

立法會
Legislative Council

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LC Paper No. CB(2)1955/18-19
(These minutes have been seen
by the Administration)

Bills Committee on National Anthem Bill

Minutes of the sixth meeting
held on Saturday, 30 March 2019, from 9:00 am to 1:00 pm
in Conference Room 1 of the Legislative Council Complex

Members present :

- Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)
- Hon CHEUNG Kwok-kwan, JP (Deputy Chairman)
- Hon James TO Kun-sun
- Hon Tommy CHEUNG Yu-yan, GBS, JP
- Prof Hon Joseph LEE Kok-long, SBS, JP
- Hon Jeffrey LAM Kin-fung, GBS, JP
- Hon WONG Ting-kwong, GBS, JP
- Hon Starry LEE Wai-king, SBS, JP
- Hon CHAN Hak-kan, BBS, JP
- Hon CHAN Kin-por, GBS, JP
- Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
- Hon WONG Kwok-kin, SBS, JP
- Hon Paul TSE Wai-chun, JP
- Hon Claudia MO
- Hon Steven HO Chun-yin, BBS
- Hon Frankie YICK Chi-ming, SBS, JP
- Hon WU Chi-wai, MH
- Hon YIU Si-wing, BBS
- Hon MA Fung-kwok, SBS, JP
- Hon CHAN Chi-chuen
- Hon LEUNG Che-cheung, SBS, MH, JP
- Hon Kenneth LEUNG
- Hon Alice MAK Mei-kuen, BBS, JP
- Dr Hon KWOK Ka-ki
- Hon KWOK Wai-keung, JP
- Hon Christopher CHEUNG Wah-fung, SBS, JP
- Dr Hon Fernando CHEUNG Chiu-hung
- Hon IP Kin-yuen
- Dr Hon Elizabeth QUAT, BBS, JP

Dr Hon CHIANG Lai-wan, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon SHIU Ka-chun
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan
Hon CHAN Chun-ying, JP
Hon HUI Chi-fung
Hon LUK Chung-hung, JP
Hon LAU Kwok-fan, MH
Hon Jeremy TAM Man-ho
Hon Gary FAN Kwok-wai
Hon AU Nok-hin
Hon Vincent CHENG Wing-shun, MH
Hon Tony TSE Wai-chuen, BBS
Hon CHAN Hoi-yan

**Members
absent** : Hon LEUNG Yiu-chung
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Michael TIEN Puk-sun, BBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Han-pan, BBS, JP
Hon Dennis KWOK Wing-hang
Dr Hon Helena WONG Pik-wan
Hon Andrew WAN Siu-kin
Hon LAM Cheuk-ting
Hon Tanya CHAN
Hon Kenneth LAU Ip-keung, BBS, MH, JP
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu

Public Officers : Mr Patrick NIP Tak-kuen, JP
attending Secretary for Constitutional and Mainland Affairs

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

Ms Cordelia LAM Wai-ki
Principal Assistant Secretary for Constitutional and Mainland
Affairs

Ms Jocelyn NG Wai-chung
Assistant Secretary for Constitutional and Mainland Affairs

Dr CHOI Yuk-lin, JP
Under Secretary for Education

Mrs HONG CHAN Tsui-wah
Deputy Secretary for Education

Mr Lawrence PENG Si-yun
Deputy Law Draftsman (Acting)
Department of Justice

Mr Jonathan LUK King-hang
Senior Government Counsel
Department of Justice

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

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

Miss Rachel DAI
Assistant Legal Adviser 2

Ms Jasmine TAM
Senior Council Secretary (2) 3

Mr Dennis HO
Council Secretary (2) 3

Mrs Fonny TSANG
Legislative Assistant (2) 3

Action

I. Meeting with the Administration

[File Ref.: CMAB E4/1/1, LC Paper Nos. CB(3)307/18-19, CB(2)903/18-19(01), CB(2)811/18-19(01) and CB(2)893/18-19(02)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Clause-by-clause examination of the Bill

2. The Bills Committee commenced clause-by-clause examination of the Chinese text of the Bill. The Bills Committee examined up to clause 2 of the Bill before the end of the meeting.

