

**立法會**  
**Legislative Council**

Ref : CB2/PL/CA

LC Paper No. CB(2)1520/18-19  
(These minutes have been seen  
by the Administration)

**Panel on Constitutional Affairs**

**Minutes of meeting**  
**held on Monday, 21 January 2019, from 2:30 pm to 4:45 pm**  
**in Conference Room 1 of the Legislative Council Complex**

**Members present** : Hon CHEUNG Kwok-kwan, JP (Chairman)  
Hon LUK Chung-hung, JP (Deputy Chairman)  
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  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Hon Claudia MO  
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 Helena WONG Pik-wan  
Hon IP Kin-yuen  
Hon Martin LIAO Cheung-kong, SBS, 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  
Hon LAM Cheuk-ting  
Hon Holden CHOW Ho-ding  
Hon Tanya CHAN  
Hon HUI Chi-fung  
Dr Hon CHENG Chung-tai  
Hon AU Nok-hin

**Members attending** : Hon CHAN Kin-por, GBS, JP  
Dr Hon KWOK Ka-ki  
Hon SHIU Ka-fai

**Members absent** : Hon WONG Kwok-kin, SBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Steven HO Chun-yin, BBS  
Hon CHUNG Kwok-pan  
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

Miss Rosanna LAW Shuk-pui, JP  
Deputy Secretary for Constitutional and Mainland Affairs

Ms Cherie YEUNG Lok-sze  
Principal Assistant 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 Raymond WANG Man-chiu  
Principal Electoral Officer  
Registration and Electoral Office

Item IV

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

Ms Judy CHUNG Sui-kei  
Principal Assistant Secretary (Constitutional and  
Mainland Affairs) 5

Miss Cathy LI King-tsz  
Assistant Secretary (Constitutional and Mainland Affairs)  
5A

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

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

Mr Raymond LEUNG Kwok-kee  
Assistant Commissioner for Labour (Policy Support)  
(Acting)

Miss Eva TSE Hui-wah  
Government Counsel  
Department of Justice

**Attendance by : Item IV  
invitation**

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai

Democratic Alliance for the Betterment and Progress of  
Hong Kong

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Mr LAI Jee-shing

Hong Kong Unison

Ms Phyllis CHEUNG Fung-mei

Society for Cultural Integration

Miss TAM Yuen-yee

Miss CHEUK Man-po

Les Corner Empowerment Association

YEO Wai-wai

Civic Party

Mr Warren TAM Ka-chun

Miss CHAU Wai-ki

Mr WONG Kai-yeung

PathFinders Limited

Ms Nabina PUN

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

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

Ms Jasmine TAM  
Senior Council Secretary (2) 3

Mrs Fanny TSANG  
Legislative Assistant (2) 3

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**I. Information paper(s) issued since the last meeting**

[LC Paper Nos. CB(2)633/18-19(01) and (02), and CB(2)648/18-19(01)]

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

- (a) joint letter dated 3 January 2019 from 24 Members [LC Paper No. CB(2)633/18-19(01)] and the Administration's response [LC Paper No. CB(2)633/18-19(02)]; and
- (b) joint email dated 29 December 2018 from Ms Claudia MO, Mr CHAN Chi-chuen, Mr CHU Hoi-dick and Mr AU Nok-hin [LC Paper No. CB(2)648/18-19(01)].

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

[LC Paper Nos. CB(2)596/18-19(01) and (02)]

2. Member agreed to discuss the following items proposed by the Administration at the next meeting on 18 February 2019 at 2:30 pm:

(a) "Launching a pilot scheme of electronic counting in the 2020 Legislative Council General Election"; and

(b) "Launching a pilot scheme of advance polling in the 2020 Legislative Council General Election".

**III. Legislative amendments regarding the 2020 Legislative Council General Election**

[LC Paper Nos. CB(2)596/18-19(03) and (04)]

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)596/18-19(03)].

*Proposed technical amendments for functional constituencies*

4. Regarding the proposed technical amendments in relation to the delineation of the electorate of the functional constituencies ("FCs") under the Legislation Council Ordinance (Cap. 542) ("LCO") set out in Annex A to the Administration's paper, Mr Jimmy NG noted that 10 corporates were proposed to be deleted. He asked what measures had been taken to verify whether the corporates concerned had ceased operation and to ensure that they/their members were aware that they would no longer be eligible to register as electors in the relevant FCs and cast their votes in the 2020 Legislative Council ("LegCo") General Election. He further asked whether there had been any corporates in the past which had been mistakenly identified as having ceased operation and thereby, been deleted from the relevant FC.

