

立法會
Legislative Council

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LC Paper No. CB(4)820/20-21
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

**Minutes of meeting by videoconferencing
held on Thursday, 18 February 2021, at 2:30 pm**

- Members present** : Hon Holden CHOW Ho-ding (Chairman)
Hon Kenneth LAU Ip-keung, BBS, MH, 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 Kin-por, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, 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
Hon Jimmy NG Wing-ka, BBS, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon CHEUNG Kwok-kwan, JP
Hon LUK Chung-hung, JP
- Member attending** : Ir Dr Hon LO Wai-kwok, SBS, MH, JP
- Members absent** : Hon WONG Kwok-kin, SBS, JP
Hon CHUNG Kwok-pan
Dr Hon CHENG Chung-tai

**Public Officers : Item III
attending**

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

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

Miss Katharine CHOI Man-yee
Deputy Secretary for Constitutional and Mainland Affairs (2)

Ms Cordelia LAM Wai-ki
Principal Assistant Secretary (Constitutional and Mainland
Affairs)⁷

Dr CHOI Yuk-lin, JP
Under Secretary for Education

Mr CHENG Ming-keung
Principal Assistant Secretary (School Administration_Special
Tasks)
Education Bureau

Item IV

Equal Opportunities Commission

Mr Ricky CHU
Chairperson

Dr Ferrick CHU
Executive Director (Operations)

Ms Shana WONG
Head, Corporate Communications

The Administration

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)⁵

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (4) 7

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

Mr Dennis HO
Senior Council Secretary (4) 7 (Acting)

Ms Louisa YU
Legislative Assistant (4) 7

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

Members noted that no information paper had been issued since the last meeting.

II. Items for discussion at the next meeting

[LC Paper Nos. CB(4)495/20-21(01) and (02)]

2. Members agreed to discuss "An outline of the topics for the Third Report of the Hong Kong Special Administrative Region under the Convention on the Rights of the Child" as proposed by the Administration at the next regular meeting on 15 March 2021 at 2:30 pm. The Chairman said that the Panel usually conducted public hearings on these outlines of topics and sought members' views on whether a public hearing should be held at the next meeting. Ms Elizabeth QUAT said that in view of the Coronavirus Disease 2019 epidemic, the Panel should consider adopting the same approach as that of other committees of the Legislative Council ("LegCo"), i.e. to invite written submissions from the public instead of holding public hearings so as to reduce the risk of infection. Mr WONG Ting-kwong and Mr Martin LIAO echoed Ms QUAT's view and expressed concern that holding a public hearing would entail the risk of crowd gathering at the meeting venue. They pointed out that if infection cases occurred in LegCo, it would lead to a possible two-week shutdown of LegCo, which would severely affect the work of LegCo and Members. They further said that the epidemic was still fluctuating and it was necessary to be very careful in considering this matter. Moreover, they considered that instead of holding a public hearing to collect views from the public, it would still serve the same purpose by inviting the public to provide written submissions, which would also be fully considered by members and forwarded to

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the Administration for response. Mr WONG and Mr LIAO disagreed to hold a public hearing at the next meeting. Having regard to members' views, the Chairman directed that the Panel would only invite the public to provide written submissions and no in-person public hearing would be held at the next meeting.

3. Ms Elizabeth QUAT enquired about the timetable for introducing the legislative amendment proposals in respect of combating doxxing activities and enhancing the existing electoral arrangements. The Secretary for Constitutional and Mainland Affairs ("SCMA") said that the Administration aimed to complete the drafting of the legislative amendments and introduce the relevant bills into LegCo within the current legislative session.

