

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 22 May 1996**

**The Council met at half-past Two o'clock**

## **MEMBERS PRESENT**

THE PRESIDENT

THE HONOURABLE ANDREW WONG WANG-FAT, O.B.E., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, C.B.E., J.P.

THE HONOURABLE MRS SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P.

THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.

THE HONOURABLE SZETO WAH

THE HONOURABLE LAU WONG-FAT, O.B.E., J.P.

THE HONOURABLE EDWARD HO SING-TIN, O.B.E., J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, O.B.E., J.P.

THE HONOURABLE MRS MIRIAM LAU KIN-YEE, O.B.E., J.P.

DR THE HONOURABLE EDWARD LEONG CHE-HUNG, O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA, M.B.E.

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

THE HONOURABLE FRED LI WAH-MING

THE HONOURABLE HENRY TANG YING-YEN, J.P.

DR THE HONOURABLE SAMUEL WONG PING-WAI, M.B.E., F.Eng., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE JAMES TIEN PEI-CHUN, O.B.E., J.P.

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE CHAN KAM-LAM

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE CHENG YIU-TONG

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

THE HONOURABLE CHEUNG HON-CHUNG

THE HONOURABLE CHOY KAN-PUI, J.P.

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE IP KWOK-HIM

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE AMBROSE LAU HON-CHUEN, J.P.

DR THE HONOURABLE LAW CHEUNG-KWOK

THE HONOURABLE LAW CHI-KWONG

THE HONOURABLE LEE KAI-MING

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE BRUCE LIU SING-LEE

THE HONOURABLE LO SUK-CHING

THE HONOURABLE MOK YING-FAN

THE HONOURABLE MARGARET NG

THE HONOURABLE NGAN KAM-CHUEN

THE HONOURABLE SIN CHUNG-KAI

THE HONOURABLE TSANG KIN-SHING

DR THE HONOURABLE JOHN TSE WING-LING

THE HONOURABLE MRS ELIZABETH WONG CHIEN CHI-LIEN, C.B.E.,  
I.S.O., J.P.

THE HONOURABLE LAWRENCE YUM SIN-LING

## **MEMBERS ABSENT**

DR THE HONOURABLE DAVID LI KWOK-PO, O.B.E., LL.D. (CANTAB),  
J.P.

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE PAUL CHENG MING-FUN

## **PUBLIC OFFICERS ATTENDING**

MR RAFAEL HUI SI-YAN, J.P.  
FINANCIAL SECRETARY

THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P.  
ATTORNEY GENERAL

MR MICHAEL SUEN MING-YEUNG, C.B.E., J.P.  
SECRETARY FOR HOME AFFAIRS

MR GORDON SIU KWING-CHUE, J.P.  
SECRETARY FOR ECONOMIC SERVICES

MR NICHOLAS NG WING-FUI, J.P.  
SECRETARY FOR CONSTITUTIONAL AFFAIRS  
MRS KATHERINE FOK LO SHIU-CHING, O.B.E., J.P.  
SECRETARY FOR HEALTH AND WELFARE

MR JOSEPH WONG WING-PING, J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

MR PETER LAI HING-LING, J.P.  
SECRETARY FOR SECURITY

MISS DENISE YUE CHUNG-YEE, J.P.  
SECRETARY FOR TRADE AND INDUSTRY

MR LAM WOON-KWONG, J.P.  
SECRETARY FOR THE CIVIL SERVICE

MRS LESSIE WEI CHUI KIT-YEE, J.P.  
SECRETARY FOR FINANCIAL SERVICES

## **CLERKS IN ATTENDANCE**

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL

MR LAW KAM-SANG, DEPUTY SECRETARY GENERAL

MISS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**PAPERS**

The following papers were laid on the table pursuant to Standing Order 14(2):

*Subject*

Subsidiary Legislation	<i>L.N. No.</i>
Dangerous Drugs (Amendment) Regulation 1996 .....	191/96
Building (Oil Storage Installations) (Amendment) Regulation 1996.....	192/96
Places of Public Entertainment (Amendment) Regulation 1996.....	193/96
Building (Planning) (Amendment) Regulation 1996 .....	194/96
Building (Construction) (Amendment) Regulation 1996.....	195/96
Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) (Amendment) Regulation 1996 .....	196/96
Inland Revenue (Amendment) Ordinance 1996 (19 of 1996) (Commencement) Notice 1996 .....	197/96
Official Languages (Authentic Chinese Text) (Apportionment Ordinance) Order .....	(C) 45/96
Official Languages (Authentic Chinese Text) (Crown Leases Ordinance) Order.....	(C) 46/96
Official Languages (Authentic Chinese Text) (Crown Lease (Pok Fu Lam) Ordinance) Order.....	(C) 47/96

Official Languages (Authentic Chinese Text)  
 (Crown Rent and Premium (Apportionment)  
 Ordinance) Order..... (C) 48/96

Official Languages (Authentic Chinese Text)  
 (Civil Aviation (Births, Deaths and Missing  
 Persons) Ordinance) Order..... (C) 49/96

Official Languages (Authentic Chinese Text)  
 (Dangerous Goods (Consignment by Air)  
 (Safety) Ordinance) Order..... (C) 50/96

Sessional Paper 1995-96

No. 82 — Report of the Independent Police Complaints Council 1995

## Address

### Report of the Independent Police Complaints Council 1995

**DR LEONG CHE-HUNG:** Mr President, on behalf of the Independent Police Complaints Council (IPCC), may I present the IPCC's Annual Report for 1995.

The IPPC is an independent advisory body appointed by the Governor to monitor and review the investigation of public complaints directed at the police. Whilst the investigation work is carried out by the Complaints Against Police Office (CAPO) of the Royal Hong Kong Police Force (RHKPF), the results of investigation, together with all the relevant CAPO files and documents are examined in depth by the IPCC, which is supported by a full-time secretariat. A case will not therefore be finalized until the IPCC has endorsed its investigation results.

In 1995, the IPCC reviewed and endorsed a total of 3 195 complaint cases involving 4 633 allegations. Of these, assault, over-bearing impolite conduct/abusive language, neglect of duty/improper action, unnecessary use of authority and fabrication of evidence constituted the bulk of the complaints with assault cases topping the list, representing some 38.4% of the total number. Of the

4 633 allegations endorsed, 732 were resolved by what is called informal resolution; 133 classified as "Substantiated" or "Substantiated other than Reported"; 23 as "Not Fully Substantiated" (previously known as "Not Proven") — I will explain what all this is about afterwards; 720 as "Unsubstantiated"/"Curtailed"; 70 as "False"; 2 837 as "Withdrawn/Not Pursuable" and 118 as "No Fault".

The IPCC often raised queries on CAPO's investigation reports in the course of its deliberations. A total of 442 queries were raised in 1995, part of which led to the reclassification of some 35 cases. Arising from the investigation results endorsed by the IPCC, criminal proceedings, disciplinary and other forms of internal action (including advice and warnings) were taken against 221 police officers in 1995.

