

立法會
Legislative Council

Ref : CB4/PL/CA

LC Paper No. CB(4)578/20-21
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 16 November 2020, from 2:00 pm to 4:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon Holden CHOW Ho-ding (Chairman)
Hon Kenneth LAU Ip-keung, BBS, MH, JP (Deputy Chairman)
Hon Abraham SHEK Lai-him, GBS, JP
Hon Tommy CHEUNG Yu-yan, GBS, 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 Paul TSE Wai-chun, JP
Hon Steven HO Chun-yin, BBS
Hon MA Fung-kwok, GBS, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Elizabeth QUAT, BBS, JP
Hon Martin LIAO Cheung-kong, GBS, JP
Dr Hon CHIANG Lai-wan, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Jimmy NG Wing-ka, BBS, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon CHEUNG Kwok-kwan, JP
Hon LUK Chung-hung, JP
Dr Hon CHENG Chung-tai

**Members
attending**

Hon CHAN Hak-kan, BBS, JP
Hon SHIU Ka-fai, JP

**Members
absent**

: Dr Hon Fernando CHEUNG Chiu-hung
Hon Tony TSE Wai-chuen, BBS, JP

**Public Officers :
attending**

Item IV

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

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

Ms Maisie CHAN Kit-ling, JP
Deputy Secretary for Constitutional and Mainland Affairs

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

Miss Shirley YUNG Pui-man, JP
Deputy Secretary for Security

Ms Joceline CHUI Shih-yen
Principal Assistant Secretary (Security) E

Mr Cyrus CHEUNG Ho-chi
Principal Assistant Secretary for Security (Review)

Mr Esmond LEE Chung-sin, JP
Deputy Secretary for Education

Miss CHEUNG Hoi-shan
Assistant Commissioner (Policy Support)
Labour Department

Mr Llewellyn MUI Kei-fat
Deputy Solicitor General (Constitutional Affairs)
Legal Policy Division
Department of Justice

Ms Diana LAM Man-yee
Senior Assistant Solicitor General (Human Rights)
Legal Policy Division
Department of Justice

Mr Godfrey KAN Ka-fai
Consultant Counsel
Legal Policy Division
Department of Justice

Clerk in attendance : Ms Jasmine TAM
Chief Council Secretary (2) 3 (Acting)

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

Miss Connie AU
Senior Council Secretary (2) 6

Mr Dennis HO
Council Secretary (2) 3

Ms Louisa YU
Legislative Assistant (2) 3

Action

I. Election of Deputy Chairman

The Chairman called for nominations for the deputy chairmanship of the Panel for the 2020-2021 session. Mr Kenneth LAU was nominated by Mr Martin LIAO and the nomination was seconded by Mr Steven HO. As Mr Kenneth LAU was absent at this juncture, Mr Martin LIAO confirmed that the nomination was accepted by Mr Kenneth LAU.

2. As there was no other nomination, the Chairman declared Mr Kenneth LAU elected as the Deputy Chairman of the Panel for the 2020-2021 session.

Action

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

[LC Paper Nos. CB(2)95/20-21(01) and CB(2)199/20-21(01)]

3. The Panel noted Ms Alice MAK's letter dated 23 October 2020 [LC Paper No. CB(2)95/19-20(01)] and the Administration's response to Ms MAK's letter [LC Paper No. CB(2)199/20-21(01)] that had been issued after the last meeting.

4. Referring to the Administration's response in paragraph 3 above, Ms Alice MAK and Ms Starry LEE called on the Administration to brief the Panel on its strategies and measures for combating doxxing and to gauge members' views on the relevant legislative amendment proposals as early as possible. Ms MAK further asked whether the Administration could expedite the work and complete the drafting of the legislative amendment proposals by end-2020, such that the relevant amendment bill could be introduced into and passed by the Legislative Council ("LegCo") within the current session.

5. Ms Elizabeth QUAT said that she had issued a letter to the Chairman proposing various items for discussion by the Panel in the current session. Ms QUAT added that apart from those proposed items, the Administration should also brief the Panel on the measures it would take to improve the electoral arrangements and ensure that future elections would be held in a fair, just and safe manner. Ms Starry LEE also requested the Administration to report on its follow-up on the various suggestions raised earlier by members, including issuance of ballot papers in an electronic manner, electronic vote counting and facilitation measures for elderly or disabled electors to vote, and to brief the Panel on the electoral arrangements for the general election for the Seventh LegCo which had been postponed to September 2021 owing to the ongoing outbreak of COVID-19.

(Post-meeting note: The above letter from Ms Elizabeth QUAT was tabled at the meeting and issued vide LC Paper No. CB(2)330/20-21(01).)

6. Ms Regina IP reiterated her concern raised at previous meetings about the inadequacy of the existing anti-discrimination ordinances in prohibiting hate speech. She urged the Administration to tackle the issue by legislation and brief the Panel on the subject at a future meeting. Ms Starry LEE considered that the Administration and the Equal Opportunities Commission ("EOC") should also brief the Panel on the measures to tackle discrimination

Action

against people from the Mainland which, in her view, was prevalent in Hong Kong.

