimination Ordinance, the Family Status Discrimination Ordinance and the Race Discrimination Ordinance which disallow the award of damages if the respondent in an indirect discrimination case can prove that the requirement or condition was not applied with intention to discriminate (recommendation 22 of the Discrimination Law Review)*

18. The Chairman expressed concern that by repealing the provisions under SDO, FSDO and RDO which required proof of intention to discriminate in order to award damages for indirect discrimination claims, many people might breach the law unintentionally if the threshold was set too low. He also questioned whether an indirect discrimination existed if there was no proof of an intention to discriminate. SCMA explained that the proposal only aimed to align provisions in SDO, FSDO and RDO with DDO in protection and so far only two claims (which also involved direct discrimination) had been lodged under the relevant provision of DDO. While a complainant could make claims for damages, it was for the respondent to defend and the court to decide whether the case violated the law based on evidence. SCMA added that the Administration would look at the issue raised by the Chairman.

*Other prioritised recommendations under the Discrimination Law Review*

19. Ms Claudia MO expressed concern that RDO did not bind Government powers and functions. Mr Alvin YEUNG pointed out that the judgment of *Arjun Singh v. the Secretary for Justice* showed that despite section 3 of RDO, section 27 of RDO governing provision of services was not applicable in terms of Government acts in relation to law enforcement. Mr YEUNG pointed out that back in 2009, the relevant United Nations Committee had recommended that all Government functions and powers should be brought within the scope of RDO and the same recommendation was made by EOC under DLR. He enquired about the difficulties involved in taking forward this proposal.

20. SCMA explained that RDO bound the Government and therefore, prohibited discriminatory acts and practices of law enforcement agencies and other public authorities in all the areas specified in RDO, such as employment, education, the provision of goods, facilities or services, and the disposal or management of premises. In particular, section 27 of RDO rendered it unlawful for the Government to discriminate against a person in the provision of the services of any bureaux or departments of the Government or any

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undertaking by or of the Government. He further said that the Hong Kong Bill of Rights Ordinance (Cap. 383) in general prohibited the Government and public authorities from engaging in practices that would entail any form of discrimination, including discrimination on the ground of race. Furthermore, avenues were available to address complaints against the Government. He advised that due regard also had to be given to the impact of the proposal on the work of the Government.

21. Dr Fernando CHEUNG urged the Administration to provide a timetable for the implementation of the other prioritised recommendations made by EOC under DLR, particularly the one on introducing a distinct duty to make reasonable accommodation for persons with disabilities, as well as those with respect to RDO to enhance protection for EMs. Mr AU Nok-hin also requested a timetable be provided and further suggested that the Administration should provide an explanation should it decide not to take forward any of these recommendations. Mr CHU Hoi-dick said that some of the recommendations were not controversial and should be taken forward, such as the one of repealing the exception provision on arrangements of medium of instruction in vocational training and education. SCMA said that the Administration would continue to study other recommendations of higher priority under DLR in conjunction with relevant bureaux and departments.

Motions

22. Ms Claudia MO moved the following motion:

(Translation)

"This Panel urges the Government to expeditiously formulate a timetable for implementing the prioritised recommendations with respect to the Race Discrimination Ordinance ("RDO"); and study as soon as possible the inclusion of government functions and powers in the next phase of amendments to RDO, so as to address the inadequacies of the existing Ordinance and help promote racial equality."

23. The Chairman put the motion to vote. The voting result was that 11 members voted for and no members voted against the motion. Also, no members abstained from voting. The Chairman declared that the motion was passed. The Administration was requested to provide a written response to the motion.

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24. Mr HUI Chi-fung moved the following motion:

(Translation)

"This Panel requests the Government, in the course of amending the Sex Discrimination Ordinance, to cover the acts of harassment, vilification and offensive behavior towards breastfeeding in the Ordinance, as well as to classify such acts as unlawful, with a view to further encouraging breastfeeding."

25. The Chairman put the motion to vote. The voting result was that 10 members voted for and no members voted against the motion. Also, no members abstained from voting. The Chairman declared that the motion was passed. The Administration was requested to provide a written response to the motion.

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**IV. 2018 Voter Registration**

[LC Paper Nos. CB(2)1599/17-18(02) and CB(2)1615/17-18(04)]

26. At the invitation of the Chairman, 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)1599/17-18(02)].

Discussion

27. Ms Claudia MO enquired what checking process had gone through before the inclusion of some 46 000 electors in the omissions list ("OL"). USCMA said that the Registration and Electoral Office ("REO") would carry out checking measures by conducting random sample checks as well as other measures, and follow-up inquiries on undelivered poll cards. After implementing or following up with the checking measures, REO initiated the inquiry process and inquiry letters were issued to electors concerned requesting them to update or confirm their registered address. About 46 000 electors who did not respond to the inquiry process had been included in OL.

28. Noting the Administration's position in response to some Members' suggestions regarding the voting right of Hong Kong people residing in the Mainland, Ms Claudia MO enquired if the Administration would also study whether people holding Hong Kong permanent identity card could vote

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abroad if they lived overseas. USCMA responded that according to the present law, a person had to satisfy all the following requirements in order to be eligible to vote: (a) he/she was a permanent resident of Hong Kong, (b) he/she was aged 18 years or above, (c) he/she ordinarily resided in Hong Kong; and (d) the residential address in his/her application for registration was his/her only or principal residence in Hong Kong. Any proposal to deviate from the above-mentioned requirements would entail legislative amendments. USCMA said that the Administration needed to consider the issue carefully.