Other than the scrutiny of investigation reports, the IPCC also dealt with other major issues in 1995, including studies and reviews as well as reforms of the police complaints machinery.

With regard to studies and reviews, the IPCC conducted comparative study visits, in conjunction with the Security Branch and the Royal Hong Kong Police Force, to a few cities in North America in the latter part of 1995, also to Australia, Japan and Singapore in the recent few months. The study aims at drawing on experience from other countries with a view to improving the police complaints system in Hong Kong. To help foster reforms to the complaints system, the IPCC also proposed and the Administration agreed in 1995 to second a directorate Administrative Officer for six months to the IPCC to review CAPO's procedures. This officer was appointed in January this year and the review is still in progress.

In 1995, the IPCC completed reviews on the reterming of "Not Proven" classification to "Not Fully Substantiated", and the subjudice procedures. The "Not Proven" classification has caused considerable confusion to members of the public who are not acquainted with the terminology used in the police complaints system. Literally "Not Proven" means there is no substance in the complaint, whereas in actual fact when the classification is used by CAPO, it implies that "there is some reliable evidence to support the allegation made by the complaint but insufficient to fully substantiate the complaint". The proposed terminology of "Not Fully Substantiated" is therefore in line with the Chinese term of "Not Proven" (無法完全證實)。



To turn to other activities, the IPCC understands that the Administration aims to introduce the draft bill to make the IPCC a statutory body to the Legislative Council within 1996. The IPCC has deliberated on the draft a few times and agrees that notwithstanding areas of concern which will be further deliberated and, needless to say, also deliberated in this Council subsequently, this bill will provide a necessary legal framework to preserve the present IPCC system. To improve its monitoring role, the IPCC continued to interview witnesses in 1995 to clarify matters directly with them. By the end of the year, a total of 21 witnesses were interviewed. The IPCC attached equal importance to the publicity of its activities and the prevention of complaints. A logo design competition was organized in 1995 to boost the public understanding of the work of the IPCC. As a result of IPCC's proposal, and later sponsorship, the RHKPF actually successfully organized a "Courteous Police Officer" Selection Scheme to promote police image.

Towards the end of 1995, the IPCC decided to enhance its monitoring role by introducing the Observers Scheme. Under the Scheme, IPCC members would observe CAPO's interviews with witnesses or the conduct of scene visits. The Scheme has been put on trial for 12 months since April this year.

Before I end, Mr President, I would like to express my appreciation, on behalf of the IPCC, of the valuable contribution made by yourself before you were made President and also to Mr Benjamin WONG Pui-tong, JP whose terms of office with the IPCC expired on 1 January this year. I would also like to thank the Commissioner of Police and his staff in CAPO for their co-operation during the year.

## ORAL ANSWERS TO QUESTIONS

### United States Special 301 Law

1. **MR CHIM PUI-CHUNG** asked (in Cantonese): *Mr President, regarding the United States Government Trade Representative's most recent report in which Hong Kong is put under the "Other Observations" category on the watch list under the US Special 301 law, will the Administration inform this Council:*

- (a) *of the Administration's understanding of the "Other Observations" category;*

- (b) *how the Administration will respond to Hong Kong being put on the watch list for the first time; and*
- (c) *whether consideration will be given to approaching other countries or territories included in the "Other Observations" category with a view to making a joint response?*

**SECRETARY FOR TRADE AND INDUSTRY** (in Cantonese): Mr President, the United States Trade Representative's Report (USTR) on Special 301, announced at the end of last month, identified a number of economic entities, countries and territories perceived by the United States to have inadequate intellectual property protection regimes or fair and equitable market access for United States persons who rely on intellectual property protection. They were grouped into three categories with those perceived to provide the least adequate intellectual property protection regimes included under the "priority foreign country" category, followed by the "priority watch list" and the "watch list". The Report also contained an "other observations" section. We understand this to be a commentary section rather than a list. We note that in this section, the USTR drew attention to four countries where the lack of adequate and effective protection of intellectual property rights is a concern. The "other observations" section also highlighted developments in and expectations for progress in 16 countries and territories, of which Hong Kong was one.

Following announcement of the Special 301 Report, we have registered our disappointment at the reference to Hong Kong under the "other observations" section. We have explained to the United States Administration the vigorous actions already undertaken, and will continue to be undertaken, by the Hong Kong Government on the legislative as well as enforcement fronts. The Governor has also underlined our total commitment to protecting intellectual property rights in Hong Kong to senior United States Administration officials during his recent visit to Washington. The Chief Secretary intends to do likewise when she visits Washington next month.

We do not intend to approach other countries or territories mentioned under the "other observations" section with a view to making a joint response. We see no benefit in doing so. We consider that a more productive and effective approach is to continue to pursue direct bilateral dialogue with the United States Administration.

**MR CHIM PUI-CHUNG** (in Cantonese): *Mr President, everyone knows that Hong Kong is a place where free trade is most respected and observed. But neither has the Secretary mentioned this in the second paragraph of her main reply, nor has the Governor openly explained Hong Kong's stand during his visit to the United States as can be read from the recent reports of the media. He only stressed that the United States is very protective towards her intellectual property. Does the Secretary's reply imply that the Governor and the Government admit that Hong Kong has not done enough in this respect and they both approve of the way the United States is handling the matter; or is it just that the media has not given a clear coverage of the matter? I hope that the Secretary could explain.*

**PRESIDENT:** Mr CHIM, do you mean, would the Secretary explain?  
Secretary.

**SECRETARY FOR TRADE AND INDUSTRY** (in Cantonese): Mr President, the Hong Kong Government does not think that what we have done with respect to intellectual property protection is inadequate. In fact, the United States Administration has specially pointed out in its Report on Special 301 that they are aware of the many vigorous actions that the Hong Kong Government has undertaken in protecting intellectual property rights and that we will continue to take on a positive attitude to crack down on activities such as piracy and others which infringe upon intellectual property right. I have already explained very clearly in my main reply that on his visit to Washington at the beginning of this month to meet with senior United States officials, among which was the Secretary for Commerce, the Governor has already explained to him in detail the work done by the Hong Kong Government in the protection of intellectual property. As for media coverage, I believe that Mr CHIM will agree that Hong Kong is a society which advocates freedom, hence I cannot make any comment on it.