7. The Secretary for Constitutional and Mainland Affairs ("SCMA") said that he had noted members' views and suggestions. SCMA pointed out that as stated in the Administration's response to Ms Alice MAK's letter in November 2020, the Government was working with the Office of the Privacy Commissioner for Personal Data in studying concrete legislative amendment proposals to handle and regulate doxxing-related behaviour more effectively. The Government aimed to formulate relevant legislative amendment proposals and consult the Panel in 2021, and proceed with the legislative work. SCMA informed members that the Government would carry out the relevant work in a timely manner. SCMA further said that the Government would also work with the Electoral Affairs Commission and EOC to follow up the other issues raised by members and would revert to the Panel in due course.

III. Items for discussion at the next meeting

[LC Paper Nos. CB(2)231/20-21(01) and (02)]

8. Members agreed to the Administration's suggestion that subject to the delivery of the 2020 Policy Address by the Chief Executive ("CE") in end-November 2020, the Panel would receive a briefing by SCMA on the relevant initiatives in CE's 2020 Policy Address at the next regular meeting on 21 December 2020 at 2:30 pm.

(Post-meeting note: CE delivered her 2020 Policy Address at the Council meeting of 25 November 2020. The notice and agenda for the policy briefing-cum-meeting of the Panel on 21 December 2020 were issued on the same day. Members were subsequently informed via LC Paper Nos. CB(2)536/20-21, CB(2)546/20-21 and CB(2)568/20-21 on 16, 18 and 29 December 2020 respectively that on the instruction of the Chairman, the policy briefing-cum-meeting had been re-scheduled to be held on 5 January 2021 at 4:30 pm, and had subsequently been switched to become an informal meeting conducted by videoconferencing.)

Action

IV. Hearing of the United Nations Human Rights Committee on the Fourth Report of the Hong Kong Special Administrative Region in the light of the International Covenant on Civil and Political Rights

[LC Paper Nos. CB(2)37/19-20, CB(2)231/20-21 (03) and (04)]

Written views from deputations/individuals

9. The Chairman said that the Panel had originally planned to receive public views on this item at the meeting. The Chairman informed members that he had received on 10 November 2020 two joint letters from some members stating that, in view of strong signs of rebound in local confirmed cases of COVID-19 and an alarming surge in seasonal influenza cases recently, they were concerned about the arrangement of meeting with deputations/individuals at the meeting. The Chairman said that having carefully considered the concerns raised by the aforesaid members, the large number of deputations/individuals who had signed up to attend the meeting, and the latest local epidemic situation, he had directed that the Panel would invite written views instead of meeting with deputations/individuals at the meeting.

10. The Panel noted that a total of 32 written submissions had been received and forwarded to Members and the Administration before the meeting. The Panel further noted that one other written submission, which had just been received, was tabled at the meeting.

(Post-meeting meeting: The tabled submission was issued vide LC Paper No. CB(2)330/20-21(02) after the meeting on 16 November 2020.)

11. In reply to Ir Dr LO Wai-kwok's enquiry, the Clerk said that as some deputations/individuals had requested not to make public their written submissions, those written submissions were circulated to Members only and would not be uploaded onto the LegCo website.

12. Dr CHENG Chung-tai expressed regret that deputations/individuals had been informed just four days before the meeting that owing to the ongoing epidemic, the Panel would not meet with them at the meeting. He considered such an arrangement highly undesirable as it had prevented deputations/individuals from expressing their views directly to the Administration.

Action

The Administration's briefing and response to deputations/individuals' views

13. SCMA said that the Hong Kong Special Administrative Region's ("HKSAR") fourth report ("the Fourth Report") in the light of the International Covenant on Civil and Political Rights ("ICCPR") had been submitted to the United Nations ("UN") through the Central People's Government ("CPG") and then made public in September 2019. In August 2020, the UN Human Rights Committee ("HRC") issued a list of issues ("the List") to be taken up in connection with the consideration of the Fourth Report. SCMA informed members that taking into account the views of LegCo Members and deputations/individuals, the HKSAR Government would prepare a written response and submit it to HRC through CPG. SCMA further said that HRC had indicated its intention to consider the Fourth Report at its 131st session tentatively scheduled for March 2021, with the exact date to be confirmed. The HKSAR Government would send a delegation to attend the hearing and would report the outcome to the Panel afterwards.

14. In response to the deputations/individuals' written views on issues under the purview of the Constitutional and Mainland Affairs Bureau ("CMAB"), SCMA made the following points:

- (a) HKSAR was an inalienable part of the People's Republic of China ("PRC") and a local administrative region which enjoyed a high degree of autonomy under the "one country, two systems" principle and came directly under CPG. Human rights had been fully safeguarded by law in Hong Kong since its return to the Motherland. As the constitutional document of the HKSAR, the Basic Law provided constitutional guarantees for fundamental rights and freedoms. The HKSAR Government was firmly committed to safeguarding human rights and freedoms enjoyed under the law in Hong Kong;
- (b) the Law of PRC on Safeguarding National Security in HKSAR ("the National Security Law") clearly prescribed four categories of offences that endangered national security, namely secession, subversion of state power, terrorist activities, and collusion with a foreign country or with external elements to endanger national security. It only targeted an extremely small minority of people who had breached the law, while the basic rights and freedoms legitimately enjoyed by Hong Kong people would be protected. Article 4 of the National Security Law also clearly stipulated that