5. SCMA responded that an established mechanism was in place for handling registration of electors in FCs. The Deputy Secretary for Constitutional and Mainland Affairs ("DSCMA") explained that upon receipt of notifications from individual corporates or relevant bureaux/departments ("B/Ds") that the corporates concerned had already dissolved and were no longer in operation, the Registration and Electoral Office ("REO") would initiate statutory inquiry process for the respective registered electors. Besides, following the established practice, before each LegCo general election, the

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Constitutional and Mainland Affairs Bureau ("CMAB") would review the delineation of the electorate of FCs in consultation with relevant B/Ds. If there was information or evidence showing that individual corporates were no longer in operation, REO would issue inquiry letters to the electors concerned and strike off their registration if they failed to give a valid reply.

6. Mr Jimmy NG further asked whether a registered corporate elector, though still registered under the relevant ordinance but had actually ceased operation, could be identified under the aforesaid mechanism. DSCMA said that in line with the established practice, the relevant B/Ds would be invited to advise if they were aware that any of the corporates specified under the legislation had ceased to operate or become inactive since the last review.

7. Mr MA Fung-kwok said that an association in the printing industry, namely the Hong Kong Printers Association ("HKPA"), had all along been registered as an elector of the Insurance FC despite its repeated requests over the past 20 years for inclusion in the Sports, Performing Arts, Culture and Publication FC. Mr MA further said that he had also written to CMAB conveying HKPA's concerns in April 2015. He was disappointed to note that the case was still not rectified in the current updating exercise. He urged the Administration to follow up the case.

8. DSCMA explained that as HKPA was an association of underwriters approved by the Insurance Authority under the Insurance Companies Ordinance (Cap. 41) to carry on insurance business, it fulfilled the eligibility to be registered as an elector of the Insurance FC and could only be so registered under the relevant provisions of LCO. That said, DSCMA advised that if there were changes in the circumstances of HKPA and if a request for inclusion in the Sports, Performing Arts, Culture and Publication FC was received from it later, CMAB would consider the request in consultation with relevant bureaux. Mr MA considered that CMAB and relevant bureaux should meet with HKPA to discuss HKPA's case and address their concern.

9. Mr IP Kin-yuen expressed concern that the definition of electors of the Education FC under section 20E of LCO and the definition of voters of the Higher Education subsector under the Schedule to the Chief Executive Election Ordinance (Cap. 569) were unclear. He pointed out that the interpretation of "full-time academic staff engaged in teaching or research and administrative staff of equivalent rank" by the relevant institutions seemed to vary, which might create unfairness in the exercise of voting rights by the staff concerned. He asked what measures the Administration would take to address the problem. Mrs Regina IP noted with concern that some self-financed post-secondary colleges registered under the Post Secondary Colleges Ordinance (Cap. 320)

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were rather small in size. She questioned whether the staff of these colleges were also automatically eligible to be registered as electors of the Education FC and voters of the Higher Education subsector.

10. SCMA explained that the eligibilities for registration in the Education FC were stipulated in section 20E of LCO. In actual operation, it was the responsibility of the institutions concerned to provide REO with the information on their eligible staff members who satisfied the relevant definition for voter registration purposes. Generally speaking, each of the institutions concerned must provide REO with its respective list of eligible staff members in the light of their actual circumstances (e.g. the specific grade structure of staff members). Individual staff members who failed to register as electors in the Education FC could lodge claims, which would be handled by an independent Revising Officer, according to the statutory procedures. Due to shortage of time, SCMA agreed to provide a written response to the concerns raised by Mrs Regina IP.

*(Post-meeting note: The Administration's written response was issued to members vide LC Paper No. CB(2)837/18-19(01) on 20 February 2019.)*

11. Pointing out that a number of agricultural organizations were formed in recent years, Mr CHU Hoi-dick questioned why only one such organization (i.e. "Hong Kong New Territories Local Farmers Association") was proposed to be added to the Agriculture and Fisheries ("A&F") FC. He requested the Administration to explain the criteria for determining which bodies should be added to the A&F FC or deleted as in the case of "The Tsing Lung Tau Hand Liner Fishermen's Credit Co-operative Society, Unlimited". Mr Charles MOK expressed similar concerns and pointed out that individual bodies had repeatedly applied for inclusion in the Information Technology ("IT") FC but to no avail and that the Administration had not given any explanation. He added that while the number of practitioners in the IT industry was estimated to be about 100 000, the number of registered electors of the IT FC for the 2016 LegCo General Election was only around 12 000.