III. Legislative amendments to the National Flag and National Emblem Ordinance

[LC Paper No. CB(4)495/20-21(03)]

4. SCMA briefed members on the salient points of the Administration's paper [LC Paper No. CB(4)495/20-21(03)].

Discussion

Proposed direction of the Amendment Bill

5. Members in general expressed support for the proposed direction of the National Flag and National Emblem (Amendment) Bill ("Amendment Bill"). They said that it was the constitutional responsibility for the Hong Kong Special Administrative Region ("HKSAR") to implement the recent amendments to the Law of the People's Republic of China on the National Flag ("National Flag Law") and the Law of the People's Republic of China on the National Emblem ("National Emblem Law"), so as to preserve the dignity of the national flag and the national emblem which were symbols and signs of the country. Mr MA Fung-kwok requested the Administration to explain how it would "suitably adopt" the provisions of the amended National Flag Law and the amended National Emblem Law ("two amended national laws") in the National Flag and National Emblem Ordinance ("NFNEO"). Referring to Article 1 of the two amended national laws, the Deputy Chairman asked about the concrete measures to be taken by the Administration to "enhance citizen awareness of the state and promote patriotism". While the expression "cultivate and live by the core socialist values" in Article 1 of the two amended national laws might not be incorporated into NFNEO, Ms Elizabeth QUAT considered that the Administration should seek to promote respect for and understanding of the core socialist values of the country to help promote patriotism.

6. SCMA explained that the principle of the legislative amendments to NFNEO was to fully reflect the provisions, principles and spirit of the two amended national laws, safeguard the proper use and preserve the dignity of the national flag and the national emblem which were the symbols and signs of the People's Republic of China ("PRC"), so as to promote respect among citizens for the national flag and national emblem, enhance the sense of national identity among citizens and promote patriotism, whilst taking into account the common law system and the actual circumstances in Hong Kong. An example of how the Administration would "suitably adopt" the provisions of the two amended national laws in NFNEO was that certain provisions in the two amended national laws involving Mainland institutions which were not applicable to HKSAR would not be incorporated into the Amendment Bill. As for Article 1 of the two amended national laws, SCMA said that this provision would be suitably incorporated into NFNEO and a preamble might be added for this purpose. SCMA said that members' views and suggestions were noted and would be considered.

7. In reply to Mr WONG Ting-kwong's enquiry in relation to Article 6 of the amended National Flag Law about the premises of institutions on which the national flag would have to be displayed, SCMA said that under section 3 of NFNEO, the Chief Executive ("CE") might stipulate the organizations which must display or use the national flag, and the other places at which and the occasions on which the national flag must be displayed or used; and publish the relevant stipulations in the Gazette. At present, according to the stipulations published by CE, the locations where the national flag had to be displayed each day included the official residences of CE, Government House, all boundary control and check points of HKSAR, and the Hong Kong International Airport.

8. Referring to Article 15 of the amended National Flag Law, Mr WONG Ting-kwong asked whether the HKSAR Government could also report a person who had made outstanding contributions to PRC to the State Council for decision as to whether the national flag would be lowered to the half-staff as a token of mourning when the person passed away. SCMA said that the amendments to Article 15 of the amended National Flag Law would be suitably incorporated into the Amendment Bill in the light of the actual circumstances in Hong Kong.

9. Noting that under the two amended laws, news media were required to, among others, actively publicize the knowledge on the national flag and the national emblem, Mr Martin LIAO asked whether the Administration intended that only the local television broadcasting licensees and sound broadcasting licensees would be required to conduct such work in future. SCMA said that the requirement would be suitably incorporated into the Amendment Bill, making reference to the relevant arrangements under the National Anthem Ordinance ("NAO").

Offences and penalty level

10. Mr MA Fung-kwok said that in the course of art creation, the display or use of the national flag or the national emblem might be involved. He requested the Administration to explain what would constitute an offence under the Amendment Bill so that artists and other members of his sector would not inadvertently commit an offence. He also asked whether a defence would be available to the defendant under the Amendment Bill. Noting that Article 23 of the amended National Flag Law and Article 18 of the amended National Emblem Law provided for a penalty for "relatively minor" offences which was lighter than the penalty for desecrating national flag or national emblem, Mr MA asked whether a similar arrangement would be adopted in the Amendment Bill. He also enquired about the criteria for determining whether an offence was "relatively minor". Mr Christopher CHEUNG suggested that the Administration should consider the need to increase the penalty levels under the Amendment Bill so as to achieve adequate deterrent effect.