Action

human rights should be respected and protected in safeguarding national security in HKSAR; the rights and freedoms which HKSAR residents enjoyed under the Basic Law and the provisions of the ICCPR and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong should be protected in accordance with the law;

- (c) the core legislative principle of the National Anthem Ordinance ("NAO") was to promote respect for the national anthem, which was the symbol and sign of the country, and provide guidance on the standard, etiquette, and occasions for playing and singing the national anthem. NAO prohibited and imposed penalty for the misuse of the national anthem, and for public and intentional acts with intent to insult the national anthem. NAO did not unjustifiably restrict the various freedoms protected under ICCPR;
- (d) the postponement of the 2020 LegCo General Election for a year was to protect public safety and public health as well as ensure elections would be conducted openly and fairly. In fact, the local COVID-19 epidemic situation and the number of confirmed cases had been fluctuating, and there might also be a winter surge. As LegCo performed important and substantive functions and had an annual business cycle, and it would take months for the Registration and Electoral Office to prepare for a general election, coupled with the need to conduct a new round of voter registration exercise before the election, it was reasonable and in the public interest to postpone the election for a year;
- (e) on the qualifications of LegCo election candidates and members, it must be pointed out that as the permanent body of the highest organ of state power, the Standing Committee of the National People's Congress ("NPCSC") had the authority to interpret and monitor the implementation of the Basic Law, and to handle any constitutional problems arising from the implementation of the Basic Law in accordance with the law. The Decision of NPCSC on Issues Relating to the Qualification of Members of LegCo of HKSAR ("the Decision") was made in accordance with the law and was absolutely legally binding on HKSAR. The Decision was constitutional, lawful and reasonable. It was also necessary and it complied with the relevant stipulations of the Basic Law. It must also be pointed out that the Returning Officers acted in

Action

strict accordance with the law and facts in determining whether a person was qualified for being nominated as a candidate. The court also ruled on many occasions in favour of the constitutionality and lawfulness of the Returning Officers' decisions;

- (f) the HKSAR Government was fully committed to building a caring, inclusive and equitable society. On the legislative front, the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 was enacted in June 2020 to enhance protection from discrimination and harassment under the four anti-discrimination ordinances, including prohibiting discrimination of breastfeeding women and harassment between participants in a common workplace, and expanding the scope of protection from racial discrimination and racial harassment, etc. The Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383) ("HKBORO") bound the Government in its exercise of functions and powers, and rendered it unlawful to discriminate on the ground of race. The Race Discrimination Ordinance (Cap. 602) ("RDO") expressly prohibited the Government from discriminating a person on the ground of race in prescribed areas, including the provision of services and facilities etc. Nevertheless, the Government would continue to study the follow up work in detail and maintain dialogue with EOC. The Government's current goal was to strive for determination of the way forward for the recommendation within this term of the Government. Regarding the legislative work to eliminate discrimination on grounds of sexual orientation and identity, it was a controversial issue in society. The Government must carefully study and take into account comprehensive considerations when embarking upon future work; and
- (g) on the administrative front, the Government established a Steering Committee, chaired by the Chief Secretary for Administration ("CS"), in 2018 to co-ordinate cross-bureau / inter-departmental efforts on the support for ethnic minorities and to formulate a series of measures. The total estimated expenditure for these measures amounted to over \$800 million in the four financial years starting from the 2019-2020 financial year. Besides, the Government had improved the Administrative Guidelines on Promotion of Racial Equality ("the Guidelines") for application to all government bureaux and departments as well as

Action

related organizations providing services to people of different races (collectively referred to as "public authorities") with effect from April 2020. CMAB would closely monitor the implementation of the Guidelines and introduce improvement in collaboration with the public authorities as and when required to ensure compliance with the Guidelines. Furthermore, the Government had taken various educational and promotional initiatives to eliminate discrimination against people of different sexual orientations and gender identities.

15. On issues which fell under the purview of the Security Bureau ("SB"), the Deputy Secretary for Security ("DS for S") made the following points:

- (a) it was the right and duty of every country to safeguard its national security. Safeguarding national security through legislation was also in line with international practice. Under the National Security Law, Hong Kong people's rights and freedoms under the Basic Law as well as the relevant provisions of ICCPR as applied to Hong Kong would continue to be protected. Besides, important legal concepts of presumption of innocence, fair and open trial, non-retrospectivity of criminal laws, etc. were embedded in the National Security Law. The offences endangering national security were stringently defined in the National Security Law and were similar to those in the national security laws of other jurisdictions. The prosecution had the burden to prove beyond reasonable doubt the defendant's *actus reus* and *mens rea* before the defendant might be found guilty of the relevant offence by the court. Establishing a mechanism for safeguarding national security in HKSAR would not undermine or replace the prevailing legal and judicial systems in Hong Kong. The HKSAR Government believed that the National Security Law was vital for bringing Hong Kong back on track and maintaining its long-term prosperity and stability;
- (b) while the freedoms of speech, of assembly, of procession and of demonstration were protected by the Basic law, such freedoms were not absolute. ICCPR and HKBORO stipulated that certain rights and freedoms might be subject to restrictions as prescribed by law if it was necessary in the interests of national security, public safety, public order or the rights and freedoms of others, etc. Court rulings had also pointed out that once a protest involved the use of or the threat of using violence, the protest