12. SCMA reiterated that in keeping with the established practice, CMAB would consult the relevant B/Ds before each LegCo general election on requests for inclusion into the FCs received since the previous review and consider various factors including the representativeness of the bodies in the relevant sector in the process. He added that the eligibilities for registration as electors of the IT FC were under review and consultation would be conducted by the Innovation and Technology Bureau in the second half of 2019.

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13. As regards the case of "The Tsing Lung Tau Hand Liner Fishermen's Credit Co-operative Society, Unlimited", the Principal Assistant Secretary for Constitutional and Mainland Affairs said that as advised by the Agriculture, Fisheries and Conservation Department, the Co-operative Society was no longer in operation and its registration under the Co-operative Societies Ordinance (Cap. 33) had been cancelled. Furthermore, REO had conducted inquiry and confirmed that the Co-operative Society was no longer a registered elector in the A&F FC.

*Refining the requirement on thickness and size of each letter that might be sent free of postage by candidates and de minimis arrangement*

14. In reply to Mr Alvin YEUNG's enquiry, SCMA confirmed that the current weight limit on postage-free letters in elections (i.e. not exceeding 50 grams) would continue to apply in the future elections.

15. Referring to the Administration's proposal to raise the limits prescribed for rectifying minor errors or omissions in election returns ("ERs") under the de minimis arrangement provided in section 37A of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), Mr Alvin YEUNG enquired about the justifications for the proposed revisions to be made as set out in Annex B to the Administration's paper. He further asked whether the limits were meant to be reviewed on a regular basis.

16. SCMA said that since the de minimis arrangement was introduced in 2011, the limits prescribed for different elections had not been revised despite increases in the election expense limits ("EELs"). In considering adjustments to the limits, the Administration was mindful that the limits for different elections should not be too high or too low relative to the respective EELs. SCMA further said that the existing limits for different elections as a percentage of the respective EELs ranged from 0.04% to 1.54%, whereas the proposed limits would range from 0.3% to 5%. The Administration considered the proposed adjustments relative to EELs were appropriate. SCMA added that the electoral arrangements would be reviewed after each election cycle in the light of the experience gained from the elections held and the views received.

17. In response to Mr Alvin YEUNG's further enquiry, SCMA said that 16% of ERs with minor errors or omissions received in the 2016 LegCo General Election and 44% of such ERs received in the 2017 Chief Executive ("CE") Election were rectified under the de minimis arrangement.

18. Dr KWOK Ka-ki welcomed the proposal to revise the threshold under section 37(2)(b) of ECICO for the submission of invoices and receipts from



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\$100 to \$500 to help alleviate the workload of candidates when preparing their ERs. He was, however, concerned that candidates might not be able to produce receipts for certain kinds of election donations. He asked whether the threshold would be reviewed on a regular basis.

19. SCMA said that while the Composite Consumer Price Index had risen by 33% during the period from 2000 to 2017, the threshold of \$100 for the submission of invoices and receipts had not been adjusted since 2000. To maintain the integrity of election, the Administration considered it reasonable to require candidates to submit an invoice and/or a receipt giving particulars of the expenditure in the case of each election expense of \$500 or above. SCMA further said that the proposed threshold, if adopted, would be reviewed after this election cycle for improvements to be made in the next election cycle.

*Other issues*

20. Mr LAM Cheuk-ting considered that the current nomination threshold of 100 subscribers for the geographical constituency elections was unreasonably low, which had given rise to a large number of candidates/lists of candidates in recent LegCo elections. He and Dr CHIANG Lai-wan considered that the Administration should consider the need to raise the number of subscribers to deter frivolous candidates. Dr CHIANG said that electors would be unable to clearly understand candidates' election platform if the number of candidates/lists of candidates was too large.

21. Mr CHAN Chi-chuen, Ms Claudia MO and Ms Tanya CHAN, however, opposed raising the nomination threshold. Ms Tanya CHAN stressed that voting rights included not only the right to vote but also the rights to stand for election and to be elected, and such rights were guaranteed under the International Covenant on Civil and Political Rights. Ms Claudia MO also considered that the right to stand for election was a basic human right which should be safeguarded.

22. SCMA had taken note of members' different views on the issue of nomination threshold. He further said that the Administration was mindful that the nomination threshold should not be too high to avoid deterring aspiring individuals from standing for election or too low which would give rise to many practical issues. As such, the Administration had to give careful consideration to the different views received with a view to striking the right balance. Since any change to the nomination threshold would involve legislative amendments which would require thorough consideration and discussion, there might be practical difficulties to introduce any such change in time for the 2020 LegCo

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General Election. That said, the Administration would continue to listen to views from Members and the public in this regard.