**MR JAMES TIEN:** *Mr President, I think the business community is very disappointed at the fact that Hong Kong is now put under the "other observations" section by the United States Government. Although the Secretary mentioned that we are not as bad as the other lists, "priority foreign country", "priority watch list", and the "watch list", the fact remains that before this we*

*were simply not on any list and now we are on this so-called "other observations". Now during our meeting with Mr Lee Sands, USTR, one of his main.....*

**PRESIDENT:** Would you please come to your question, Mr TIEN?

**MR JAMES TIEN:** *Yes, I will. The main concern that Americans have is not about the intellectual property right infringement in Hong Kong itself, but the fact that a lot of exports going around the rest of the world happen to go through Hong Kong.*

*So the question I want to ask the Secretary is, according to the second paragraph of her answer which stated — "the vigorous action already undertaken and will continue to be undertaken", whether the Hong Kong Government will have new initiatives and legislation or any other action taken to make sure that the transshipment of these illegal products going through Hong Kong could be stopped?*

**SECRETARY FOR TRADE AND INDUSTRY:** Mr President, indeed the Government, with the agreement of this Council, late last month passed a new piece of legislation called the Intellectual Property (World Trade Organization Amendments) Ordinance. That Ordinance has already come into effect and the provisions that are now being implemented include two specific ones aimed at tackling the problem of pirated products being exported through Hong Kong from another place to the rest of the world. The Ordinance also empowers copyright owners to apply to the court for detention orders to detain products suspected of infringing copyright at our borders with China. It is my belief that with these addition legal instruments available, both to the Hong Kong Customs as well as to copyright owners, Hong Kong should be in a better position to tackle transshipment problems relating to copyright piracy.

In addition, the Hong Kong Customs has also stepped up co-operation and liaison with the relevant authorities in mainland China. The Hong Kong Customs held three very useful meetings, both with the Guangdong provincial authorities as well as with the Shenzhen Special Economic Zone authorities. I think there is now agreement between both sides to exchange information and intelligence, to organize more exchange visits as well as seminars, and to the

extent possible, to conduct co-ordinated operations. I think only less than a week ago, Customs mounted a very successful, co-ordinated operation at Man Kam To. In that operation, Customs was able to seize over 20 000 copies of pirated products.

### **Disposal of Seized Relics**

2. **MRS ELIZABETH WONG** asked: *With regard to the seizure of relics imported illicitly into the territory from mainland China, will the Government inform this Council:*

- (a) how it disposes of such relics; and*
- (b) of the number of pieces which were returned to the Chinese Government in the past year, and the reasons therefor?*

**SECRETARY FOR TRADE AND INDUSTRY:** Mr President, under section 18 of the Import and Export Ordinance, imports of relics to and exports of relics from Hong Kong are illegal if they are not properly manifested. Such acts are subject to a maximum penalty of a fine of HK\$2 million and imprisonment for seven years. The unmanifested relics will be seized and liable to forfeiture. They will be directly forfeited to the Government if there is no claimant or, if there is a claimant, they may be forfeited by a court order or returned to the claimant as appropriate, after the hearing of the application by the claimant.

Once the goods are forfeited to the Government, they will be subject to the disposal of the Government upon the completion of all court proceedings. In the spirit of close cross-border co-operation between Hong Kong and China, arrangements will be made to return relics smuggled into Hong Kong from China to the Chinese authorities. In 1995-96, 1 059 pieces of relics with a total estimated value of \$64 million have been returned to China.

**MRS ELIZABETH WONG:** *Mr President, we should not be aiding and abetting the plunder of any national culture or treasure. Can the Secretary tell us what is meant by her "properly manifested"? It is because according to a book written by David MURPHY entitled "Plunder and Preservation: Cultural*

*Property Law for PRC", China has indeed very tough laws on smuggling of relics and it is entirely possible that the whole area of relic might come under the umbrella of foreign affairs after 1997.*

**PRESIDENT:** Were you making a statement after the initial question?

**MRS ELIZABETH WONG:** *In fact, I am asking whether the Secretary can elaborate on her terminology in the first paragraph — "not properly manifested"? I do not understand what she means by "properly manifested", how properly is properly?*

**SECRETARY FOR TRADE AND INDUSTRY:** Mr President, under section 18 of the Import and Export Ordinance, every carrier or importer is required to submit a form which, I believe, in the trade is called a manifest. On that manifest, the carrier or importer is required to state clearly and explicitly the products being carried or being imported into Hong Kong. This is what I meant when I said "properly manifested" in my main reply. If the Honourable Member is interested, I can, of course, give her an extract of section 18 of the Import and Export Ordinance.

**MRS ELIZABETH WONG:** *Mr President, I am indeed not satisfied with the Secretary's reply. I think she has entirely missed the point. Many people in Hong Kong are worried that after 1997 .....*

**PRESIDENT:** Mrs WONG, I have no wish to see this turning into a debate.

**MRS ELIZABETH WONG:** *Mr President, may I rephrase my question. Does the Secretary consider that there is a need to impose sanctions and prohibit the sale of Chinese relics in her terminology of proper manifestation?*

**SECRETARY FOR TRADE AND INDUSTRY:** Mr President, if I understand the question correctly, there is provision for both payment of fines as well as sentencing under the Import and Export Ordinance in the event that a carrier or importer is found and convicted by the court of failing to submit a manifest to the Hong Kong Customs.

### **Renminbi as Currency in Circulation in Hong Kong**

3. **DR LAW CHEUNG-KWOK** asked (in Cantonese): *Mr President, as an increasing number of retail shops in the territory are accepting Renminbi (RMB) for payment, will the Government inform this Council:*

- (a) *of the current policy and legislation governing the use of RMB for payment of purchases and the RMB exchange activities taking place in retail shops in Hong Kong; and*
- (b) *whether it has discussed with the Chinese Government the possibility of RMB becoming one of the currencies in circulation in Hong Kong after the change of sovereignty in 1997; if so, what the details are, and whether it has estimated the extent of the circulation of RMB in Hong Kong during the initial stage following the change of sovereignty?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Mr President,

- (a) There is no legislation in Hong Kong governing the use of Renminbi (RMB) or any foreign currency for payment of purchase. The concerned parties to a transaction may use and accept any currency agreed between them. This freedom for parties to transact in the currencies of their choice is common in most free market economies.

The exchange activities of RMB or any foreign currency at the retail level are governed by the Money Changers Ordinance which protects consumers from malpractices in the money changing trade. Under the Ordinance, a money changer is required to display the net rates of exchange and make out, for confirmation by a customer, a transaction note giving essential information in a prescribed form.

- (b) We do not prohibit the circulation or usage of the RMB in Hong Kong and the Sino-British Joint Declaration and the Basic Law of the Hong Kong Special Administrative Region (HKSAR) clearly state that the HKSAR government shall formulate monetary and financial policies on its own. The question of discussion with the Chinese government on the possibilities of the RMB becoming one of the currencies in circulation after 1997 does not arise.

We do not have any clear basis to estimate the extent of the circulation of RMB in Hong Kong now or after 1997. However, we believe that the amount is, and will remain, small compared with Hong Kong dollar in circulation.