Action

would have gone beyond the constitutionally guaranteed bounds of peaceful demonstration. In respect of the large-scale public order events and the corresponding Police actions since June 2019, the Independent Police Complaints Council ("IPCC") published a thematic study report in May 2020 putting forward 52 recommendations to the Government. These recommendations, which were being followed up by a task force set up by SB, would help the Police better handle future public order events and further enhance their law enforcement efforts;

- (c) since the commencement of the comprehensive review of the strategy of handling non-refoulement claims in 2016, various measures had yielded considerable results. Among others, the Immigration Department ("ImmD") had basically completed in early 2019 the screening of the backlog claims, which had once exceeded 11 000 cases. The number of appeal cases pending the Torture Claims Appeal Board's ("TCAB") handling had also dropped significantly from the peak of 6500 to 1700 in end-October 2020. Under the Unified Screening Mechanism, each claimant would be given reasonable opportunities to establish his/her claim. Any claimant aggrieved by ImmD's decision to reject a non-refoulement claim might appeal to TCAB, and if his/her appeal was dismissed by TCAB, the claimant might seek judicial review through the courts of HKSAR; and
- (d) there was no sign that Hong Kong was being actively used by syndicates as a destination or transit point for trafficking-in-persons ("TIP"), or that TIP was a prevalent or widespread problem in Hong Kong. That said, the HKSAR Government had all along attached great importance to combating TIP through multi-pronged measures in areas including victim identification, law enforcement, prosecution, victim protection, enhancement in staff training and forming partnership with local and overseas stakeholders. To spearhead the Government's efforts on these fronts, a high-level inter-bureau/ departmental Steering Committee led by CS had been established and an Action Plan to Tackle TIP and to Enhance Protection of Foreign Domestic Helpers in Hong Kong ("Action Plan") had been promulgated in March 2018. The various measures set out in the Action Plan had been implemented since 2019.

Action

16. On issues which fell under the purview of the Education Bureau ("EDB"), the Deputy Secretary for Education made the following points:

- (a) the Government was committed to encouraging and supporting the early integration of non-Chinese speaking ("NCS") students into the community, including facilitating their adaptation to the local education system and mastery of the Chinese language. The Government also ensured that all eligible children enjoyed equal opportunities in admission to Primary One and Secondary One of public sector schools under the respective school places allocation systems. With the implementation of the enhanced support measures for NCS students since the 2014-2015 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 2019-2020 school year. Kindergartens were also reminded that their school-based admission mechanism should be fair, just and open, and in compliance with the existing legislation (including RDO) as well as circulars and guidelines issued by EDB;
- (b) starting from the 2014-2015 school year, EDB had implemented the Chinese Language Curriculum Second Language Learning Framework ("Learning Framework"), which had been 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 flexibly adapt the learning and teaching as well as assessment arrangements in the light of the learning needs of NCS students so as to facilitate these students to learn Chinese more effectively;
- (c) all eligible applicants, irrespective of their race, enjoyed equal opportunities to be admitted to post-secondary programmes. For NCS applicants who met the specified requirements, the participating institutions of the Joint University Programmes Admissions System accepted alternative Chinese Language qualifications for the purpose of satisfying the entrance requirement in respect of Chinese Language. All post-secondary institutions enjoyed autonomy in student admission. Institutions could flexibly handle the Chinese Language requirement for NCS students on a case-by-case basis; and

Action

- (d) EDB had been advocating a holistic learning experience and encouraging schools to plan their curricula and other learning activities holistically and systematically for implementing values education, including sex education, across different subjects, so as to promote students' whole-person development. EDB had also been encouraging schools to deepen students' understanding of human rights within the context of the Basic Law, cultivate positive values and attitudes (e.g. respect and care for others, sense of responsibility, commitment, civic awareness and law-abiding spirit) among students, and enhance students' appreciation of the rights and responsibilities as a citizen.