Follow-up actions required of the Administration

3. The Administration was requested to provide a written response to address the following issues raised by members:

Admin

- (a) explain the difference in meaning between the words "symbol" and "sign" in paragraph (1) of the Preamble and the implications of deleting the word "sign";
- (b) explain why the term "individuals" instead of "citizens" was used in paragraph (2) of the Preamble, while "citizens" was used in Article 3 of the Law of the People's Republic of China on National Anthem ("National Anthem Law"); and
- (c) advise whether the National Anthem Law was applicable to citizens of the People's Republic of China ("PRC") outside PRC.

(At 12:47 pm, the Chairman ruled that the conduct of Mr HUI Chi-fung was grossly disorderly and ordered him to withdraw from the meeting in accordance with Rule 45(2) of the Rules of Procedure.)

(At 12:47 pm, Mr AU Nok-hin drew to the Chairman's attention that a quorum was not present. The Chairman ordered the ringing of the quorum bell to summon members to the meeting.)

4. At 1:00 pm, the Chairman declared the meeting closed.

**Proceedings of the sixth meeting of the
Bills Committee on National Anthem Bill
on Saturday, 30 March 2019, from 9:00 am to 1:00 pm
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
001034 - 001144	Chairman	Opening remarks	
001145 - 001314	Chairman Mr Alvin YEUNG Administration	<p>Enquiry about whether an act that contravened the Law of the People's Republic of China on National Anthem ("National Anthem Law") in the Mainland would equally contravene the National Anthem Ordinance (if enacted) if it was carried out in Hong Kong.</p> <p>The Administration's advice that as provided in clause 11 of the Bill, offences in relation to the national anthem in Hong Kong were to be investigated, and persons were to be prosecuted, according to the laws of Hong Kong.</p>	
001315 - 021128	Chairman Administration Mr Alvin YEUNG Mr Jeremy TAM Mr Gary FAN Ms Claudia MO Mr CHAN Chi-chuen Dr Fernando CHEUNG Mr James TO Mr HUI Chi-fung Ms YUNG Hoi-yan Mr WU Chi-wai Mr CHU Hoi-dick Mr Kenneth LEUNG Senior Assistant Legal Adviser ("SALA")	<p>Commencement of clause-by-clause examination of the Bill</p> <p>Long title</p> <p>Mr CHAN Chi-chuen's view that the expressions "保護國歌" and "推廣國歌" in the Chinese text of the long title of the Bill were too vague and failed to reflect accurately the purpose of the Bill; and his suggestion of replacing the aforesaid expressions with "確保國歌的尊嚴不受損害" and "教育及播放國歌" respectively.</p> <p>Ms YUNG Hoi-yan's suggestion of replacing "Hong Kong" in the long title of the Bill with "the Hong Kong Special Administrative Region", which was also used in the long title of the National Flag and National Emblem Ordinance ("NFNEO").</p> <p>Preamble</p> <p>Enquiries about (a) the need for including a preamble in the Bill and the implications of deleting the Preamble on the enforcement of the Bill; and (b) whether or not a preamble formed part of the legislation.</p> <p>The Administration's advice that:</p> <p>(a) Articles 1, 3 and 5 of the National Anthem Law set out the purpose and spirit of the law. By suitably adopting these articles into the Preamble, the public could be given a better understanding of the legislative purpose of the Bill and the provisions in the National Anthem Law could be reflected more accurately;</p> <p>(b) a preamble formed part of the legislation to reflect the legislative intent and to provide background information.</p>	