**DR LAW CHEUNG-KWOK** (in Cantonese): *Mr President, a Hong Kong newspaper yesterday related that the Securities Times of Shenzhen had published an article by an official of the Peoples' Bank of China. In the article, it was suggested that the Chinese Government should formulate as soon as possible policies as to how currencies could be circulated between Hong Kong and Shenzhen.....*

**PRESIDENT:** Dr LAW, please come to your question.

**DR LAW CHEUNG-KWOK** (in Cantonese): *Will the Government inform this Council of its understanding of the suggestion made by the official of the Peoples' Bank of China and whether the Government has taken the initiative to further clarify this matter with the relevant authorities in China?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Mr President, I have not seen the newspaper report mentioned by Dr the Honourable LAW Cheung-kwok just now. However, as I have just mentioned, the HKSAR will be able to formulate monetary and financial policies on its own. Therefore, we believe that there is no need to discuss the issue of the circulation of RMB in Hong Kong with the Chinese Government. As to the circulation of the currency in question in mainland China, this is a matter for the Chinese Government. We do not think the Hong Kong Government should interfere with it.



**Establishment of Correctional Services Staff at Whitehead**

4. **MR WONG WAI-YIN** asked (in Cantonese): *Mr President, it was reported that more than 10 Correctional Services Department (CSD) staff Members were taken hostage in the riot which broke out at the Whitehead Detention Centre on the tenth of this month. In this connection, will the Government inform this Council of:*

- (a) *the establishment of CSD staff on day and night shifts respectively at the Whitehead Detention Centre, and the number of CSD staff on duty on the night of the incident; and*
- (b) *the types and numbers of readily available anti-riot equipment, such as shields and anti-riot suits, and so on, provided at the Whitehead Detention Centre?*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President,

- (a) The normal arrangements for Whitehead Detention Centre are that two day shifts (each comprising 80 staff) and two night shifts (each comprising 60 staff) discharge patrol, security and camp routine duties. In addition, about 210 staff work during normal office hours in providing other services in the camp, and 60 staff are on sleep-in stand-by duty. On the night of the incident, 20 additional staff were deployed to reinforce the patrol and camp security duties, and another 30 staff were assigned to sleep-in stand-by duty.
- (b) Various types of anti-riot gear are kept in the Whitehead Detention Centre, including chemical mace, batons, shields and so on.

**MR WONG WAI-YIN** (in Cantonese): *Mr President, before I ask my supplementary question, could you ask the Secretary for Security to answer the last part of part (b) of my main question concerning numbers because he has not yet answered it. Thank you, Mr President.*

**PRESIDENT:** I only have a copy of your original question in hand. Was the last part of your supplementary included in your revised question?

**MR WONG WAI-YIN** (in Cantonese): *Mr President, the Secretary has only answered the first part of part (b) of my question; he has not answered the last part concerning the numbers of anti-riot equipment. Mr President, may I request that you ask the Secretary to answer this part first before I ask my supplementary question.*

**PRESIDENT:** Secretary, the numbers.

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, under normal circumstances, the numbers of anti-riot equipment kept at the Whitehead Detention Centre are adequate. However, for security reasons, we do not wish to count the equipment piece by piece too openly. However, if Mr WONG is interested, I can discuss the question in detail with him on some other occasions. Regarding security at the time, I have already tabled a paper at the meeting of the Security Panel held last week, giving a detailed account of the incident based on our understanding together with our response to it.

**MR WONG WAI-YIN** (in Cantonese): *Mr President, staff of the Correctional Services Department have often expressed that there is a shortage of staff at the detention centres. It has also been reported that there have been occasions where staff to stay on duty for a continuous period of 60 hours. Is this a fact? If so, will the Secretary for Security immediately review the number of staff deployed to and anti-riot equipment kept at the detention centres? If so, what will the specific plans be and when will these measures be implemented with a view to making improvements?*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, I have already mentioned this at the meeting of the Security Panel held last week. Soon after the Whitehead Detention Centre incident, we have commissioned a review and have decided to spend \$15 million to increase the number of security and management staff at the detention centres. This amount would approximate that

required for employing 100 Correctional Services Assistants II. Since recruitment and training take a considerable period of time, it may take a few months before such security and management staff can be increased. However, in the interim, the police has promised to deploy more staff to areas close to the Whitehead Detention Centre and the High Island Detention Centre in order to step up security.

**MR CHOY KAN-PUI** (in Cantonese): *Mr President, will the Government inform this Council whether the Administration has considered the possibility that in the event of a future riot, the place for keeping anti-riot equipment will become the target of attack by the rioters or that the equipment will even be seized? Has the Administration drawn up any plans to prevent and avoid this from happening?*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, our plan to rebuild the damaged blocks and strengthen the security of the Whitehead Detention Centre has included a measure to step up the security of the place for storing anti-riot equipment such as tear gas bombs and shields and to reinforce the building concerned. Besides, the so-called "administration zone" may also be fenced off to strengthen the safety and protection of these equipment.

**MR CHAN KAM-LAM** (in Cantonese): *Mr President, what are the losses and damages done to the dormitory blocks and the staff as a result of the riot at the Whitehead Detention Centre? Who is to be responsible for such losses and damages?*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, we have already discussed the Whitehead Detention Centre incident in the meeting of the Security Panel held last week. In this incident, more than 20 dormitory blocks have been destroyed by fire and we will certainly rebuild them as soon as possible. In fact, since some of the dormitory blocks of the Whitehead Detention Centre have been left vacant, it may therefore be unnecessary to rebuild all the blocks which have been destroyed by the fire. Furthermore, as regards the claims for compensation put forward by staff whose belongings or private cars have been damaged by the migrants during the riot because they had to park their cars in the parking areas of the Whitehead Detention Centre in order to attend to their duties, the Government

will take on a positive attitude in dealing with such claims.

**PRESIDENT:** Mr CHAN Kam-lam, are you claiming that your question has not been answered?

**MR CHAN KAM-LAM** (in Cantonese): *Mr President, I wish the Secretary for Security can tell us clearly in money terms the losses and damages incurred and who is to pay for such losses. Earlier on, the Secretary has said that the Government will do something; will the money involved be paid out of the pockets of the taxpayers of Hong Kong or will the United Nations High Commissioner of Refugees (UNHCR) be responsible for it?*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, up till now, we have not finalized on the exact amount of money required for the rebuilding plan and the completion of the detailed plans concerned, but I believe some tens of million dollars will be required. Regarding losses suffered by the staff, we have not had the figures yet because we still have not received any claim from them. Concerning the matter of who is to be responsible, as I have said just now, the cost of rebuilding the dormitory blocks will certainly have to be paid out of the public funds by the Hong Kong Government. If staff claim for compensation and if we think that their claims are reasonable, they will also be paid out of public funds. Managing the detention centres is the responsibility of the Hong Kong Government, not the UNHCR.