11. SCMA said that there was no need for members of the public including artists to worry about "inadvertently contravening the law" provided that they did not commit an insulting act in relation to the national flag and the national emblem publicly and wilfully. Whether an offence was subject to any penalty depended on the circumstances of each case. SCMA supplemented that the maximum penalty of offences under NFNEO was a fine at level 5 (i.e. \$50,000) and imprisonment for three years, which was on par with that under NAO. He considered that the maximum penalty level under NFNEO was not low.

12. Dr Priscilla LEUNG also took the view that people needed not worry that they might violate the law inadvertently. She said that with many precedent court cases (e.g. *HKSAR v. Ng Kung Siu and another (1999)*) available for reference, there was a clear basis for the courts when adjudicating cases under NFNEO and after it was amended. Dr LEUNG considered that the maximum penalty of offences under NFNEO was appropriate.

13. Mrs Regina IP enquired whether the Administration would make reference to the United States Flag Code and consider prohibiting the use of the national flag as apparel, bedding, drapery, or for wrapping things, under the Amendment Bill. She further asked whether a person who used the national flag to make an outfit and wore it on the National Day to show patriotism would commit an offence under the Amendment Bill.

14. SCMA said that while he would not comment on hypothetical scenarios and circumstances as each case should be considered on their own merits, it should be

noted that certain uses of the national flag (including in trademarks or advertisements; private funeral activities; or other occasions on which or places at which the display or use of the national flag or its design was restricted or prohibited under a stipulation made by CE) were already prohibited under section 6 of NFNEO, and penalties were provided for the relevant offences. Besides, section 7 of NFNEO provided that a person who desecrated the national flag or national emblem by publicly and wilfully burning, mutilating, scrawling on, defiling or trampling on it committed an offence and was liable on conviction to a fine at level 5 and to imprisonment for three years. SCMA further said that while he could not give an exhaustive list of all possible insulting behaviour in relation to the national flag and the national emblem, the elements of an offence were already clearly set out in section 7 of NFNEO, i.e. whether a person had committed such an act of desecration publicly and wilfully.

Display of the national flag and flag-raising ceremonies of schools

15. The Deputy Chairman and Dr Priscilla LEUNG considered it important to effectively promote and educate students on the history and connotation of the national flag, and teach them to obey the rules for raising and using of the national flag and the etiquette in a flag-raising ceremony. Mr Christopher CHEUNG asked whether the requirement under the amended National Flag Law that schools would have to hold a flag-raising ceremony once a week (except during vacations) would be incorporated into the Amendment Bill. The Deputy Chairman and Mr WONG Ting-kwong considered that the Administration should provide clear guidance to schools on the requirements and detailed arrangements of holding flag-raising ceremonies. For example, whether students were required to attend flag-raising ceremonies and whether flag-raising ceremonies would still be held during suspension of face-to-face classes. The Deputy Chairman said that the requirements in relation to the display of the national flags in schools and the holding of flag-raising ceremonies by schools should be applicable to private schools, international schools and tertiary institutions as well.

16. The Under Secretary for Education ("USED") explained that as stipulated in Article 21 of the amended National Flag Law, the national flag would be taken as an important part of school education. Article 21 also stipulated that primary and secondary schools would have to educate their students on the history and connotation of the national flag, and obey the rules for the display and use of the national flag and the etiquette in a flag-raising ceremony. She said that schools were obliged to enable students to learn the development of PRC in various aspects and to cultivate in them a sense of national identity. She further said that upon passage of the Amendment Bill, the Education Bureau ("EDB") would update and issue relevant guidelines to schools, and related curriculum resources would be provided to schools accordingly. USED added that similar to NAO, all primary

and secondary schools, including international schools, would be required to implement the arrangements as set out in the relevant legislative amendments.

17. Ms Alice MAK and the Chairman both considered that "schools" in the Amendment Bill should cover universities as well. USED explained that the Central Authorities had yet to clarify whether "schools" in Articles 6 and 14 of the amended National Flag Law covered tertiary institutions. Nevertheless, local tertiary institutions had all along been encouraged to display the national flag and, on special occasions, hold flag-raising ceremonies.