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		<p>It only served to provide a context to facilitate the interpretation of the legislation concerned; and</p> <p>(c) the Preamble of the Bill did not impose any legal liability .</p> <p>SALA's advice that a preamble did not have any legal effect but it provided background information to facilitate understanding of a provision when the meaning of the provision was not clear.</p> <p><u>Paragraph (1) of the Preamble</u></p> <p>Concern about the appropriateness of stating that the national anthem, which was not a physical object, was the "symbol" and "sign" of the People's Republic of China ("PRC"); and a query that the meaning of the words "symbol" and "sign" was repetitive.</p> <p>The Administration's explanation that paragraph (1) of the Preamble adopted the content of Article 3 of the National Anthem Law (i.e. "[t]he national anthem of the People's Republic of China is a symbol and sign of the People's Republic of China") to fully reflect the intent of the provision.</p> <p>The Chairman's request for the Administration to provide a written response to explain the difference in meaning between the words "symbol" and "sign" and the implications of deleting the word "sign" as suggested by Mr CHAN Chi-chuen.</p> <p><u>Paragraph (2) of the Preamble</u></p> <p>Major queries and concerns raised as follows:</p> <p>(a) why the term "individuals and organizations" instead of "citizens" was used in paragraph (2) of the Preamble, while "citizens" was used in Article 3 of the National Anthem Law;</p> <p>(b) whether foreigners in Hong Kong would also have to "preserve the dignity of the national anthem";</p> <p>(c) whether the current drafting of paragraph (2) of the Preamble had rendered it even wider in scope of coverage than that of the corresponding articles of the National Anthem Law on which paragraph (2) of the Preamble was based;</p> <p>(d) given that the penal provisions of the Bill sought mainly to prohibit public and intentional insulting behaviour against the national anthem, whether it would be more appropriate to spell out clearly in paragraph (2) of the Preamble that the intent of the Bill was to require respect for the national anthem on public occasions rather than on all occasions; and</p>	<p>Admin (para. 3(a) of minutes)</p>

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		<p>(e) the definition of the term "dignity" under the Bill.</p> <p>The Administration's explanations as follows:</p> <p>(a) the national anthem was a symbol and sign of PRC; thus everyone in Hong Kong, being PRC citizen or not, should respect the national anthem. In order to make it clear that everyone should respect the national anthem, the term "individuals" was used in paragraph 2 of the Preamble;</p> <p>(b) it was the Administration's understanding that everyone in China, regardless of being PRC citizen or non-PRC citizen, had to abide by the National Anthem Law. Therefore, using the term "individuals" in paragraph 2 of the Preamble was in line with the legislative intent of the National Anthem Law;</p> <p>(c) the Preamble reflected the purpose and intent of the National Anthem Law, which was to preserve the dignity of the national anthem and promote respect for the national anthem. The penal provisions contained in Part 3 of the Bill were meant to deal with behaviour that amounted to a public and intentional insult of the national anthem or misuse of the national anthem; and</p> <p>(d) there was no legal definition for the term "dignity" and it should be understood in accordance with its ordinary meaning.</p> <p>The Chairman's request for the Administration to provide a written response to (a) explain the rationale for using the term "individuals" instead of "citizens" in paragraph (2) of the Preamble; and (b) advise whether the National Anthem Law was applicable to citizens of PRC outside PRC.</p> <p><u>Paragraph (3) of the Preamble</u></p> <p>Major views and concerns raised as follows:</p> <p>(a) the expressions "to enhance citizen awareness of the People's Republic of China" and "to promote patriotism" in paragraph (3) of the Preamble were vague and their meaning was unclear;</p> <p>(b) the meaning of the term "國家觀念" in the Chinese text and whether the corresponding translation "awareness of the People's Republic of China" in the English text reflected accurately its meaning;</p> <p>(c) the meaning of the term "patriotism", which was an umbrella concept covering both the mild as well as the extreme forms of patriotism, was vague and might be open to different interpretations;</p>	<p>Admin (para. 3(b) and (c) of minutes)</p>

