

立法會
Legislative Council

Ref : CB2/PL/CA

LC Paper No. CB(2)1432/19-20
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 15 June 2020, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon CHEUNG Kwok-kwan, JP(Chairman)
Hon Kenneth LAU Ip-keung, BBS, MH, JP (Deputy Chairman)
Hon James TO Kun-sun
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 Kin-por, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Claudia MO
Hon Steven HO Chun-yin, BBS
Hon WU Chi-wai, MH
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung, 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
Hon Martin LIAO Cheung-kong, GBS, JP
Dr Hon CHIANG Lai-wan, SBS, JP
Hon Alvin YEUNG
Hon CHU Hoi-dick

Hon Jimmy NG Wing-ka, BBS, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon Tanya CHAN
Hon HUI Chi-fung
Hon LUK Chung-hung, JP
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho

Members absent : Hon Abraham SHEK Lai-him, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon CHUNG Kwok-pan
Dr Hon CHENG Chung-tai

Public Officers attending : Item IV

Mr Erick TSANG Kwok-wai, IDSM, JP
Secretary for Constitutional and Mainland Affairs

Ms Elizabeth TAI Ka-pui, JP
Deputy Secretary for Constitutional and Mainland Affairs

Mrs HONG CHAN Tsui-wah
Deputy Secretary for Education

Mr Gary POON Wai-wing, JP
Deputy Secretary for the Civil Service

Mr Patrick LI Pak-chuen, JP
Deputy Secretary for Home Affairs

Item V

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

Mr Jacky LUM Kwok-keung
Principal Assistant Secretary for Constitutional and Mainland
Affairs

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

Staff in attendance : Mr Bonny LOO
Senior Assistant Legal Adviser 3(Acting)

Ms Jasmine TAM
Senior Council Secretary (2) 3

Mr Dennis HO
Council Secretary (2) 3

Mrs Fonny TSANG
Legislative Assistant (2) 3

Action

I. Confirmation of minutes of meeting

[LC Paper No. CB(2)1194/19-20]

The minutes of the meeting held on 20 April 2020 were confirmed without amendments.

II. Information paper(s) issued since the last meeting

[LC Paper Nos. CB(2)1184/19-20(01) and CB(2)1201/19-20(01)]

2. Members noted that the following papers had been issued after the last meeting:

- (a) letter dated 10 June 2020 from the Secretary for Constitutional and Mainland Affairs ("SCMA") on the date of the General Election for the Seventh Legislative Council ("LegCo") [LC Paper No. CB(2)1184/19-20(01)]; and
- (b) Administration's consolidated response to three letters respectively from five members belonging to the Civic Party, Dr Helena WONG and Mrs Regina IP [LC Paper No. CB(2)1201/19-20(01)].

III. Matters arising from the meeting on 18 May 2020

[LC Paper No. CB(2)1167/19-20(01)]

3. The Chairman said that at the last meeting on 18 May 2020, Dr Fernando CHEUNG had proposed to move a motion relating to the practical arrangements and publicity for the 2020 LegCo General Election. The Chairman further said that while he had ruled at the last meeting that the

Action

proposed motion was directly related to the agenda item under discussion, owing to insufficient meeting time, members agreed to deal with the proposed motion at this meeting.

4. Members agreed that Dr Fernando CHEUNG's proposed motion be proceeded with. The Chairman put Dr Fernando CHEUNG's motion (at **Annex I**) to vote. At Dr Fernando CHEUNG's request, the Chairman ordered a division. The voting result was that 14 members voted for and 17 members voted against the motion, and no member abstained from voting (details of the division at **Annex II**). The Chairman declared that the motion was negated.