Publicity and educational work in respect of the national flag and the national emblem

18. Ms Starry LEE considered that publicity and educational work should be stepped up to promote respect among citizens for the national flag and national emblem and enhance the sense of national identity among citizens. She suggested that the Administration should set benchmarks in this regard. Mr CHAN Kin-por called on the Administration to explore more innovative ways in conducting the publicity and educational work so as to appeal to the younger generation. He suggested that the Administration might engage public relations agencies and the Radio Television Hong Kong for conducting the work. Mr Jeffery LAM also expressed concern about the publicity and educational work which, in his view, should complement the legislative amendment exercise and dispel concern about inadvertently committing offences under the Amendment Bill. He also enquired about the Administration's work to promote the sense of national security and law-abiding awareness among citizens further to the enactment of the Law of the People's Republic of China on Safeguarding National Security in HKSAR.

19. SCMA said that the Administration was currently mapping out the relevant promotion and publicity strategy and would suitably consider using new channels (including online channels) on top of traditional ones. SCMA advised that the Administration would continue to step up its measures to promote, amongst others, the Constitution of the People's Republic of China and the Basic Law, as well as the opportunities of the Guangdong-Hong Kong-Macao Greater Bay Area, so as to boost the sense of national identity amongst the public. To this end, various seminars and videos (e.g. the *Extraordinary Greater Bay Area* television programme) had been produced.

IV. Briefing by the Chairperson of the Equal Opportunities Commission
[LC Paper Nos. CB(4)495/20-21(04) and (05)]

20. At the invitation of the Chairman, the Chairperson of the Equal Opportunities Commission ("EOC") briefed members on the salient points of the paper submitted by EOC [LC Paper No. CB(4)495/20-21(04)].

21. Members noted that Hong Kong Unison Limited had provided a written submission, which had been issued to members for reference.

(Post-meeting note: The above submission from Hong Kong Unison Limited was issued to members on 19 February 2021 vide LC Paper No. CB(4)541/20-21(01).)

Discussion

Discrimination against Mainland Chinese people

22. Ms Alice MAK, Mr Martin LIAO, Ms Elizabeth QUAT and Mr LUK Chung-hung raised concern about the prevalence of discrimination against Mainland Chinese people in Hong Kong. They asked when EOC would submit its recommendations following its review of the anti-discrimination legislation in respect of strengthening the protection of Mainland Chinese people in Hong Kong against discrimination.

23. The Chairperson of EOC said that in its submission to the Government on the Discrimination Law Review ("DLR") in 2016, EOC had recommended that the Government should conduct public consultation and introduce legal protection from discrimination on the grounds of nationality, citizenship and residency status under the Race Discrimination Ordinance (Cap. 602) ("RDO"). EOC had subsequently embarked on an international comparative study on the issue of discrimination against people from other places of origin, and explored various possibilities of legislative amendments in conjunction with the Constitutional and Mainland Affairs Bureau ("CMAB"). The final report of the relevant study was near completion and would be submitted to CMAB in due course. In response to Mr Martin LIAO's enquiry, the Deputy Secretary for Constitutional and Mainland Affairs said that the matter was one of EOC's remaining 19 priority recommendations from its DLR. She said that the Administration's current goal was to map out the way forward for the relevant recommendation within the current-term Government.

24. Dr Priscilla LEUNG considered that EOC should make its stance clear on matters relating to discrimination against Mainland Chinese people and people holding different political views. Ms Starry LEE also raised concern that

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discriminatory acts of such nature might fall outside the scope of existing anti-discrimination legislation. She and Mr LUK Chung-hung enquired how EOC would take enforcement actions to follow up cases involving certain local restaurants which had committed discriminatory acts by refusing to serve people who came from the Mainland or spoke Putonghua.