**MR ANDREW CHENG** (in Cantonese): *Mr President, experience tells us that there is bound to be a riot whenever the migrants are transferred from one detention centre to another and the Police will have to be called in to maintain order. Will the Secretary for Security seriously consider implementing a policy to deploy police officers to the detention centres to strengthen the security some time, for example, 48 hours, before the migrants are moved instead of asking for assistance of the Police only after staff of the Correctional Services Department have been taken hostage or even after some of the migrants have escaped, just as what has happened in this incident or in the past incidents?*

**PRESIDENT:** I am afraid this is outside the scope of the original question.

**MR CHEUNG HON-CHUNG** (in Cantonese): *Mr President, it has been reported that the tear gas bombs fired on that day had passed then expiry date, thus weakening the effectiveness of the measures to stop the riot. Has the Security Branch reviewed and strengthened the management of anti-riot equipment to ensure that all of them are effective?*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, it has indeed been reported in a newspaper that the expiry dates marked on some of the tear gas bombs fired on that day apparently showed that they had expired. However, we understood from the police that these tear gas bombs in fact had not expired. It was just that they had been marked with wrong expiry dates when they were delivered to Hong Kong. We have clarified the matter with the manufacturer prior to the incident. Therefore, these tear gas bombs in fact had not expired.

**DR JOHN TSE** (in Cantonese): *Mr President, the Whitehead Detention Centre is very close to residential areas. The riot this time has had a negative impact on the safety of residents. Will the Government consider moving the Whitehead Detention Centre because of this incident?*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, at present, we still have 17 000 migrants in Hong Kong and our major detention centres are situated in three places, namely, Whitehead, High Island and Tai A Chau. Under the circumstances, we believe that it is impossible to have the Whitehead Detention Centre removed shortly. However, our solution is to repatriate the migrants who are stranded in Hong Kong as soon as possible. With repatriation, the number of migrants in each detention centre will gradually be reduced and eventually, the Whitehead Detention Centre as well as the other detention centres will no longer be needed when all Vietnamese migrants have been successfully repatriated.

**MR ALBERT HO** (in Cantonese): *Mr President, according to part (a) of the main reply given by the Secretary for Security, the Correctional Services Department had deployed 20 additional staff to reinforce patrol duties in the*

*Detention Centre and an additional 30 staff were assigned to stand-by duty. According to my understanding (and I stand to be corrected), these additional staff were deployed before the riot actually occurred. I believe that is certainly because a riot had been expected or that information indicating such a possibility had been received. Now, to look at the case afterwards, was the number of staff insufficient and had the authority concerned underestimated the seriousness and scale of the riot? In future, will arrangements be made for more staff to be deployed, including the deployment of police officers to the detention centres to maintain order, before moving the migrants?*

**PRESIDENT:** I have earlier ruled the last part of the question out of order as it is outside the scope of the original question. But, for the first half, Secretary for Security.

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, regarding the incident which occurred that night and the information we received on the possibility of migrants causing trouble, Mr Raymond LAI, the Commissioner of Correctional Services, has already given a clear account at the meeting of the Security Panel of the Legislative Council held last week. The information we received prior to the riot was not very clear, nor did it indicate precisely what would happen and when. The information we received only indicated that when the names of the migrants who were to be moved away from the Detention Centre were announced the next day, some of them might cause trouble. Notwithstanding that, we had already made prior arrangements for more staff to spend the night in the Detention Centre.

### **Enforcement Actions against Pirated Softwares**

5. **MRS SELINA CHOW** asked (in Cantonese): *Mr President, in view of the passage of the Intellectual Property (World Trade Organization Amendments) Bill 1996 by this Council, will the Government inform this Council:*

- (a) *given that the sale of pirated computer CD-ROMs is becoming increasingly rampant and that such activities are concentrated in several computer shopping centres in Kowloon and on Hong Kong Island, whether the departments concerned have a comprehensive*

- plan to step up enforcement action in these centres to combat such activities;*
- (b) of the number of raids carried out in these centres in the past 12 months, and the total quantity and value of pirated CD-ROMs seized;*
  - (c) of the number of prosecutions instituted regarding such offences in the past 12 months, together with the percentage of prosecutions resulting in convictions, as well as the highest, lowest and average penalties imposed by the court; and*
  - (d) whether any difficulties have been encountered by the departments concerned in instituting prosecutions relating to such offences; if so, whether positive action has been taken to overcome such difficulties so as to enhance the deterrent effect on offenders?*

**SECRETARY FOR TRADE AND INDUSTRY** (in Cantonese): Mr President, the Hong Kong Customs has stepped up enforcement action against the sale of pirated copyright products, including computer CD-ROMs, in known blackspots and shopping arcades. I wish to stress that in addition to tackling the copyright piracy problem at the retail level, Customs also places emphasis on tackling the problem at the distribution and importation levels. To this end, Customs, in conjunction with the police, has been adopting a pro-active enforcement approach in the form of intelligence gathering and investigation work relating to alleged triad and organised criminal involvement in local and cross-border copyright piracy activities, resulting in a number of successful border interceptions and raids on storage premises for pirated CD-ROMs. Customs has also been forging closer cooperation with the relevant counterpart authorities in China in the protection and enforcement of intellectual property rights and in joint border operations.

In 1995, a total of 273 raids were carried out by Customs at the retail and distribution levels, resulting in a total seizure of about 359 000 CD-ROMs containing computer software and video CDs (VCDs) at an estimated value of HK\$27 million. The corresponding figures in the first four months of this year were 192 raids conducted, and about 210 000 CD-ROMs and VCDs seized totalling an estimated value of HK\$14 million. The quantity and value of pirated CD-ROMs and VCDs seized in the first four months of this year already

represent 58% and 52% respectively of the figures in the entire year of 1995.

In 1995, 72 persons and one firm were prosecuted for copyright piracy offences relating to CD-ROMs and VCDs. The conviction rate was 69%. The corresponding figures in the first four months of this year were 144 persons and two firms. The conviction rate was 81%.

In 1995, the highest, lowest and average fines per case were HK\$33,000, HK\$500 and HK\$9,300 respectively. The corresponding figures for the first four months of 1996 were HK\$52,500, HK\$300 and HK\$12,500 respectively. In 1995, a total of two offenders were given imprisonment sentences of one month and three months respectively for CD-ROMs and VCDs piracy offences. In the first four months of this year, a total of 18 offenders were sentenced to imprisonment, with terms of imprisonment of up to three months.

Customs has encountered difficulties in pursuing prosecution action in CD-ROM and VCD cases where the copyright owners cannot be identified, or where the owners fail to provide adequate proof of copyright infringement, or where the copyright owners are not interested in pursuing criminal prosecution, or where the copyright owners cannot afford the costs to fly their expert witnesses to Hong Kong to assist in prosecution. Both Customs and the Intellectual Property Department have stepped up liaison with the relevant copyright industry and organisations so as to encourage copyright owners to come forward to assist in prosecution. In addition, to encourage cooperation from overseas copyright owners, financial assistance will be offered to them, on a case-by-case basis, to assist in criminal investigation and prosecution.