IV. Promotion of the Basic Law

[LC Paper Nos. CB(2)1167/19-20(02) and (03)]

5. SCMA briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)1167/19-20(02)].

Discussion

Effectiveness of promotion of the Basic Law

6. The Deputy Chairman considered that the social incidents in the past year had reflected a lack of comprehensive and accurate understanding of the Basic Law among many members of the public. He pointed out that apart from stating that the basic policies of "one country, two systems", "Hong Kong people administering Hong Kong" and a high degree of autonomy would be implemented in Hong Kong, the Basic Law also stipulated that the Hong Kong Special Administrative Region ("HKSAR") was an inalienable part of the People's Republic of China ("PRC") and that HKSAR was a local administrative region of PRC which came directly under the Central People's Government ("CPG"). He stressed that given the important constitutional status of the Basic Law in HKSAR, it was necessary to enhance understanding of the "one country, two systems" principle and the Basic Law among various sectors of the community, particularly teachers, students and civil servants. He asked what measures would be taken to promote the Basic Law other than those set out in the Administration's paper, which in his view were too conventional and unable to attract young people. Mr CHAN Chi-chuen also considered that the promotional activities set out in the Administration's paper were more or less the same as before and questioned whether the Administration had evaluated the effectiveness of its promotion work on the Basic Law.

Action

7. Mr Holden CHOW opined that the Administration's efforts in promoting the Basic Law were far from adequate. He requested the Administration to step up efforts to promote a correct understanding of both the Constitution of PRC ("the Constitution") and the Basic Law. Ms Starry LEE considered that the fact that Hong Kong had been able to enjoy the highest level of freedom among all cities in PRC owed much to the implementation of the Basic Law. She urged the Administration to promote a deeper understanding of the benefits brought by the implementation of the Basic Law and the "one country, two systems" principle. Dr Junius HO suggested that a set of commonly asked questions and answers about the Basic Law be drawn up and provided for public reference.

8. The Deputy Secretary for Constitutional and Mainland Affairs ("DSCMA") said that to commemorate the 30th anniversary of the promulgation of the Basic Law, an online exhibition had been launched in May 2020 and a webinar had been held on 8 June 2020. The Constitutional and Mainland Affairs Bureau ("CMAB") had also launched a new online game on the Constitution and the Basic Law, with a view to enhancing public understanding of the Constitution and the Basic Law through wide-reaching social media and in a lively manner. DSCMA informed members that the online game had been well received by the public and recorded more than 2.2 million views so far. DSCMA further said that CMAB would update the Basic Law website and launch a new mobile application to provide, among others, Basic Law quizzes, which were designed to enhance the interest of the general public, particularly the young people, in gaining a deeper understanding of the Basic Law.

9. Dr Priscilla LEUNG considered that the Administration's education and promotion work had been focusing only on the Basic Law with little mention of the Constitution. This, in her view, had given rise to an inadequate awareness of China's sovereignty over Hong Kong especially among the young people. She stressed that the Administration should step up promotion of the Constitution and the Basic Law so as to let the public gain an accurate understanding of the constitutional order established by the Constitution and the Basic Law. She called on the Administration to make use of information technology, visual illustrations, etc. to explain the historical background of the Basic Law to the public in a lively manner. Dr Junius HO also considered it important to enhance public understanding of the relationship between the Constitution and the Basic Law. He suggested that the Administration should step up efforts to promote the Constitution Day and the National Security Education Day.

Action

10. SCMA noted members' views and suggestions and acknowledged that there was room for improvement in the promotion work on the Constitution and the Basic Law. SCMA said that the Administration would make sustained efforts to enhance its work in this area, including adopting more innovative and effective approaches to enable the public to acquire a comprehensive and thorough understanding of the Constitution and the Basic Law.

Basic Law education for students

11. Mr Martin LIAO said that as stipulated in the Secondary Education Curriculum Guide ("the Guide") issued by the Education Bureau ("EDB"), schools were required to allocate a total of 51 lesson hours for teaching the Basic Law at junior secondary level, among which 24 lesson hours were to be derived from the teaching of the curriculum of the Chinese History subject. He expressed concern that according to the findings of a survey conducted recently, around 30% to 40% of the responding schools had not allocated any lesson hour under relevant curricula/subjects for teaching the Basic Law. Besides, among those responding schools which had implemented Basic Law education ("BLE") for students, nearly 80% had allocated only fewer than 15 lesson hours under the curriculum of Chinese History subject for teaching the Basic Law, which was far less than the relevant required number of lesson hours stipulated in the Guide. Mr LIAO asked how EDB would follow up relevant cases of non-compliance by individual schools. He further asked whether relevant training would be enhanced to strengthen teachers' capability to teach the Basic Law, and whether consideration would be given to incorporating the assessment of Basic Law knowledge into the recruitment and performance appraisal processes of teachers, such that the relevant test result would be taken into consideration in assessing individual candidates' suitability for appointment or promotion.