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
		<p>(d) "patriotism" and "愛國精神" did not tally in translation. "愛國精神" should be translated as "the spirit of patriotism" instead of "patriotism"; and</p> <p>(e) while Article 1 of the Law of the People's Republic of China on the National Flag also provided that the Law was enacted to, among others, "enhance citizen awareness of the People's Republic of China" and "promote patriotism", the reason why these expressions were not incorporated into NFNEO should be explained.</p> <p>The Administration's response as follows:</p> <p>(a) the Bill should fully reflect the purpose and intent of the National Anthem Law. Paragraph (3) of the Preamble adopted the content of Article 1 of the National Anthem Law, which provided that "This Law is enacted in accordance with the Constitution to", among others, "enhance citizen awareness of the People's Republic of China" and "promote patriotism". The meaning of these expressions should be interpreted by their ordinary meaning;</p> <p>(b) the Administration was of the view that "awareness of the People's Republic of China" reflected accurately the meaning of "國家觀念" in the context of the Bill;</p> <p>(c) "patriotism" was a general term and had no specific meaning in the context of the Bill. The dictionary meaning of "patriotism" was "devotion to one's country", which, in the opinion of the Administration, reflected accurately the meaning of "愛國精神"; and</p> <p>(d) the Administration did not have records showing the consideration behind the adoption or otherwise of specific provisions of the national laws by the Government in 1997 during the drafting of the National Flag and National Emblem Bill.</p>	
021129 - 040354	Chairman Administration Ms Claudia MO Mr CHAN Chi-chuen Mr CHU Hoi-dick Mr Alvin YEUNG Mr Kenneth LEUNG Mr WU Chi-wai Mr James TO Dr Fernando CHEUNG Mr Gary FAN Dr KWOK Ka-ki Mr AU Nok-hin Mr HUI Chi-fung Dr CHIANG Lai-wan	<p>Part 1 – Preliminary</p> <p><u>Examination of clauses 1 and 2</u></p> <p><i>Clause 2(1)</i></p> <p>Enquiry about the current official version of the national anthem and discussion on the appropriateness of translating "《義勇軍進行曲》" as "March of the Volunteers".</p> <p><i>Clause 2(2)</i></p> <p>Discussion on (a) whether there was a need for providing the English translation or Hanyu pinyin of the lyrics of the national anthem in the English text of Schedules 1 and 2 to the Bill; and (b) whether there would be any problem if the national anthem was played or sung with a tempo or key</p>	

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
		<p>different from that stipulated in Schedules 1 and 2 to the Bill.</p> <p><i>Clause 2(3)</i></p> <p>Enquiries about (a) whether whistling or humming the tune of the national anthem, or performing the national anthem in different music styles (e.g. a cappella or rap) would be regarded as playing and singing the national anthem under clause 2(3) and therefore, subject to clause 7; and (b) the difference between the reference to playing and singing the national anthem under clause 2(3) and under clause 5(3).</p> <p>The Administration's explanations as follows:</p> <p>(a) as the word "includes" was used in clause 2(3), the three situations referred to in items (a) to (c) under clause 2(3) were not exhaustive, and other hypothetical ways of playing and singing of the national anthem asked by members could also be regarded as playing and singing of the national anthem according to clause 2(3). However, merely singing and playing the national anthem in any of the above ways by itself would not constitute an act of insulting the national anthem under clause 7 of the Bill, unless the relevant acts contained the elements of offence specified in clause 7, i.e. publicly and intentionally insulting the national anthem, which was a question of fact and had to be assessed based on the actual circumstances of each case; and</p> <p>(b) the main differences between the reference to playing and singing the national anthem under clause 2(3) and under clause 5(3) were set out in paragraphs 9 and 10 of the Administration's reply letter dated 28 February 2019 to SALA [LC Paper No. CB(2)893/18-19(02)].</p>	