17. On issues which fell under the purview of the Labour and Welfare Bureau and the Labour Department ("LD") respectively, the Assistant Commissioner for Labour (Policy Support) made the following points:

- (a) the Social Welfare Department had been adopting a three-pronged approach, i.e. preventive measures, support services and specialized services, to combat domestic violence and sexual violence as well as to strengthen support for victims and their families. 24-hour emergency services to victims and their families had been in operation as usual during the epidemic;
- (b) 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 additional benefits of free accommodation, free food or food allowance, etc. provided by their employers. LD had set up in September 2020 a dedicated FDH division to coordinate and implement measures to strengthen protection for FDHs and enhance promotion and education for FDHs and employers to assist both parties to understand their respective rights and obligations. A 24-hour hotline with interpretation services in seven EM languages was also in place to provide one-stop support services for FDHs;
- (c) on concerns about the employment rights of FDHs under the epidemic, LD had disseminated relevant information in languages used by FDHs through various channels such as press releases, LD's dedicated FDH portal, as well as FDH organizations and employers' associations. For instance,

Action

LD had issued multiple press releases reminding employers that they should discuss with their FDHs the rest day arrangements amid the epidemic but that they should not compel their FDHs to work on a rest day which was in breach of the Employment Ordinance (Cap. 57) ("EO"), and that they should not terminate the contract of their FDHs on the ground that the latter had been infected with COVID-19;

- (d) as regards concerns about regulation of employment agencies ("EAs"), legislative amendments had been made to EO by virtue of the Employment (Amendment) Ordinance 2018 to raise the maximum penalties for the offences of overcharging job-seekers and unlicensed operation by employment agencies to a maximum fine of \$350,000 and imprisonment for three years. Apart from instituting prosecutions against law-defying EAs, LD had stepped up regulation of EAs through other enforcement actions and administrative measures including conducting inspections of EAs, requesting EAs to comply with the relevant Code of Practice for EAs promulgated by LD, and considering revoking or refusing to renew the licences of EAs which failed to comply with the relevant laws and Code of Practice; and
- (e) on the suggestion of legislating against age discrimination in employment, LD considered that various relevant factors including the necessity for legislation and the impact on Hong Kong's economic environment and labour market needed to be prudently considered. At the present stage, the Government had no plans to enact legislation in this regard. That said, the Government would continue to monitor the situation and step up publicity efforts to enhance public understanding and awareness of eliminating age discrimination in employment.

18. On issues which fell under the purview of the Department of Justice ("DoJ"), the Deputy Solicitor General (Constitutional Affairs) ("DSG(C)") made the following points:

- (a) the Basic Law was a national law enacted by the National People's Congress. As with other national laws, the final power of interpretation of the Basic Law was vested in NPCSC. The mechanism for interpretation of the Basic Law provided under BL 158 was carefully designed and fully reflected the "one country, two systems" principle, as it not only guaranteed the exercise of

Action

independent judicial power by the courts of HKSAR but also ensured consistency in interpretation of the Basic Law across the nation. The solid foundation of the rule of law in Hong Kong remained intact. The HKSAR Government would continue to be firmly committed to upholding the rule of law as Hong Kong's core value;

- (b) BL 63 clearly stipulated that DoJ "shall control criminal prosecutions, free from any interference". Prosecutors of DoJ had all along discharged the aforesaid constitutional duty independently and professionally. The Prosecution Code of DoJ provided clear and consistent guidelines and principles for carrying out prosecution work. A prosecutor must not be influenced by any investigatory, political, media, community or individual interest or representation. All prosecutorial decisions were based on admissible evidence, applicable laws and the Prosecution Code, without political consideration. Cases would not be handled any differently owing to the political beliefs or background of the persons involved. Prosecution would only be commenced if there was sufficient admissible evidence to support a reasonable prospect of conviction. No one should interfere or attempt to interfere with independent prosecutorial decisions; and
- (c) the HKSAR Government had established the Inter-departmental Working Group on Gender Recognition ("IWG"). During the consultation period, IWG received more than 18 000 written submissions, with views expressed from a wide range of perspectives. At the same time, judicial proceedings on some relevant cases were still ongoing. The Government would carefully study and consider the public views as well as the outcome of the relevant proceedings with a view to formulating the way forward.

Admin

19. At the Chairman's request, SCMA agreed that the Administration would provide after the meeting a consolidated written response.

(Post-meeting note: The Administration's consolidated written response was issued vide LC Paper No. CB(4)432/20-21(01) on 26 January 2021.)

Action

Discussion

List of issues in relation to the Fourth Report of the Hong Kong Special Administrative Region

20. In reply to Dr Junius HO's enquiry, SCMA explained that in its Concluding Observations on the previous report of HKSAR in the light of ICCPR, HRC had set March 2018 as the date for submission of the next report. Accordingly, the HKSAR Government had prepared the Fourth Report, covering information on related developments and updates since the submission of the previous report in 2011 till mid-2017. This notwithstanding, the List issued by HRC in August 2020 had already covered the recent developments in HKSAR. The HKSAR Government would provide detailed written response to the List and inform the international community of the actual and latest situation of Hong Kong with the aid of facts and evidence at the hearing tentatively scheduled for March 2021.

21. Dr Junius HO further asked whether the Administration would consult LegCo on the draft written response to the List before it was submitted to HRC. SCMA said that as stated earlier, the Administration would take into account the views of Members and deputations/individuals in preparing the written response. The HKSAR Government would then submit the written response to HRC through CPG and would publish HKSAR's response after HRC had received it. The HKSAR Government would also send a delegation to attend the hearing and report the outcome to the Panel afterwards.