12. The Deputy Secretary for Education ("DSED") responded that she needed to look at further details of the survey, including how the relevant questions were set, before she could comment on the survey results. She said that EDB had all along included elements related to the Constitution and the Basic Law in the professional training programmes for principals, middle managers and teachers to shed light on the constitutional status of the Basic Law and the concept of "one country, two systems", and to share the learning and teaching ("L&T") strategies for promoting BLE inside and outside the classroom. This apart, the Basic Law Knowledge Enrichment

Action

Online Course for Secondary School Teachers had also been launched to enhance teachers' knowledge and understanding of the Basic Law. That said, EDB would examine how relevant training and support measures for teachers could be enhanced to strengthen their confidence in implementing BLE.

13. DSED further clarified that learning elements related to BLE had already been incorporated into the Personal, Social and Humanities Education curriculum (which included four subjects, namely Life and Society, Chinese History, History and Geography) at junior secondary level. As elaborated in the Guide, lesson hours spent on teaching certain topics/themes in relevant subjects would be regarded as BLE-related lesson hours. Therefore, the Guide was not asking for additional lesson hours being put aside in relevant subjects for BLE. Instead, teachers might naturally connect the contents of the Basic Law at appropriate junctures when teaching relevant topics/themes. Mr Martin LIAO asked whether EDB would conduct a survey on the number of lesson hours spent on teaching the Basic Law by individual schools. DSED replied that EDB had been monitoring through its web system individual schools' compliance with the requirement to spend at least about two periods per week on average on teaching Chinese History-related contents to junior secondary students.

14. Mr IP Kin-yuen asked whether the Administration could guarantee that the explanation of the provisions of the Basic Law provided in the BLE-related L&T resources developed by EDB was accurate. DSED said that EDB had launched in different years various sets of BLE-related L&T resources which were developed in consultation with relevant government departments and the legal sector. She assured members that EDB would keep its L&T resources for BLE under review and refine/update them as necessary and appropriate in order to keep up with the times.

Applicability of Article 22 of the Basic Law to the Liaison Office of the Central People's Government

15. Mr WU Chi-wai, Mr CHAN Chi-chuen and Dr Helena WONG expressed grave concerns that the HKSAR Government had issued three press releases on 18 and 19 April 2020 giving contradictory statements regarding the applicability of Article 22 of the Basic Law ("BL 22") to the Liaison Office of CPG in HKSAR ("the Liaison Office"). They pointed out that the latest explanation given by the HKSAR Government, i.e. the Liaison Office was not an office set up by a department of CPG in HKSAR within the meaning of BL 22(2), was clearly contrary to its previous explanation to

Action

LegCo as well as the general understanding that the Liaison Office was subject to BL 22 and, in particular, BL 22(1) which expressly provided that no department of CPG might interfere in the affairs which HKSAR administered on its own in accordance with the Basic Law. Mr WU asked whether any official(s) and/or bureau(x) of the HKSAR Government would be held responsible for misconstruing and misleading the public about the applicability of BL 22 over the past many years. Mr CHAN queried whether any, and if so, which department of CPG was currently subject to BL 22. Mr CHAN also requested SCMA to clarify whether the Liaison Office might interfere in public elections in Hong Kong if it was not bound by BL 22.

16. SCMA responded that the HKSAR Government and the former SCMA had apologized for the confusion caused by the issue of the aforementioned press releases. While the information regarding the roles and functions of the Liaison Office under the Basic Law in the papers previously provided by the HKSAR Government to LegCo might not be entirely clear, SCMA said that the HKSAR Government had now clarified the matter and put the record straight.