25. The Chairperson of EOC said that EOC had all along made its stance clear that the aforementioned discriminatory behaviour should not be tolerated by society and had therefore issued several statements to clear the air in this regard, by explaining relevant laws to the public, and reminding restaurants and other service providers to avoid discriminatory practices against certain customers. The Chairperson of EOC further said that an overwhelming majority of the complaints of discrimination and vilification against Mainland Chinese people were lodged by onlookers or third party, instead of the aggrieved persons. Therefore, in the absence of identified aggrieved persons, EOC was unable to take further enforcement actions against the discriminatory practices. In order to enhance the efficient and effective handling of these cases, EOC was exploring the possibility of legislative amendments, such that EOC could initiate proceedings in its own name for discriminatory practices.

Discrimination on the ground of occupation

26. Ms Alice MAK expressed concern that practitioners of certain occupations (e.g. police officers) and their family members had been subject to discrimination in recent years. She asked whether legislative amendments would be necessary to tackle discrimination on the ground of occupation.

27. The Chairperson of EOC said that while EOC was open-minded to the suggestion of introducing anti-discrimination legislation on the ground of occupation, occupation was not an innate characteristic like the other characteristics which were currently protected by anti-discrimination laws. Therefore, EOC needed more time to conduct an in-depth study on the issue.

Sexual harassment

28. Ms Elizabeth QUAT welcomed the establishment of EOC's Anti-Sexual Harassment Unit in November 2020 and of the dedicated hotline for handling sexual harassment issues. She enquired about the progress of EOC's review of the current legal regime on anti-sexual harassment. She also called on EOC to formulate measures and policy frameworks for preventing sexual harassment in workplaces in the private sector (including small and medium enterprises ("SMEs")) and in the ethnic minority ("EM") community in light of a recent news report involving EM victims being sexually harassed.

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29. The Chairperson of EOC said that the report of EOC's review on anti-sexual harassment legislation was near completion and would be submitted to the Government shortly. He said that EOC had been in close liaison with the EM groups and had prepared anti-sexual harassment publicity materials in various EM languages for the EM community. He undertook that EOC would continue to step up its anti-sexual harassment efforts in the private sector including SMEs.

Rights of sexual minorities

30. Dr Priscilla LEUNG considered that the issue of discrimination against sexual minorities should not be addressed through legislation which, in her view, might result in "reverse discrimination" and would trigger more conflicts amongst people holding different views on the matter. She said that EOC and the Administration should thoroughly take into account overseas experience and explore other non-legislative ways to tackle discrimination on such ground. The Chairman said that he was opposed to legalizing same-sex marriage which, in his view, would pose serious challenges to the existing institution of monogamy and traditional marriage between a man and a woman. In reply to Dr Junius HO's enquiry about EOC's stance, the Chairperson of EOC said that legalizing same-sex marriage was a complex and controversial issue which required further study and discussion in society. EOC was at present undertaking a study which aimed to find out how legislation might facilitate the elimination of discrimination on the grounds of sexual orientation, gender identity and intersex status in certain fields, including employment, education, and the provision of goods, services and facilities. The Chairperson of EOC further said that EOC had received a study report last year from a law firm concerning the recognition and treatment of different relationships under Hong Kong laws. He said that the study had identified 21 areas in which a person might be treated differently depending on his/her relationship status. EOC was conducting further research in the light of the study report before formulating relevant recommendations to the Government. In reply to Dr HO's enquiry, the Chairperson of EOC said that the study report provided by the law firm was available on EOC's website.

Complaints handling of the Equal Opportunities Commission

31. While welcoming that in the first three quarters of 2020-2021, 96 of the 113 dispute cases that underwent voluntary conciliation had reached a settlement, Mr Martin LIAO asked how many applications for legal assistance were received and approved respectively amongst the remaining cases which failed to reach a settlement after conciliation. The Chairperson of EOC said that he did not have the relevant information at hand. He added that the number of applications for legal assistance had been on the decrease in recent years and whether or not an application for legal assistance was approved would depend on various factors.

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

V. Any other business

32. There being no other business, the meeting ended at 4:43 pm.

Council Business Division 4
Legislative Council Secretariat
15 April 2021