**MRS SELINA CHOW** (in Cantonese): *Mr President, while the first paragraph of the Secretary's main reply mentioned that the Hong Kong Customs had been adopting in conjunction with the police a multi-faceted approach to combat such organized criminal activities, the fines and penalties referred to in the fourth paragraph seemed to suggest another picture. Does the Secretary share the view that the level of fines and penalties is too trivial when compared to the business turnover and amount of profit involved the sale of pirated CD-ROMs? Does it reflect that the Government still cannot get to the masterminds behind the copyright piracy activities? If so, how is the Government going to tackle this problem?*



**SECRETARY FOR TRADE AND INDUSTRY** (in Cantonese): Mr President, the rule of law is upheld in Hong Kong. Under the legal system of Hong Kong, we have an independent judiciary. As such, when the court hear copyright piracy cases, it is the presiding judge who judges whether the defendant is guilty or not and it is also the presiding judge who determines the sentence to be imposed upon the convicted defendant, such as the level of fines and the term of imprisonment and so on. However, the Attorney General will review the sentence for each and every court case. In case the Attorney General is of the view that the sentence is too light, he may apply for a review of the sentence by referring the case to the original court or to a higher court. There are in fact some past examples. The Legislative Council passed a piece of new legislation named the Intellectual Property (World Trade Organization Amendments) Ordinance last month. When replying to a supplementary question earlier on, I have made it clear that with the enactment of this new Ordinance, both the Hong Kong Customs and the copyright owners would be vested with more legal powers to institute prosecutions against the masterminds behind the copyright piracy activities if sufficient evidence can be produced, and then the judge would decide whether or not they should be found guilty.

**MRS MIRIAM LAU** (in Cantonese): *Mr President, I understand that some of the owners of the shops that sell pirated computer CD-ROMs own a number of shops in the same shopping arcade. In order to minimize loss, they would open shop A on Mondays, Wednesdays and Fridays, and shop B on Tuesdays, Thursdays and Saturdays. Some of them may even open their shops for half a day and then re-open them after the raids conducted by the Hong Kong Customs are over. Could the Secretary inform this Council whether the Administration have mastered any evidence that the above situation does exist? If so, what corresponding strategy will the Hong Kong Customs adopt?*

**SECRETARY FOR TRADE AND INDUSTRY** (in Cantonese): Mr President, I have not received any report from the Hong Kong Customs in this respect. I will reflect the case as described by Mrs LAU to the Hong Kong Customs because this is by nature an operational matter. I will ask the Commissioner of Customs and Excise to give a reply to the question put by Mrs LAU. (Annex)

**MR SIN CHUNG-KAI** (in Cantonese): *Mr President, one of the core issues involved in the Sino-United States trade war is intellectual property. In fact, Hong Kong should produce more active effects in the prevention of the aggravation of infringement upon intellectual property. Does the Hong Kong Customs have enough manpower to handle work in this respect? Secondly, it was originally mentioned in the Honourable Mrs Selina CHOW's question that .....*

**PRESIDENT:** One supplementary at a time please.

**MR SIN CHUNG-KAI** (in Cantonese): *Both are in fact related to the same question because this kind of illegal activities is no longer confined to several shopping arcades. Perhaps it is because of the more vigorous raids conducted by the Hong Kong Customs that such activities are now spread to other smaller shopping arcades. Could the Secretary inform us whether the Hong Kong Customs will require additional manpower resources as they have to carry out enforcement actions at quite a number of shopping arcades instead of raiding only several major shopping arcades as in the past?*

**SECRETARY FOR TRADE AND INDUSTRY** (in Cantonese): Mr President, we conduct annual review exercise with the Commissioner of Customs and Excise over the adequacy of the establishment of the Customs and Excise Department in relation to the work involving the combating of copyright piracy activities. Within the past three years, that is, 1994, 1995 and the current year, the manpower which the Hong Kong Customs allocates for that purpose have increased from 117 persons to 164 persons within the past three years, representing an increase of 40%. I am also aware of the fact that it is an onerous task to combat these activities at the retail level. Therefore, as I have point out in the main reply, apart from tackling such activities at the retail and distribution levels, the Customs and Excise Department also works in conjunction with the police in the hope that they can do more in the area of intelligence gathering. If we can command accurate intelligence, the deployment of manpower will be more effective.

**PRESIDENT:** I must say the Secretary and the Commissioner would be most thankful for Members' intelligence.

**Assistance for Provisional Legislature**

6. **MR TSANG KIN-SHING** asked (in Cantonese): *Official of the Chinese Government have announced that the provisional legislature will be set up formally after 1 July 1997, and that it will start to operate before the date. In this connection, will the Government inform this Council whether it will permit civil servants to assist, before 1 July 1997, the provisional legislature in the preparatory work relating to amending or abolishing certain laws, such as the Bill of Rights Ordinance and the six amendment ordinances which the former Preliminary Working Committee's Legal Sub-group had recommended for their amendment or abolition, contrary to the stance taken by the Government?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Mr President, we have yet to know when a provisional legislature will be established, or when and how such a body will begin operation. Nor would we wish to speculate. In the absence of the necessary information, it would be difficult to provide a direct answer to Mr TANG's question. But I should like to make four general remarks.

First, the corporate position of the British Government and the Hong Kong Government on the question of a provisional legislature is clear, consistent, and we known to this Council as well as the community. Both the Prime Minister and the Foreign Secretary have reaffirmed our position in their recent meetings with Chinese leaders. And we will continue to reaffirm our position if the need arises.

Secondly, until British sovereignty ends on 1 July 1997, the only constitutional legislature in Hong Kong is the current Legislative Council, elected openly and fairly by a record number of voters, and with a clear and legitimate mandate. The Government's commitment is to continue to work with this Legislative Council.

Thirdly, and following from the above, we have made clear to the Chinese side that we will not provide any assistance to a provisional legislature. However, we have stated clearly that we shall co-operate with the Preparatory Committee and, in due course, the Chief Executive (Designate) in other areas where there are identified common ground.

Fourthly, the Joint Declaration provides that Britain shall continue to be responsible for administering Hong Kong until 30 June 1997, and that China will co-operate in this regard. Chinese leaders have reaffirmed on various occasions that they will abide by the Joint Declaration. During his recent meeting with the Foreign Secretary at The Hague, Vice Premier QIAN Qichen said that until 30 June 1997 the Governor, the Privy Council and the current Legislative Council would alone exercise power.