17. SCMA explained that pursuant to BL 22(2), if there was a need for departments of the Central Government, or for provinces, autonomous regions, or municipalities directly under the Central Government to set up offices in HKSAR, they had to obtain the consent of the HKSAR Government and the approval of CPG. However, the Xinhua News Agency (Hong Kong Branch), the antecedent of the Liaison Office, was founded more than 70 years ago and had all along discharged relevant responsibilities in Hong Kong as the representative office authorized by CPG. In December 1999, the State Council decided to change the name of "Xinhua News Agency (Hong Kong Branch)" to "Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region". Hence, the Liaison Office was not set up in accordance with BL 22(2).

18. SCMA further said that the Liaison Office was authorized by CPG to handle issues relating to Hong Kong. It was entrusted with the authority and responsibility to represent CPG to express views and exercise supervisory power on major issues such as those concerning the relationship between CPG and HKSAR, the accurate implementation of the Basic Law, the proper operation of the political system and the well-being of the community as a whole. SCMA stressed that discharging such duties did not constitute any interference in the affairs which HKSAR administered on

Action

its own in accordance with the Basic Law. SCMA added that as the Secretary for Justice ("SJ") had earlier said, pursuant to Article 5 of the Constitution and State Letter No.5 of 2000 issued by the State Council, the Liaison Office and its personnel were required to strictly abide by the Basic Law and the laws of Hong Kong, and to discharge their duties in accordance with the law.

19. SCMA said that there were so far three CPG offices in HKSAR, namely the Liaison Office, the Office of the Commissioner of the Ministry of Foreign Affairs of PRC in HKSAR, and the Hong Kong Garrison of the Chinese People's Liberation Army. However, all of them were not set up in accordance with BL 22(2). In reply to Mr CHAN Chi-chuen's further enquiry, SCMA confirmed that there was currently no institution set up in accordance with BL 22(2) in HKSAR.

20. Dr Fernando CHEUNG queried the legal basis for the Liaison Office to exercise "supervisory power" on HKSAR. SCMA explained that as stipulated in BL 12, HKSAR was a local administrative region of PRC that enjoyed a high degree of autonomy and came directly under CPG. Therefore, CPG had the authority and responsibility to supervise the implementation of the Basic Law by HKSAR. SCMA reiterated that since the Liaison Office was authorized by CPG to handle issues relating to HKSAR, it was legitimate for the Liaison Office to represent CPG to exercise supervisory power on major issues relating to HKSAR. In reply to Dr CHEUNG's further enquiry, SCMA said that apart from the Liaison Office, the Hong Kong and Macao Affairs Office of the State Council was also entrusted with the authority to represent CPG to exercise supervisory power on major issues relating to HKSAR.

21. Referring to the recent remark by the Secretary for Civil Service that civil servants of the HKSAR Government were also civil servants of the State at the same time, Mr Jeremy TAM and Mr IP Kin-yuen questioned whether the personnel of the Liaison Office were empowered to give orders or instructions directly to civil servants of the HKSAR Government and if so, whether the latter were obliged to follow those orders or instructions. Mr CHU Hoi-dick also expressed concern on how the Liaison Office was to exercise "supervisory power" on HKSAR and asked whether there was any law in Hong Kong that prohibited the personnel of the Liaison Office from issuing orders directly to officials of the HKSAR Government. SCMA reiterated that as earlier explained, the Liaison Office was entrusted with the authority and responsibility to represent CPG to exercise supervisory power on major issues relating to HKSAR. Furthermore, the Liaison Office and

Action

its personnel were required to abide by the Basic Law and the laws of Hong Kong. SCMA said that generally speaking, civil servants of the HKSAR Government should carry out their duties in accordance with the relevant rules and regulations applicable to the civil servants, such as the Civil Service Code. SCMA added that while working at the Immigration Department as a civil servant, he had not received any order or instruction from any official of the Liaison Office.