23. Mr CHAN Chi-chuen said that there had been wide public concern about the disqualification decisions made by the Returning Officers ("ROs") in the past LegCo elections. Pointing out that CE had publicly indicated that the Government would examine whether it was necessary to rationalize the relevant requirements and arrangements under the existing law following the Interpretation of Article 104 of the Basic Law by the Standing Committee of the National People's Congress ("the Interpretation"), Mr CHAN asked whether the issues under examination included the criteria adopted by ROs in determining whether a candidate's nomination was valid and when the Administration would introduce relevant legislative amendments. Ms Tanya CHAN also expressed concern about whether the Administration would seek to prescribe in the law that a person seeking candidature in future LegCo elections must sign the Confirmation Form in order to be validly nominated as a candidate.

24. SCMA responded that pursuant to the relevant electoral law, whether a candidate's nomination was valid or not was determined by RO according to the legal requirements and relevant procedures. All public officers responsible for electoral affairs, including RO, had all along strictly adhered to the Basic Law, relevant legislation and legal advice in the due execution of their public duties. The Administration would examine whether the requirements and arrangements as set out in the Interpretation had been duly reflected in the relevant local legislation and would consult LegCo on relevant issues as necessary and appropriate.

25. SCMA further explained that under LCO, a candidate was required to submit during the nomination period a nomination form including a declaration that he/she would uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region ("HKSAR"). The Confirmation Form was meant to provide further information to facilitate RO's consideration of the nomination, including whether the candidate concerned fully understood the legal requirements and responsibilities when signing the declaration in the nomination form. RO would, in accordance with the law and having considered the relevant information, decide whether or not a person was validly nominated as a candidate. SCMA stressed that while the arrangement for the Confirmation Form was not expressly provided in the law, the court judgment of a recent election petition case had confirmed that RO, in accordance with LCO, had the power to request further information from a candidate in order to determine whether the declaration made by the candidate in the nomination form that he/she would uphold the Basic Law and pledge allegiance to HKSAR was genuine, thereby deciding whether the relevant nomination was valid.

**IV. An outline of the topics in the fourth report of the Hong Kong Special Administrative Region under the International Covenant on Economic, Social and Cultural Rights**

[LC Paper Nos. CB(2)509/18-19(01) and CB(2)596/18-19(05) and (06)]

Meeting with deputations and the Administration

26. The Under Secretary for Constitutional and Mainland Affairs ("USCMA") said that HKSAR's third report ("the Third Report") under the International Covenant on Economic, Social and Cultural Rights ("ICESCR") was submitted as part of People's Republic of China's ("PRC") second report to the United Nations ("UN") in June 2010 and considered by the UN Committee on Economic, Social and Cultural Rights ("the Committee") in May 2014. The Committee had set the deadline for submission of the next report as May 2019. The HKSAR Government would submit to the Central People's Government the next report ("the Fourth Report") for incorporation into the third report of PRC. Members noted that an outline of the topics to be included in the Fourth Report [LC Paper No. CB(2)509/18-19(01)] was issued on 24 December 2018 for public consultation until 4 February 2019. USCMA said that the Administration would take into account the views received in drafting the Fourth Report.

27. The Panel received views from 10 deputations/individuals on the outline of the topics for inclusion in the Fourth Report. A summary of views expressed by these deputations/individuals is in the **Appendix**.

Administration's response to deputations' views

28. In response to the views expressed by the deputations/individuals on issues under the purview of CMAB, USCMA made the following points:

- (a) the Government would set out in the Fourth Report its response to the concerns and recommendations raised in the Committee's Concluding Observations on the Third Report ("the Committee's Concluding Observations");
- (b) while the Race Discrimination Ordinance (Cap. 602) ("RDO") did not contain a specific clause to cover the performance and exercise of Government functions and powers, it bound the Government and therefore, prohibited discriminatory acts and practices of the Government and other public authorities in all the areas specified in RDO. The Hong Kong Bill of Rights Ordinance (Cap. 383) ("HKBORO") also prohibited the Government and public

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authorities from engaging in practices that would entail any form of discrimination, including discrimination on the ground of race. The Discrimination Legislation (Miscellaneous Amendments) Bill 2018, which sought to take forward eight recommendations of priority in the Equal Opportunities Commission's ("EOC") submissions to the Government on the Discrimination Law Review, had been introduced into LegCo. The Government would continue to carefully study EOC's submissions and consider how to follow up on the other recommendations, including the recommendation of bringing all Government functions and powers within the scope of RDO, at a later stage;