**MR TSANG KIN-SHING** (in Cantonese): *Mr President, in a letter to the Governor, the Honourable James TIEN, Chairman of the Hong Kong General Chamber of Commerce, suggested that the Governor should accept the reality of having a provisional legislature and arrange for the secondment of some senior civil servants to assist the provisional legislature in its work. Does the Government think that this proposal of Mr James TIEN will create conflicts and unnecessary confusion among civil servants of Hong Kong?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Mr President, the Governor has explicitly stated our position in his letter in reply to the Hong Kong General Chamber of Commerce. Just now I have also recapitulated our position in the main reply that we would not provide any assistance to a provisional legislature. Therefore the conflict Mr TSANG has referred to does not exist.

**PRESIDENT:** Mr TSANG Kin-shing, are you claiming that your question has not been answered?

**MR TSANG KIN-SHING** (in Cantonese): *Yes, Mr President. The Secretary has not answered the latter part of my question which asked him whether conflict and confusion would be created by that proposal. I hope he can give us a reply.*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Mr President, I have made it very clear that we do not allow branch secretaries to provide assistance to the provisional legislature. Therefore, the situation Mr TSANG has referred to simply does not exist.

**DR YEUNG SUM** (in Cantonese): *Mr President, just now the Secretary said that no assistance would be provided to a provisional legislature but the Hong Kong Government would co-operate with the Preparatory Committee and, in due course, the Chief Executive (Designate). If members of the provisional legislature seek the Government's co-operation through the Preparatory Committee or the Chief Executive (Designate) in respect of their proposals to amend the laws, what will be the attitude of the Government?*

**PRESIDENT:** Secretary? It is hypothetical anyway.

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Mr President, as you have said, this is a hypothetical question. We do not want to make a premature guess at how we will co-operate with the Chief Executive (Designate) in future.

**DR YEUNG SUM** (in Cantonese): *Mr President, the Government said that it would not provide assistance to a provisional legislature. In saying so, does the Government mean the provisional legislature as a whole or does it mean members of the provisional legislature only? It is because they can seek the Government's assistance through other people.*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Mr President, our commitment is to do our best to co-operate with the Chief Executive (Designate) in areas where there are reasonable and identified common grounds in future. As for what assistance the Chief Executive (Designate) will require from the Government and how we will co-operate in future, it is absolutely inappropriate for us to hazard a guess at this stage. We hope to further discuss the matter with the Chief Executive (Designate) subsequent to the completion of the selection process.

**MRS ELIZABETH WONG:** *Mr President, is the Secretary's stand, explained in his reply, reflecting in full the stand of the Civil Service as a whole?*

**SECRETARY FOR THE CIVIL SERVICE:** Mr President, what I have said reflects the stand of the Government as a whole.

**MR LEUNG YIU-CHUNG** (in Cantonese): *Mr President, the Government mentioned in paragraph 5 of the main reply that during his recent meeting with the British Foreign Secretary at the Hague, Vice Premier QIAN Qichen said that until 30 June 1997 the Governor, the Privy Council and the current Legislative Council would have plenipotentiary power. Does this imply that the Legislative Council must be dissolved after 30 June 1997? If the answer is yes, does it mean that the British Government has accepted the reality that the provisional legislature will exist? Besides, what actions will the British Government take in abidance by the Joint Declaration, to deal with the dissolution of the current Legislative Council?*

**PRESIDENT:** I am afraid this is outside the scope of the original question.

**MR ANDREW CHENG** (in Cantonese): *Mr President, in its brief to the Chinese side on matters relating to the provisional legislature, the Hong Kong Government suggested that it would be more appropriate for the Chief Executive (Designate) and the officials (designate) to be responsible for making preparations for repealing and amending laws. In saying so, does the Government mean that it will assist the provisional legislature in its work via the Chief Executive (Designate) and the officials (designate), "secretly passing Chencang", so to speak, and changes its dissenting attitude towards the provisional legislature and its position of not assisting the provisional legislature?*

**PRESIDENT:** Secretary, you may answer without countering the argumentative part.

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Mr President, the allusion of "secretly passing Chencang" originated from the "bibliography of Emperor GAO of the HAN Dynasty" as documented in "Shiji" (A Book of

Historical Records). It is recorded that during the war Generals LIU Bang and HAN Xin, in the guise of repairing the path along the cliff, secretly passed over the place called Chencang. The purpose for their doing so was to stage a sudden attack on the enemy and to seize power of the state .....

**PRESIDENT:** Secretary, I am afraid this is not an answer.

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Mr President, I am trying to answer Mr CHENG's question.

**PRESIDENT:** It is very interesting. But .....

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): May I go on replying now?

**PRESIDENT:** Please tackle the question, shorn of all arguments.

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): My answer is: the Hong Kong Government will strictly abide by and observe the provisions in the Joint Declaration and the Basic Law. We do not intend to launch a sudden attack or do anything else. Our only objective is to abide by the Joint Declaration and the Basic Law.

**MR ALBERT HO** (in Cantonese): *Mr President, may I ask whether the Government will allow senior civil servants, in particular branch secretaries, to firmly hold onto the position of civil servants and be loyal to the Hong Kong Government when they are at work in the daytime but assist the provisional legislature in their personal capacity after they finish work in the evening, and tacitly allow the adoption of one approach during the day and another in the evening, hence, the practice of double allegiance?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Mr President, the Government has stringent stipulations governing the acceptance of other duties by civil servants outside office hours. Article 553 of the Civil Service Regulations clearly sets out the conditions under which civil servants can take up jobs other than their official duties. One of the points clearly stipulated in the Regulations is that there cannot be any conflict of interests. Should there be a conflict of interests, the civil servants concerned must obtain the approval of the head of department before taking up such jobs.

**PRESIDENT:** Mr Albert HO, are you claiming that your question has not been answered?

**MR ALBERT HO** (in Cantonese): *In fact, I only want the Secretary to answer the last part of the question. Will he allow civil servants to do so? Will he still allow them to take up such jobs in the evening, even though there is a conflict of interests?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Mr President, generally, we do not wish to make judgments on hypothetical applications or applications which have not been submitted. Yet, should we encounter such circumstances, we will basically consider whether the acceptance of these duties by the officials concerned is in conflict with the fundamental position of the Government. The Government's position in this respect is very clear.

**MR LEE WING-TAT** (in Cantonese): *Mr President, it is stated in paragraph 3 of the main reply that until July 1997, the only constitutional legislature in Hong Kong is the current Legislative Council. As far as I know, the legislative function of the current Legislative Council is derived from two constitutional documents, namely the Letters Patent and the Royal Instructions. Is the Government suggesting that the setting up of a provisional legislature which claims to have legislative functions before 1997 is in violation of the Letters Patent and the Royal Instructions? If so, will the Government inhibit the Selection Committee, by way of an injunction, from selecting a provisional*



*legislature, which claims to have legislative functions?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Mr President, as this question has gone beyond the jurisdiction of the Civil Service Branch, if you give me leave, may I invite my colleague, the Secretary for Constitutional Affairs, to answer the question for me?