The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region

22. Mr LAM Cheuk-ting said that BL 81 provided that "The judicial system previously practised in Hong Kong shall be maintained except for those changes consequent upon the establishment of the Court of Final Appeal of the Hong Kong Special Administrative Region". He expressed concern that notwithstanding the aforesaid article, SJ had recently remarked that it was impracticable and unreasonable to expect that the Law of PRC on Safeguarding National Security in HKSAR ("the National Security Law") to be enacted by the Standing Committee of the National People's Congress ("NPCSC") "[would] be exactly as what a statute in the [HKSAR] common law jurisdiction would be like". Mr LAM further said that the Hong Kong Bar Association ("HKBA") had issued a statement urging that if the National Security Law was to be made and apply to HKSAR, it should be drafted, construed and applied in accordance with the common law principles. He asked whether the HKSAR Government would reflect the above views of HKBA to the Central Authorities. Ms Claudia MO also raised a similar question.

23. SCMA said that the Thirteenth National People's Congress adopted the Decision on Establishing and Improving the Legal System and Enforcement Mechanisms for Safeguarding National Security in HKSAR ("the Decision") on 28 May 2020. Pursuant to the Decision, the National Security Law was to be enacted by NPCSC, and after NPCSC's consultation with its Committee for the Basic Law of HKSAR and the HKSAR Government, the National Security Law would be added to Annex III to the Basic Law to be applied locally by way of promulgation by HKSAR. SCMA further said that as the relevant law drafting work by NPCSC was underway, he could not comment on the drafting approach or the specific contents of the legislation. That said, it had already been announced that the enactment of the National Security Law would not compromise the independent judicial power exercised by the courts of HKSAR and the power of final adjudication conferred on the Court of Final Appeal of

Action

HKSAR under the Basic Law. He believed that NPCSC would give due regard to the enforceability of the National Security Law in HKSAR as well as its compatibility and complementarity with the relevant national laws and laws of HKSAR in the drafting process. SCMA added that the HKSAR Government would listen to the views of different sectors on the issue and would duly reflect such views when being consulted by NPCSC.

24. In reply to Mr Alvin YEUNG's enquiry, SCMA confirmed that the adoption of various legal principles, such as presumption of innocence, proof beyond a reasonable doubt, and non-retroactivity of criminal legislation, in criminal proceedings in Hong Kong was safeguarded by the Basic Law. SCMA also confirmed that any national law added to Annex III to the Basic Law must not contravene the Basic Law. Mr Alvin YEUNG enquired about the actions to be taken by the HKSAR Government in the event that the provisions of a national law proposed to be added to Annex III to the Basic Law were regarded as contravening the Basic Law. SCMA said that before adding a national law to Annex III to the Basic Law, NPCSC would consult its Committee for the Basic Law of HKSAR and the HKSAR Government in accordance with BL 18. Mr YEUNG further asked whether SCMA had been consulted on the inclusion of the National Security Law in Annex III to the Basic Law. SCMA replied that CMAB would give its views where appropriate when the HKSAR Government was consulted by NPCSC.

25. Dr Helena WONG expressed concern that while BL 23 provided that HKSAR should enact laws on its own to prohibit various specified acts to safeguard national security, at least three types of acts which the National Security Law sought to deal with (i.e. acts of secession, subversion of state power, and collusion with foreign and external forces to endanger national security) were already covered in BL 23. She also expressed strong dissatisfaction that notwithstanding the profound impact of the National Security Law on Hong Kong, LegCo had not been given the opportunity to have sight of and give views on the draft Law.

26. SCMA explained that while the National Security Law aimed to prevent, suppress and impose punishment for four types of criminal acts/activities that posed a prominent threat to national security, the enactment of the legislation by NPCSC would not dispense with or reduce the constitutional responsibility of HKSAR to enact national security laws on its own pursuant to BL 23. In fact, as stated in Article 3 of the Decision, "[HKSAR] should legislate as soon as possible to safeguard national security as required by the Basic Law of [HKSAR]". He said that as such,

Action

the legislative work on BL 23 was to be carried out separately and the HKSAR Government would embark on the relevant work.