- (c) as announced in CE's 2018 Policy Address, the Administration would improve the Administrative Guidelines on Promotion of Racial Equality for application to all government bureaux and departments as well as related organizations providing services to ethnic minorities;
- (d) EOC was an independent statutory body. Its powers, functions and autonomy in internal governance were protected by law. It was worth noting that human rights were fully protected by law in HKSAR and were enshrined in the Basic Law, HKBORO and other relevant legislation. These were buttressed by the rule of law and an independent judiciary. Under the existing institutional framework, there were a number of organizations which helped promote and safeguard human rights and equal opportunities. These organizations included not only EOC but also the Office of the Ombudsman, the Office of the Privacy Commissioner for Personal Data, and the legal aid services; and
- (e) the Administration had been actively taking forward the strategies and measures recommended by the Advisory Group on Eliminating Discrimination against Sexual Minorities ("the Advisory Group"), including:
  - (i) encouraging more organizations to adopt the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation. At present, over 300 organizations employing a total of more than 500 000 employees had adopted the Code;
  - (ii) sponsoring the Tung Wah Group of Hospitals to operate a 24-hour hotline to provide prompt support, counseling and

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referral services for sexual minorities and their families. Over 2 400 calls had been received by the hotline since it was launched in January 2018;

- (iii) providing training and devising training resources for medical and healthcare professionals to enhance their knowledge of and sensitivity towards sexual minorities. The next phase of training would be targeting social workers, teachers and human resources professionals; and
- (iv) studying the experience of other jurisdictions in implementing anti-discrimination measures through administrative and legislative initiatives. The study was expected to be completed in the first half of 2019 and the findings would provide more information to facilitate a more in-depth discussion in the community on the issue.

29. On issues which fell under the purview of the Education Bureau ("EDB"), the Principal Assistant Secretary for Education (Education Commission and Planning) ("PAS(ECP)") made the following points:

- (a) as non-Chinese speaking ("NCS") students regarded Hong Kong as their home, it was imperative for them to be proficient in Chinese so as to be competitive in respect of further studies and career pursuits. Therefore, the policy intent was to help NCS students overcome the difficulties in learning Chinese as a second language with a view to facilitating their bridging over to mainstream Chinese Language classes in the long run. Starting from the 2014-2015 school year, EDB had implemented the "Chinese Language Curriculum Second Language Learning Framework" ("Learning Framework"), which was drawn up in consultation with teachers and language experts and on the basis of the mainstream Chinese Language curriculum, in primary and secondary schools. With reference to the "Learning Framework", teachers could set progressive learning targets, learning progress and expected learning outcomes so that their NCS students with diverse learning needs could learn Chinese progressively in a "small-step" approach;
- (b) to facilitate the implementation of the "Learning Framework", EDB had been providing school-based professional support services for schools admitting NCS students and organizing diversified professional development programmes to enhance

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teachers' professional capability in teaching Chinese as a second language. Learning Chinese was not easy, and effective language learning was also based on multiple factors. Besides learning and teaching in schools, learning motivation of NCS students, study skills, time invested in learning Chinese, and parents' cooperation and expectation, etc., were also important factors which contributed to NCS students' mastery of the Chinese language. It had only been some 4 years since the implementation of the "Learning Framework", and it would take time for support measures to take root and create a sustainable impact. EDB would continue to collect and analyze relevant data with a view to evaluating the effectiveness of the implementation of the "Learning Framework"; and

- (c) all eligible children, irrespective of their races or places of birth, enjoyed equal opportunities for admission to Primary One and Secondary One of public sector schools under the respective school places allocation systems, which were fair and transparent. Since the so-called "designated schools" system was abolished in the 2013-2014 school year, the number of primary and secondary schools admitting NCS students had gradually increased from about 590 in the 2013-2014 school year to about 630 in the 2018-2019 school year, which covered about two-thirds of the schools in the territory. While some schools might, due to various reasons, including their location in districts where relatively more NCS people resided, parents' tendency to arrange their younger children to study in the same school with their siblings, and some parents' preference for schools with rich experience in taking care of NCS students, still had relatively more NCS students compared with schools in other districts, the measures introduced by the Government did not in any way contribute to any *de facto* racial segregation and any allegation that *de facto* racial segregation existed in Hong Kong was groundless and unfair. It was also not feasible to set a limit on the maximum number of NCS students admitted by individual schools, which would not only limit the school choices of NCS students, but also cause some Chinese-speaking students to be allocated to schools that they did not choose.