22. Mr Jimmy NG expressed concern that while a number of issues raised in the List were based on "reports", the source(s) of such reports were omitted from the List. It also appeared to him that HRC already had a pre-determined stance on the issues raised, which in his view was unfair to the HKSAR Government. For instance, HRC requested the HKSAR Government to comment on "reports that the Public Order Ordinance had been abused to dissuade people from taking part in peaceful protests for fear of being prosecuted", and "reports that journalists, academics, students, politicians and human rights defenders were increasingly facing threats, physical attacks, cyberattacks, harassment and intimidation". However, there was no mention of the unlawful acts done by some protesters, the Police having a statutory duty to maintain public safety and public order, nor the fact that many police officers, government officials and even judges had been doxxed and harassed. Mr NG asked whether the HKSAR

Action

Government would, apart from putting forward arguments to deny the claims made in those reports, request HRC to base their questions on reports that offered more balanced views.

23. SCMA said that while he would not comment on whether HRC had a pre-determined stance on the issues raised in the List, the HKSAR Government would respond to those issues based on facts and explain Hong Kong's actual situation to HRC. DS for S also indicated that the Administration would set out all relevant facts and clarify misconceptions about HKSAR in preparing HKSAR's response to the List.

24. Dr CHENG Chung-tai said that queries had been raised by both the deputations/individuals and HRC about the use of excessive force or torture by the Police, including whether the use of weapons and firearms by the Police in handling the public events in the past year was in compliance with the relevant rules and guidelines. Pointing out that there were various instances where police officers had fired live rounds against protesters and aimed for protesters' heads when using batons causing many of them serious injuries, and that a judge had also commented in adjudicating a relevant case that the police officers involved had used excessive force, he asked whether the Administration had followed up these cases and if so, whether it was of the view that the Police had used excessive force. Dr CHENG further said that concern had also been expressed about arrestees being treated with unnecessary force during arrest or detention. While noting that the Administration had stated in the Fourth Report that the Complaints Against Police Office ("CAPO") had not received any complaint of torture since the submission of the previous report of HKSAR to UN in 2011, Dr CHENG asked whether there had been any relevant cases after the submission of the Fourth Report to UN in 2019.

25. Referring also to the questions raised by HRC about the use of force by the Police, Ir Dr LO Wai-kwok said that he did not see any relevant cases of abuse committed by law enforcement officers during the violent incidents in the past year. He pointed out that on the contrary, there were many cases where members of the public and tourists had been tortured and unlawfully detained by protesters. He considered it necessary for the Administration to reveal the truth to the world in order to put the record straight.

26. DS for S said that Hong Kong had been besieged by a series of violent events from June 2019 to early 2020. Rioters had hurled at least 5 000 petrol bombs, with at least another 10 000 petrol bombs seized during the period. Some rioters had also extensively vandalized public facilities,

Action

attacked police officers and assaulted other citizens who held different opinions. The scale of violent and unlawful acts was unprecedented, resulting in huge difficulties and challenges faced by the Police in enforcing the law and maintaining public order.

27. DS for S pointed out that whenever violent and unlawful acts took place, the Police must make assessment in accordance with the actual situation and take appropriate actions to restore public peace and protect citizens' life and property. The Police had a set of stringent guidelines on the use of force which were consistent with international human rights norms and standards. The level of force would depend on the prevailing circumstances at the scene, operation needs and the level of threat and resistance faced by the police officer concerned. DS for S stressed that as the Police had reiterated time and again, if protesters expressed their views in a peaceful manner, there would be no need for the Police to use any force to maintain law and order.

28. DS for S further said that the arrests made by the Police were based on evidence and strictly according to the laws in force. The Police fully respected the rights of arrestees and would treat them fairly. Besides, Hong Kong had put in place a two-tier police complaints system under which CAPO would comprehensively investigate every complaint received and submit investigation reports to IPCC. As an independent statutory body, IPCC would critically review CAPO's investigation findings and recommendations to ensure that each complaint case was handled fairly and justly. If any police officer was found to have committed disciplinary offence, the Police would follow up the case in a serious and impartial manner.

29. With reference to the concern raised by HRC about the National Security Law, Mr Jeffrey LAM held the view that the Law would not affect the implementation of ICCPR in HKSAR. He said that since the National Security Law came into force on 30 June 2020, except for a small minority of people who had been arrested for alleged violation of the Law, the vast majority of Hong Kong citizens had not been affected and their legitimate rights and freedoms under the Basic Law and ICCPR had remained intact. He stressed that the enactment of the National Security Law was absolutely necessary, given that Hong Kong had been haunted by a series of unlawful and violent incidents since June 2019, during which some organizations and people blatantly advocated "Hong Kong independence" and some external forces flagrantly intensified their interference with Hong Kong's internal affairs by rendering support to rioters. Mr LAM further pointed out that

Action

there were a number of instances where innocent citizens had been brutally attacked and an old man killed by rioters. He stressed the need for the Administration to make use of video footage, photos, etc. to present to HRC the various violent acts and human rights violations committed by the rioters, so as to let UN and the world know what had truly happened in Hong Kong.