27. Dr Junius HO opined that in view of the current situation in Hong Kong and the difficulty faced by HKSAR to complete on its own legislation for safeguarding national security as required under BL 23, the Central Authorities had the right and duty to introduce a national law to improve at the national level the legal framework and enforcement mechanisms for HKSAR to safeguard national security. He urged the HKSAR Government to step up efforts to explain to the public the constitutional and legal basis for NPCSC to enact the National Security Law. Mr Holden CHOW also commented that the enactment of the National Security Law by NPCSC was entirely legitimate, necessary and in conformity with the Constitution and the Basic Law. He added that the National Security Law only targeted an extremely small minority of criminals who threatened national security.

(At 2:47 pm, the Chairman ruled that the question put by Dr KWOK Ka-ki to SCMA was irrelevant to the agenda item under discussion and as such, it could not be asked pursuant to Rule 41(1) of the Rules of Procedure ("RoP") which also applied to proceedings of a committee such as the Panel by virtue of RoP 43. Dr KWOK expressed strong dissatisfaction with the above ruling. Mr CHAN Chi-chuen, Mr IP Kin-yuen and Mr LAM Cheuk-ting also expressed disagreement with the Chairman's ruling. The Chairman pointed out that pursuant to RoP 44, his decision on a point of order was final. At 2:49 pm, the Chairman said that as Dr KWOK Ka-ki had used the expression "sworn brother" ("契弟"), he ruled that Dr KWOK had used offensive language about him in breach of RoP 41(4). The Chairman further said that as Dr KWOK had refused to withdraw the aforesaid expression, he ruled that the conduct of Dr KWOK was grossly disorderly and ordered Dr KWOK to withdraw immediately from the meeting in accordance with RoP 45(2).)

V. Progress of work in tackling discrimination on the grounds of sexual orientation and gender identity

[LC Paper Nos. CB(2)1167/19-20(04) and (05)]

28. With the aid of PowerPoint, 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)1167/19-20(04)].

(Post-meeting note: the PowerPoint presentation materials were issued vide LC Paper No. CB(2)1213/19-20(01) on 16 June 2020.)

Action

Discussion

29. With regard to the Administration's research study on the experience of other jurisdictions in tackling discrimination against sexual minorities through legislative and non-legislative measures ("the Study"), Dr Helena WONG expressed concern that the Administration failed to state clearly whether or not it would introduce legislation to prohibit discrimination on the grounds of sexual orientation and gender identity. She said the Democratic Party considered that the Administration should expeditiously introduce legislation to prohibit discrimination on such grounds, which in her view should not be delayed just because the issue was controversial. She requested the Administration to provide a timetable for the legislative exercise. She also asked whether the administrative measures adopted by the jurisdictions examined in the Study would be implemented in Hong Kong and when the Study report would be published.

30. USCMA said that the Study was conducted as recommended by the Advisory Group on Eliminating Discrimination against Sexual Minorities. The purpose of the Study was to provide more information to facilitate a more in-depth and rational discussion in the community on the issue of whether legislation should be introduced to prohibit discrimination on the grounds of sexual orientation and gender identity. USCMA further said that after listening to members' views, the Administration would discuss with stakeholders and consider anti-discrimination proposals suitable to be implemented in Hong Kong based on the findings of the Study.

31. Mr Holden CHOW and Dr Priscilla LEUNG said that while they agreed that people of different sexual orientations should be respected, they were concerned that enacting legislation to prohibit discrimination on the ground of sexual orientation would arouse great controversy in the community. Moreover, they were concerned that it might lead to "reverse discrimination" and result in people contravening the law inadvertently as shown by the experience of some examined jurisdictions. Mr CHOW said that many parent groups and religious organizations had expressed concerns about the court rulings on judicial review cases relating to same-sex marriage in recent years, which in their view had posed serious challenges to the existing institution of monogamy and heterosexual marriage. He opined that a balance should be struck between eliminating discrimination against sexual minorities and safeguarding traditional family values and freedoms of religion/conscience. He supported drawing up a charter on non-discrimination of sexual minorities ("the charter") for voluntary

Action

adoption by relevant organizations as he considered that this approach would be more easily acceptable to the public at large.