30. On issues which fell under the purview of the Labour Department ("LD"), the Assistant Commissioner for Labour (Policy Support) (Acting) ("ACL(PS)(Acting)") made the following points:

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- (a) foreign domestic helpers ("FDHs") were entitled to the same rights and benefits as local employees under the labour laws of Hong Kong. Further protection was afforded to FDHs through the Government-prescribed Standard Employment Contract, under which FDHs were entitled to the Minimum Allowable Wage and additional benefits including free accommodation, free food or food allowance, free medical treatment, free passages to/from their place of origin, etc. provided by their employers; and
- (b) FDHs had full access to the free consultation and conciliation service provided by LD in case of disputes with their employers. LD would continue to strengthen protection of FDHs' labour rights through stepping up publicity and educational efforts to enhance the awareness of rights and obligations of FDHs and their employers.

*(At 4:38 pm, the Chairman directed that the meeting be extended by 15 minutes beyond the appointed ending time.)*

Discussion

*Article 1: Progress and development of democracy*

31. Mr LAM Cheuk-ting considered that universal suffrage for selecting CE and electing all LegCo Members was fundamental to the implementation of "one country, two systems", "Hong Kong people administering Hong Kong" and a high degree of autonomy in Hong Kong. Noting that the current-term Government had no plans to restart public consultation on constitutional development, Mr LAM asked whether the Administration would inform the Committee that there was no progress at all in fostering the development of democracy in Hong Kong. Mr HUI Chi-fung said that while paragraph 1 of Article 1 stated that "All peoples have the right of self-determination", some people who allegedly advocated "self-determination" in Hong Kong had been disqualified from seeking candidature in public elections. Mr HUI urged the Administration to state clearly in the Fourth Report the fact that Hong Kong had made no progress or even taken a step backward in the democratic development.

32. USCMA said that the methods for selecting CE and forming LegCo were to be specified in light of the actual situation in HKSAR and in accordance with the principle of gradual and orderly progress with the ultimate aim of selecting CE and electing all LegCo members by universal suffrage. To attain this goal, the HKSAR Government of the previous term had put forward a universal

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suffrage package for selecting CE after conducting extensive public consultations but the relevant motion was voted down by LegCo. As any amendment to be implemented in the methods for selecting CE and forming LegCo would require tripartite consensus among LegCo Members, CE and the Standing Committee of the National People's Congress, it was imperative for the HKSAR Government to prudently consider all related factors, size up the situation and seek consensus instead of rashly embarking on political reform again. As explained in the Administration's reply to a LegCo question raised at the Council meeting of 9 January 2019, the Government would continue to do the best to work towards creating a favourable atmosphere to take forward political reform.

*Article 2: Progressive realization of the rights recognized in the Covenant and the exercise of those rights without discrimination*

33. Dr Priscilla LEUNG considered that discrimination against new arrivals from the Mainland ("NAs") still prevailed in Hong Kong. Pointing out that NAs were not protected under RDO which did not cover discrimination on the basis of nationality, citizenship and resident status, she urged the Administration to formulate appropriate policies and measures to enhance the protection of NAs against discrimination.

34. Citing paragraph 41 of the Committee's Concluding Observations which stated that the Committee was concerned about the absence of comprehensive anti-discrimination legislation in Hong Kong, Mr CHAN Chi-chuen enquired about the Administration's timetable for introducing legislation to outlaw discrimination on grounds of sexual orientation and gender identity. USCMA replied that the study being conducted by the Administration on other jurisdictions' legislative and administrative measures to eliminate such discrimination was expected to be completed in the first half of 2019. The findings would provide more information to facilitate a more in-depth and rational discussion in the community on the issue and the way forward. Dr Priscilla LEUNG said that while she agreed that the Administration should follow up the recommendations of the Advisory Group as appropriate, she did not support affording special protection to sexual minorities by enacting the proposed legislation as it might result in "reverse discrimination". She considered it more appropriate to eliminate discrimination on grounds of sexual orientation and gender identity by means of administrative measures.

35. Dr CHENG Chung-tai considered it problematic that the Chairperson and members of EOC, which should be independent from the Government, were appointed by CE. He asked whether the Administration would consider reforming the appointment mechanism to ensure the institutional independence



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of EOC and reviewing the statutory power vested in EOC. USCMA said that EOC was an independent statutory body and the Government was supportive of EOC's work. In addition to recurrent subvention, the Government had provided additional funding to EOC to launch dedicated measures to promote equal opportunities and racial integration.