30. Ms Alice MAK made several suggestions on the information to be included in HKSAR's response to the List. First, in responding to the request for information on the number of racial discrimination cases brought to EOC against police and correctional services officers (paragraph 7 of the List referred), the HKSAR Government should also set out the number of cases lodged with EOC involving discriminatory acts done by rioters (e.g. beating up people who spoke Putonghua). Second, in commenting on reports that police officers did not wear any form of identification on their uniform (paragraph 11 of the List referred), the HKSAR Government should also mention the number of rioters disguising themselves as first-aiders and media practitioners during the violent incidents and the difficulty faced by the Police in ascertaining the identity of persons at the scene. Third, in commenting on reports that police officers had accessed private data on the smartphones of persons arrested without warrants (paragraph 19 of the List referred), the HKSAR Government should also point out that many innocent citizens' cell phones had been snatched and smashed by rioters. Fourth, in responding on the steps taken or envisaged to expedite the processing of the large backlog of applications for union registration (paragraph 26 of the List referred), the HKSAR Government should provide information on the respective numbers of union registration applications received in each of the past few years and query whether the sudden surge of such applications in the past year had been politically driven. Noting that HRC had previously expressed concerns about the interpretations of the Basic Law by NPCSC, Ms MAK urged the HKSAR Government to also explain clearly in its response that as NPCSC's interpretations of the Basic Law had solid legal basis and were consistent with the Constitution of PRC and the Basic Law, they would not weaken or undermine the rule of law and the independence of the judiciary in HKSAR and would, rather, ensure the enduring success of "one country, two systems".

31. With regard to the implementation of the provisions of ICCPR concerning participation in public affairs in HKSAR, Dr CHIANG Lai-wan and Mr SHIU Ka-fai called on the Administration to proactively explain the Decision to HRC. They considered it necessary for the Administration to state clearly that the four former LegCo Members concerned had been disqualified because they had, among others, solicited foreign governments

Action

to impose sanctions against HKSAR, and that their disqualification had nothing to do with suppression of dissenting views as alleged by some people. Referring to the concerns raised by HRC regarding the right to privacy, Dr CHIANG said that the Administration should mention in its response that many police officers and LegCo Members as well as their family members had also been doxxed and their personal data unlawfully disclosed. As regards HRC's concerns regarding the freedom of expression by journalists, academics, etc., Dr CHIANG considered that the Administration should point out that some members of the public were indeed deprived of the right to freedom of expression, as evidenced by the fact that the business of a major catering group in Hong Kong was seriously hurt and many of its restaurants vandalized by protesters after its founder's daughter attended a UN hearing held last year speaking in support of the Government. Dr CHIANG also wondered why HRC had raised the issue on TIP, which in her view barely existed in Hong Kong, and questioned whether it was an attempt to defame HKSAR.

32. SCMA said that the HKSAR Government was requested to clarify certain facts about the issues raised in the List, so as to facilitate HRC's consideration of the Fourth Report at the hearing tentatively scheduled for March 2021. The Government would take Members' and deputations/individuals' views into consideration in finalizing HKSAR's written response to the List and in preparing oral response for the hearing. SCMA assured members that the HKSAR Government would explain, with facts and evidence, the real situation in HKSAR over the past year, including the background leading to the enactment of the National Security Law.

33. On the point made by Dr CHIANG regarding TIP, SCMA remarked that any allegation that HKSAR had been used as a destination or transit point for TIP was totally groundless. The Government would spare no effort to refute such allegation.

34. Referring to the concerns raised by HRC about the right of peaceful assembly, Mr Christopher CHEUNG queried why HRC had focused its concerns primarily on the use of force by the Police but paid no regard to the fact that rioters had hurled bricks and petrol bombs to police officers and assaulted people of opposite political stances. He also queried why the international community had turned a blind eye to the blatant acts done by rioters to advocate "Hong Kong independence", which in his view was an attempt to subvert state power. He asked whether the Administration would in future explain more proactively the actual situation in HKSAR at

Action

the international level, so as to give the international community a more comprehensive and objective understanding about HKSAR. Ms Starry LEE also stressed the need for the Administration to accurately reflect the actual situation in HKSAR over the past year to HRC. She considered that the Administration should also examine what could be done in future to prevent HRC from forming superficial or biased views on the human rights situation in HKSAR.

35. Ms Elizabeth QUAT expressed concern that while a torrent of false information had been disseminated to the international community about the enforcement of the National Security Law, there had been no mention of the fact that the Law was enacted because the national security had been under threat, that safeguarding national security through legislation was in line with international practice, and that public safety and public order were restored with the implementation of the Law. Ms QUAT was also concerned that some people had widely publicized their allegation that the Police had arbitrarily and excessively enforced the law, which in her view was grossly unfair to the Police. She considered that the Police had handled the series of violent incidents over the past year in a highly professional and restrained manner. Pointing out that many people residing overseas might not be aware of the fact that some rioters had taken the law into their own hands and that many police officers had been injured in those violent incidents, she urged the Administration to seize every opportunity to clarify the actual situation in HKSAR through, among others, presenting the relevant figures, photos and video footage to the international community. Mr SHIU Ka-fai also expressed similar views.