32. Dr Priscilla LEUNG also stressed the need to safeguard the freedom of parental choice of children's religious and moral education under Article 18(3) and (4) of the International Covenant on Civil and Political Rights, as well as the freedom of religious belief under BL 32 and BL 141. She considered that discrimination against sexual minorities should be tackled by public education rather than legislation, and that the adoption of the charter should be voluntary. Referring to the administrative measures mentioned in paragraph 12(c) and (f) of the Administration's paper, Dr LEUNG said that it was important to ensure that balanced views would be offered if relevant concepts of sexual orientation and gender identity were to be incorporated into the programmes and activities for students and young people. She added that the Administration should eliminate the problem of "reverse discrimination" as well.

33. USCMA said that the Administration had been actively taking forward various measures to promote equal opportunities for people of different sexual orientations and gender identities. For instance, sustained efforts had been made to promote the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation ("Code of Practice") and the number of organizations which had pledged to adopt the Code of Practice had been on the rise in recent years. Besides, the Administration was drawing up the charter for voluntary adoption by providers of goods, facilities and services, with a view to enhancing acceptance and friendliness towards sexual minorities. USCMA said that the Administration would continue to formulate and implement appropriate anti-discrimination measures in consultation with stakeholders holding different views on the issue.

(At 4:29 pm, the Chairman announced that he would extend the meeting by 15 minutes beyond the appointed ending time.)

34. Mr CHU Hoi-dick expressed support for enactment of legislation to prohibit discrimination on the grounds of sexual orientation and gender identity as well as legalization of same-sex marriage and civil unions, which in his view had become the mainstream opinion of the community as reflected by the findings of relevant public surveys conducted in recent years. He urged the Administration to expeditiously take forward relevant legislative proposals. He also asked whether the Administration would expedite its work in drawing up the charter. USCMA said that the

Action

preparation of the charter covering the provision of goods, facilities and services was near completion. The Administration would consider a suitable time to introduce the charter, having regard to the circumstances of various trades and industries after the pandemic. The Administration would also continue to draw up charters covering organizations in other domains, including disposal and management of premises, employment and education.

35. Dr Fernando CHEUNG queried the effectiveness of the Code of Practice given that the Government itself had also been ruled by the Court that it did not abide by the Code of Practice in a relevant court case. He also expressed doubt about the effectiveness of the charter, which was not legally binding, in eliminating discrimination against sexual minorities. He reminded the Administration that according to a study report released by the Equal Opportunities Commission ("the EOC Study Report") in 2016, there was a significant increase in public support for legislating against discrimination on the grounds of sexual orientation and gender identity from 28.7% in 2006 to 55.7% in 2016. Furthermore, the Human Rights Council and other relevant committees of the United Nations had since 2006 repeatedly urged the HKSAR Government to legislate to protect sexual minorities against discrimination. He queried why the Administration failed to introduce such legislation.

36. Mr CHAN Chi-chuen expressed dissatisfaction that the Administration's paper did not mention any plan to introduce legislation to prohibit discrimination against sexual minorities, which had been under discussion for more than 20 years. He also criticized the Administration for failing to follow up the recommendation made in the EOC Study Report that the Government should consider launching a public consultation exercise with a view to legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status. He asked when the Administration would take forward the aforesaid recommendation made by EOC.

(At 4:44 pm, the Chairman suggested and members agreed that the meeting be further extended for 15 minutes.)

37. In response to the concerns raised by Dr Fernando CHEUNG and Mr CHAN Chi-chuen, USCMA reiterated that there were divergent views on whether legislation should be introduced to prohibit discrimination on the grounds of sexual orientation and gender identity. As such, the Administration would discuss with stakeholders and consider

Action

anti-discrimination proposals suitable to be implemented in Hong Kong based on the findings of the Study, with a target to put forward the directions of work in the final report. In reply to Mr CHAN's enquiry, USCMA said that among the 15 jurisdictions examined in the Study, 10 had enacted legislation that made discrimination on the grounds of sexual orientation and/or gender identity unlawful.