*Article 6: Choice of occupation and labour rights*

*Article 7: Right to enjoy just and favourable conditions of work*

36. The Deputy Chairman enquired about the measures to be taken by the Administration to enhance the protection of employees against unreasonable dismissal. ACL(PS)(Acting) replied that under the Employment Ordinance (Cap. 57) ("EO"), the court or the Labour Tribunal ("LT") might award remedies, including an order for reinstatement or re-engagement subject to the agreement of the employer and the employee concerned, to employees who made claims against their employers by reason of unreasonable dismissal. As a further step to enhance the employee protection against unreasonable and unlawful dismissals ("UUD"), the Employment (Amendment) (No.2) Ordinance 2018 ("the Amendment Ordinance") was enacted on 17 May 2018 such that LT might make an order for reinstatement or re-engagement without the need to secure the employer's agreement in the event of UUD under EO. The Amendment Ordinance came into operation on 19 October 2018.

37. Dr Priscilla LEUNG opined that more assistance should be provided to FDHs given their contributions to Hong Kong. She called on the Administration to consider providing dedicated support services (e.g. counseling and conciliation services) and more leisure spaces for them.

*Article 10: Protection of the family*

38. Mr HUI Chi-fung said that while the Administration had introduced legislative proposals to, among others, prohibit direct and indirect discrimination against a woman on the ground of breastfeeding, he was concerned that the proposed scope of protection did not cover harassment behaviour against breastfeeding women. USCMA responded that as explained to the relevant Bills Committee, the Administration would study the relevant issues and consider the next step at a later stage.

*Article 11: Right to an adequate standard of living*

39. The Deputy Chairman expressed concern that while the Administration had launched a series of measures to increase housing supply, such measures could not effectively address the current problem of exorbitant rents in Hong

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Kong. In his view, a three-pronged approach, viz. providing rental vouchers, implementing rent control and introducing vacancy tax, should be adopted to alleviate the housing difficulties faced by grassroots tenants. He asked whether the Administration would, as a follow-up measure to safeguard people's right to an adequate standard of living under ICESCR, consider providing rental vouchers and implementing rent control to assist grassroots tenants.

40. USCMA said he noted that rent control was a highly controversial subject which had been discussed a number of times in LegCo. As advised by the Transport and Housing Bureau, concern had been raised that implementing rent control might lead to an array of unintended consequences, including those to the detriment of the tenants whom the measure sought to assist. For instance, it might discourage landlords from renting out their premises, thereby reducing the supply of accommodation for rent. There was also a prospect that landlords might even try to increase the rent upfront as much as possible when negotiating tenancy agreements in order to minimize the impact arising from rent control upon renewals. The Government was thus concerned that implementing rent control amid the current tight housing supply might be counter-productive and would not be in the interest of tenants and the general public.

*Article 13 and 14: Right to education*

41. Dr CHENG Chung-tai said he noted that EDB issued a circular memorandum on 18 January 2019 to inform schools of the refined "Learning Framework" and the relevant briefing session to be held on 31 January 2019. He queried why revisions had been made to the "Learning Framework" before the relevant review report was published.

42. PAS(ECP) explained that EDB had been collecting teachers' views on the "Learning Framework" in the past few years. In the light of the views received, revisions and refinements had recently been made to the "Learning Framework". A circular memorandum was issued to schools to inform them of the refined "Learning Framework", as well as the briefing sessions and teacher training organized for schools.

*Article 15: Right to cultural life, scientific progress and its applications*

43. Citing the cases of Mr MA Jian and Badiucuo, a writer and an artist respectively, who had experienced various obstructions in attending cultural and arts activities in Hong Kong, Mr HUI Chi-fung expressed concern that people's right to take part in cultural life and freedom of creation in Hong Kong were gradually being eroded. USCMA dismissed the criticism and

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emphasized that the Government continued to do its best to safeguard people's freedom to engage in literary and artistic creation and other cultural activities in Hong Kong.