29. Noting that REO had not created any official accounts in popular social media such as Facebook, Instagram and Youtube, Mr Alvin YEUNG enquired which social media platforms had been used to disseminate voter registration ("VR") messages. CEO replied that REO had placed advertisement on Facebook and Instagram as well as websites with high browsing rates for dissemination of VR messages in VR cycles. Mr Alvin YEUNG further pointed out that the 70.8% registration rate among eligible young people aged 18-30 was low when compared with that of other age groups which was on average above 80%. He enquired whether REO had reviewed the publicity arrangements and would consider creating accounts on the aforesaid social media platforms. CEO said that every possible means would be considered in order to enhance publicity on VR and, in particular, promote VR among young people. In this respect, REO had implemented targeted measures to set up registration counters in Registration of Persons Offices of Immigration Department, which effectively secured some 50 000 new VR applications every year.

*(Due to other urgent commitments, the Chairman left the meeting at this juncture. The Deputy Chairman took the chair.)*

30. Ms Alice MAK said that the issue of overseas polling arrangement for Hong Kong people staying outside Hong Kong for work or other purposes who maintained close connection with Hong Kong should warrant further consideration. She enquired whether the figure of around 46 000 electors included in OL was exceptionally high, and how the Administration would ensure that electors' names would not be wrongly entered into OL by mistake. USCMA said that in connection with the 2018 LegCo By-election for three geographical constituencies ("GCs") and one functional constituency ("FC") which involved over 2 million electors, more undelivered poll cards had been received and REO had followed up by initiating the inquiry process. REO contacted the electors concerned by telephone, mobile phone short message

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service, electronic mail or fax based on the contact information (if any) they provided, and reminded them to update or confirm their registered addresses.

31. In respect of about 75 300 GC electors who were not registered in traditional FCs or the District Council (Second) FC ("DC (second) FC"), Ms Alice MAK enquired what actions would be taken to remind these electors to get re-registered in relevant FCs. USCMA said that REO would send notification letters to appeal to these electors who had not yet registered under the DC (second) FC to be so registered in order to vote in the 2020 LegCo election.

32. Regarding the some 46 000 electors included in OL, Mr WONG Ting-kwong enquired what remedial actions could be taken by these electors in order to retain their right to vote in the coming election. USCMA and CEO responded that in addition to the inquiry letters issued by REO during the inquiry process, REO issued reminding letters on 31 May 2018 to those electors included in OL, to remind them to reinstate their registration status by taking appropriate remedial action by 25 June 2018, including lodging a claim or confirming/updating their registered addresses. Upon approval by the Revising Officer, their names and residential addresses would be included in the 2018 Final Registers. In response to Mr WONG's enquiry, CEO said that following legislative amendments, REO had changed to use surface mail instead of registered post for sending inquiry letters and notifications.

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33. Mr CHU Hoi-dick requested the Administration to provide information in writing on (a) the age profile of 81 000 newly registered electors and (b) the age profile of the 46 000 electors who failed to update or confirm their latest residential address in response to the REO's inquiry letters and were included in OL. In response to Mr CHU's question about the number of electors identified for checking under random sample checks and the percentage of these electors who were included in OL, CEO replied that inquiry letters were issued to some 11 500 electors under the category of random sample checks, and as a result, some 6 400 electors who had failed to respond to the letters were included in OL. Mr CHU queried the validity of the method for conducting the random sample checks given that it was highly unlikely that nearly 60% of the electors selected on a random basis had moved homes. USCMA agreed to look at the issue raised to see if there was any anomaly in the process.

34. Dr CHIANG Lai-wan suggested that the time gap between the deadline for VR and the polling day should be narrowed. She pointed out that there

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was a time gap of only one month between the deadline for updating VR particulars and the polling day in the United Kingdom. USCMA said that updating of VR particulars was carried out by REO in every VR cycle. He said that in the 2018 VR cycle, the time gap would be about four months and it was important to allow sufficient time for REO to complete processes like making available relevant electoral registers for public inspection. Dr CHIANG also said that a person had complained to her that while the person had given consent to transferring his/her personal particulars provided to the Immigration Department to REO, it was subsequently found that the address he/she used for VR purpose was changed by REO to the address he/she so reported to the Immigration Department, which was a rental property and subject to changes. It was the person's wish to retain his/her parents' address for correspondence. USCMA responded that a person could use another address for correspondence in relation to VR. If the person did not have documentary proof for the address for VR, he/she could swear an oath for this purpose.

35. The Deputy Chairman urged the Administration to take measures to eliminate abuse of the objection mechanism in relation to VR. USCMA said that the Administration would soon introduce an amendment bill to improve the objection mechanism, which would propose (a) to require an objector to provide sufficient justification for lodging an objection, (b) that if the objector provided insufficient justification for the objection and did not attend the hearing, the Revising Officer would also take into account these factors for ruling, and (c) to empower REO to process indubitable objection cases through written submissions to the Revising Officer for ruling to speed up the handling process.

**V. Any other business**

36. There being no other business, the meeting ended at 12:45 pm.