VI. Any other business

38. There being no other business, the meeting ended at 4:45 pm.

Council Business Division 2
Legislative Council Secretariat
17 August 2020

Panel on Constitutional Affairs

**Motion proposed to be moved by Dr Fernando CHEUNG
under agenda item V "Practical arrangements and publicity for
the 2020 Legislative Council General Election"
at the meeting on 18 May 2020**

(English translation of the motion)

As serious political conflicts involving violence have emerged in Hong Kong society, the authorities should ease the worries of the public when making practical arrangements for Legislative Council elections, and polling staff should uphold political neutrality, so as to safeguard the fairness and integrity of the elections. Nevertheless, the Junior Police Officers' Association had issued a statement, commenting that demonstrators were "rioters" and "no different from cockroaches", etc. This Panel urges the Government to, when recruiting polling staff, exclude serving and retired police officers.

點名表決 DIVISION: 1
 日期 DATE: 15/06/2020
 時間 TIME: 02:37:21 下午 PM

動議 MOTION: 張超雄議員提出的議案
 Motion proposed by Dr Hon Fernando CHEUNG

動議人 MOVED BY:

出席 Present : 32
 投票 Vote : 31
 贊成 Yes : 14
 反對 No : 17
 棄權 Abstain : 0
 結果 Result : 否決 Negatived

個別表決如下 THE INDIVIDUAL VOTES WERE AS FOLLOWS:

議員	MEMBER	投票	VOTE	議員	MEMBER	投票	VOTE
張國鈞	CHEUNG Kwok-kwan	出席	PRESENT	郭榮鏗	Dennis KWOK	贊成	YES
涂謹申	James TO			張華峰	Christopher CHEUNG	反對	NO
石禮謙	Abraham SHEK			張超雄	Dr Fernando CHEUNG	贊成	YES
李國麟	Prof Joseph LEE	贊成	YES	黃碧雲	Dr Helena WONG	贊成	YES
林健鋒	Jeffrey LAM	反對	NO	葉建源	IP Kin-yuen	贊成	YES
黃定光	WONG Ting-kwong	反對	NO	廖長江	Martin LIAO		
李慧琼	Starry LEE	反對	NO	蔣麗芸	Dr CHIANG Lai-wan	反對	NO
陳健波	CHAN Kin-por	反對	NO	鍾國斌	CHUNG Kwok-pan		
梁美芬	Dr Priscilla LEUNG			楊岳橋	Alvin YEUNG	贊成	YES
黃國健	WONG Kwok-kin	反對	NO	朱凱迪	CHU Hoi-dick		
葉劉淑儀	Mrs Regina IP	反對	NO	吳永嘉	Jimmy NG	反對	NO
謝偉俊	Paul TSE			何君堯	Dr Junius HO	反對	NO
毛孟靜	Claudia MO	贊成	YES	林卓廷	LAM Cheuk-ting	贊成	YES
何俊賢	Steven HO	反對	NO	周浩鼎	Holden CHOW	反對	NO
胡志偉	WU Chi-wai			陳淑莊	Tanya CHAN	贊成	YES
馬逢國	MA Fung-kwok	反對	NO	許智峯	HUI Chi-fung		
莫乃光	Charles Peter MOK	贊成	YES	陸頌雄	LUK Chung-hung	反對	NO
陳志全	CHAN Chi-chuen	贊成	YES	劉業強	Kenneth LAU		
梁志祥	LEUNG Che-cheung	反對	NO	鄭松泰	Dr CHENG Chung-tai		
麥美娟	Alice MAK	反對	NO	鄭俊宇	KWONG Chun-yu	贊成	YES
郭家麒	Dr KWOK Ka-ki	贊成	YES	譚文豪	Jeremy TAM	贊成	YES
郭偉強	KWOK Wai-keung	反對	NO				

秘書 CLERK