**V. Any other business**

44. There being no other business, the meeting ended at 5:00 pm.

Council Business Division 2  
Legislative Council Secretariat  
23 May 2019

## Panel on Constitutional Affairs

**Meeting on Monday, 21 January 2019, from 2:30 pm to 4:45 pm**  
**Meeting to receive views on "An outline of the topics in the fourth report of the**  
**Hong Kong Special Administrative Region under the**  
**International Covenant on Economic, Social and Cultural Rights"**

**Summary of views and concerns expressed by deputations/individuals**

| No. | Name of deputation / individual                                  | Submission / Major views and concerns  |
|-----|--|--|
| 1.* | Hong Kong Human Rights Monitor                                   | <ul style="list-style-type: none"> <li>● The Government should duly respond to the recommendations raised in the concluding observations issued by the United Nations ("UN") Committee on Economic, Social and Cultural Rights ("the Committee") on the previous report submitted by the Hong Kong Special Administrative Region ("HKSAR").</li> <li>● HKSAR's fourth report under the International Covenant on Economic, Social and Cultural Rights ("ICESCR") should truthfully reflect:               <ul style="list-style-type: none"> <li>(a) the interference of Mainland authorities in HKSAR's affairs;</li> <li>(b) the downplaying of human rights education in HKSAR;</li> <li>(c) whether the operations of HKSAR's human rights institutions (e.g. the Equal Opportunities Commission ("EOC") and Office of The Ombudsman) complied with the UN Paris Principles; and</li> <li>(d) the progress of the Government's review of the Race Discrimination Ordinance ("RDO").</li> </ul> </li> </ul> |
| 2.* | Democratic Alliance for the Betterment and Progress of Hong Kong | <ul style="list-style-type: none"> <li>● The Government should introduce a Chinese as a second language curriculum to enable non-Chinese speaking ("NCS") students to acquire a higher level of Chinese language skills and provide adequate support and guidance for teachers teaching the subject.</li> <li>● The Government should tackle the problem of racial discrimination against South Asians residing in Hong Kong. In particular, their difficulties in accessing goods and services, as well as renting private accommodation, should be addressed.</li> <li>● The Government should step up monitoring of compliance with the Administrative Guidelines on Promotion of Racial Equality ("the Administrative Guidelines") among bureaux and departments and extend the scope of the Administrative Guidelines to cover all public authorities so as to safeguard the equal access to public services among ethnic minorities ("EMs").</li> </ul>  |
| 3.  | Hong Kong Unison   | <ul style="list-style-type: none"> <li>● LC Paper No. CB(2)745/18-19(01)</li> </ul>  |
| 4.* | Society for Cultural Integration                                 | <ul style="list-style-type: none"> <li>● The Government should expeditiously amend RDO by providing that it was also unlawful for the Government to</li> </ul>   |

| No.  | Name of deputation / individual    | Submission / Major views and concerns   |
|------|------------------------------------|---|
|      |                                    | <p>discriminate on the ground of race in performing its functions and exercising its powers.</p> <ul style="list-style-type: none"> <li>● The operation of EOC did not comply with the Paris Principles and should be reviewed with a view to enhancing the protection of EMs from racial discrimination.</li> </ul>  |
| 5. * | Miss CHEUK Man-po                  | <ul style="list-style-type: none"> <li>● The Government should introduce a Chinese as a second language curriculum to enable NCS students to acquire a higher level of Chinese language skills and address the problem of over-concentration of NCS students in certain schools.</li> <li>● The Government should include in the fourth report under ICESCR the findings of review of the effectiveness of the "Chinese Language Curriculum Second Language Learning Framework" in enhancing the Chinese language levels of NCS students.</li> </ul>  |
| 6.   | Les Corner Empowerment Association | <ul style="list-style-type: none"> <li>● LC Paper No. CB(2)703/18-19(01)</li> </ul>   |
| 7. * | Civic Party                        | <ul style="list-style-type: none"> <li>● The Government should duly respond to the recommendations raised in the concluding observations issued by the Committee on the previous report submitted HKSAR.</li> <li>● The Government should include in HKSAR's fourth report under ICESCR the lack of achievement in the following areas: <ul style="list-style-type: none"> <li>(a) the constitutional development of HKSAR;</li> <li>(b) tackling discrimination on grounds of sexual orientation and gender identity; and</li> <li>(c) the protection of labour rights (e.g. introducing standard working hours and the rights of collective bargaining).</li> </ul> </li> </ul> |
| 8.   | Miss CHAU Wai-ki                   | <ul style="list-style-type: none"> <li>● LC Paper No. CB(2)596/18-19(07)</li> </ul>   |
| 9.   | Mr WONG Kai-yeung                  | <ul style="list-style-type: none"> <li>● LC Paper No. CB(2)745/18-19(02)</li> </ul>   |
| 10.  | PathFinders Limited                | <ul style="list-style-type: none"> <li>● LC Paper No. CB(2)703/18-19(02)</li> </ul>   |

\* No submissions provided for this meeting