36. SCMA said that the HKSAR Government would take every opportunity to inform the international community of the actual situation of Hong Kong through different channels. The HKSAR Government would refute biased and misleading accusations that human rights had been undermined in Hong Kong, and would underline the fact that human rights had been fully protected by law in Hong Kong and that the HKSAR Government attached great importance to the protection of the lawful rights and interests of Hong Kong residents.

37. On the concerns raised about the National Security Law, Dr Priscilla LEUNG considered that the Administration should explain to the international community that in view of the chaotic situation in Hong Kong in the past year as well as the difficulty faced by HKSAR to enact on its own legislation for safeguarding national security as required under BL 23, the enactment of the National Security Law by NPCSC was entirely

Action

constitutional, lawful, necessary and reasonable. Dr LEUNG further suggested that the Administration should also explain the background to the enactment of the Basic Law and the implementation of "one country, two systems" in Hong Kong, as well as clarify that there had been a clear division of work and proper checks and balances among the executive, the legislature and the judiciary under Hong Kong's executive-led political system as provided in the Basic Law. She hoped that the Administration would work out, in consultation with Members, effective strategies for enhancing HKSAR's publicity work at the international level.

38. DSG(C) said that the Basic Law had brought into implementation the "one country-two systems" principle, an innovative concept originated from PRC. He pointed out that BL 1, which stipulated that HKSAR was an inalienable part of PRC, clearly established that "one country" was the premise upon which "two systems" were based. DSG(C) further said that the Basic Law had established the "executive-led" principle in HKSAR's political system under which the executive authorities and the legislature should regulate each other as well as co-ordinate their activities, while at the same time guaranteeing the independence of the judiciary.

Inadequacies of existing anti-discrimination ordinances

39. Mrs Regina IP expressed concerns that the prohibition against discriminatory acts and practices in RDO was confined only to areas specified in the Ordinance and did not cover the performance and exercise of all government functions and powers. There was also no express provision under RDO prohibiting discrimination on the basis of language or place of origin, or prohibiting racist hate speech and hate crimes. Mrs IP urged the Administration to expeditiously introduce legislative amendments to address the above.

40. Mr LUK Chung-hung also expressed concern that Mainlanders in Hong Kong had been subject to serious discrimination especially during the violent incidents in the past year. He sought clarification on the applicability of RDO, in particular sections 45 and 46 which dealt with racial vilification and serious vilification respectively, to cases involving discriminatory acts or remarks against Mainlanders in Hong Kong. He also asked whether law enforcement actions would be taken against cases of discrimination on the basis of place of origin or residence.

41. SCMA said that the Government would continue to study the EOC's remaining priority recommendations from its Discrimination Law Review,

Action

including discrimination or vilification that might be faced by persons arriving in Hong Kong from the Mainland, and would maintain dialogue with EOC. SCMA said that the Government would give careful consideration to the way forward for the recommendation within the current term of Government.

Enhancement of electoral arrangements

42. Mrs Regina IP said that as stipulated in paragraph 11 of the explanation on Article 25 of ICCPR provided by HRC in its General Comment No. 25, "[s]tates must take effective measures to ensure that all persons entitled to vote are able to exercise that right". She stressed that the HKSAR Government was, therefore, obliged to make arrangements to facilitate all eligible electors, including electors who were residing or working in the Mainland and electors with special needs (e.g. senior citizens and persons with mobility difficulties), to vote in public elections. She urged the Administration to expeditiously take forward legislative amendment proposals to refine the electoral arrangements and asked when the relevant amendment bill would be introduced into LegCo.

43. SCMA said that the Government was aware that there had been calls in society for enhancement of the current electoral arrangements, including that the Government should explore the feasibility of introducing electronic mode of ballot paper distribution, voting outside Hong Kong, and facilitation measures for elderly or disabled electors. The Government was actively studying the views and suggestions received, with a view to further improving the electoral arrangements while ensuring that elections would be conducted in a fair, open and honest manner. SCMA assured members that after feasible options had been worked out, and if such options involved amendments to electoral legislation, the Government would submit the proposal to LegCo for scrutiny in line with established procedures.

Regulation of activities in the cyber world and other issues

44. Ir Dr LO Wai-kwok expressed concern that a large number of doxxing and cyberbullying incidents had taken place over the past year. He was also concerned that there had been loads of fake and misleading information on the Internet discrediting the work of the Police. He urged the Administration to review whether the existing legislation was adequate and whether law enforcement work needed to be strengthened. SCMA pledged that the Government would take necessary improvement measures on various fronts including education, publicity, law enforcement, etc. to prevent recurrence of similar incidents.

Action

45. Mr WONG Ting-kwong considered that in the face of increasingly complex international developments, CMAB would need to step up efforts to explain HKSAR's situation to the international community on the one hand, while enhancing communication between the HKSAR Government and CPG on the other. He was concerned whether CMAB had adequate manpower resources to cope with the heavy workload. SCMA said that the Government had all along adhered to the principle of making the best use of resources including manpower resources. CMAB would seek LegCo's support for relevant staffing proposal(s) as and when necessary.

V. Any other business

46. There being no other business, the meeting ended at 4:27 pm.

Council Business Division 4
Legislative Council Secretariat
3 March 2021