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Mr President, I have tried on various occasions to state clearly the position of the Hong Kong Government and quite a number of reports relating to our position have also been made. Just now my colleague, the Secretary for the Civil Service, has reiterated the position of the Hong Kong Government on the provisional legislature. We will not do anything to jeopardize the status and authority of the current Legislative Council. This position is crystal clear. In response to the hypothetical question Mr LEE has raised earlier, I think I have to answer it in the usual way and that is, we cannot give a hypothetical reply.

**PRESIDENT:** Mr LEE, are you claiming that your question has not been answered?

**MR LEE WING-TAT** (in Cantonese): *Yes, Mr President. My question is not hypothetical. I would like the Secretary to clarify a point which was indeed mentioned in paragraph 3 of the main reply. It was said that until 1997, the only constitutional legislature in Hong Kong is the current Legislative Council. My question is: does a provisional legislature, which claims to have legislative functions, violate the Letters Patent and the Royal Instructions? Thus, this is not a hypothetical question.*

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Mr President, I do not intend to give a non-legal explanation or answer to a so-called legal problem. In my view, if a legal problem is involved, there are certainly other ways to give an answer and to pass judgement on it.

**MR LEE WING-TAT** (in Cantonese): *Mr President, if the Secretary for*

*Constitutional Affairs cannot give me a reply, will he ask the Attorney General (who is now in this Council) to answer my question on behalf of the Government? If he does not see the need to do so, perhaps he may give me a reply in writing. My question is whether a provisional legislature which claims to have legislative functions violates the Royal Instructions and the Letters Patent?*

**PRESIDENT:** Mr LEE Wing-tat, you have put yourself out of order. You are seeking the expression of a legal opinion as the solution to a legal problem.

**MR ERIC LI** (in Cantonese): *Mr President, I fully understand that government officials must firmly hold onto the position of the Government at all times. That is to say, they have to remain politically neutral. However, I do not understand what the Secretary for the Civil Service has said earlier. He said that civil servants taking up duties in their personal capacity outside working hours, say, on holidays, will entail a conflict of interests. A conflict of interests and the Government's position are two entirely different matters. If they work for other institutions, organizations or people .....*

**PRESIDENT:** Mr LI, please come to the question.

**MR ERIC LI** (in Cantonese): *May I ask why interests are involved? Where do these interests come from? If this is not a matter of interests, it may in essence be a question of allegiance. May I ask whether all civil servants in Hong Kong are required to swear allegiance to the Hong Kong Government or the British Government before they join the Civil Service?*

**PRESIDENT:** I take your second part as the same question.

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Mr President, the term "interests", in a broad sense, does not only refer to pecuniary interests. Let me cite an example. If it is the Government's policy to discourage smoking and when a senior civil servant seeks permission to work for a tobacco company after 8.00 pm, we will not allow this civil servant to do so even though he or she is not

remunerated. Therefore, under these circumstances, particularly when it concerns senior civil servants, it is impractical to disregard the Government's policy and position as factors that would be considered when interests are being taken into account.

## WRITTEN ANSWERS TO QUESTIONS

### Hospital Authority Savings

7. **MR MICHAEL HO** asked (in Chinese): *It is learnt that, in order to fund new services, the Hospital Authority instructed all public hospitals to raise their productivity in order to achieve savings from the allocations provided to them, at the rates of 1%, 2% and 3% respectively in the past three financial years. In this connection, will the Government inform this Council:*

- (a) *whether the Hospital Authority has asked all public hospitals to submit detailed information on the savings achieved through enhancing productivity;*
- (b) *whether the Hospital Authority Board has discussed such information; and*
- (c) *whether the Hospital Governing Committees of individual public hospitals have discussed such information?*

**SECRETARY FOR HEALTH AND WELFARE** (in Chinese): Mr President, the established practice of requiring individual hospitals to achieve productivity gains is a mechanism intended to create incentives for managers to enhance cost-effectiveness by rescheduling of duties, restructuring of work or re-engineering of processes. In many cases, productivity gains are notional and will only lead to better staff deployment or quality of service rather than quantifiable savings.

A reporting framework is in place for the Hospital Authority Head Office to capture and collate information about ways in which productivity gains have been achieved. The Hospital Authority Board has also been kept informed of the broad approach, methodology and parameters adopted by individual hospitals

in meeting their targets.

Productivity gains are integral to the annual plan and budget of individual hospitals, both of which are endorsed and monitored by the respective Hospital Governing Committees.

### **Prisoners Injured or Killed in Custody**

8. **MR CHOY KAN-PUI** asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the number of prisoners injured or killed as a result of being physically assaulted whilst in the custody of the Correctional Services Department (CSD), in each of the past three years;*
- (b) *of the reasons for the occurrence of such incidents; and*
- (c) *whether family members of the prisoners killed in those incidents have been granted any compensation?*

**SECRETARY FOR SECURITY** (in Chinese): Mr President, our reply to the three parts of the question is as follows:

- (a) There were no deaths resulting from assaults among prisoners in the three years 1993 to 1995. There was, however, an assault incident in Lai Chi Kok Reception Centre on 28 April this year, which resulted in one fatality — the first fatal case in recent years. The number of prisoners injured by assaults was 408 in 1993, 510 in 1994, 520 in 1995 and 193 in 1996 (up to April).
- (b) The reasons for these assaults were mostly personal grudges or disputes. A small number of assaults were due to bullying or to cigarette debts (cigarettes are used as money in gambling in prisons). The cause of the fatal assault case in April this year is still under the Police investigation.
- (c) Any prisoner who feels that he has a case to claim compensation for

injuries caused by another person may seek compensation or damages through legal proceedings. The same applies to family members of prisoners killed while in custody. So far, there have been no cases where compensation was sought or awarded.

### **News Coverage of Sovereignty Handover**

9. **MR LEE WING-TAT** asked (in Chinese): *With regard to the ceremony for the handover of sovereignty in 1997, will the Government inform this Council:*

- (a) of the estimated number of overseas journalists coming to the territory to cover the event;*
- (b) what assistance will be provided to these journalists; and*
- (c) whether overseas journalists coming to the territory to cover the event will be required to obtain prior approval from the authorities concerned; if so, whether the Chinese Government's consent to such an arrangement will need to be sought?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): Mr President, my reply is as follows:

- (a) To assess media interest, the Information Services Department conducted a survey with local and overseas news organizations in April. The returns received to date indicate about 2 300 media personnel plan to cover the handover ceremony and related events. However, as there are some 13 months to go before the handover, we expect that more news organizations may come forward and that the ultimate number may reach several thousands.
- (b) As the handover ceremony is a historical event for Hong Kong we fully intend to make proper arrangements to facilitate media coverage by, for example, establishing a press and broadcasting centre for this purpose to facilitate the coverage of the handover ceremony and other related events.

- (c) The current system of allowing foreign journalists to visit Hong Kong without restriction and to report on developments in the territory will continue. The Government has no intention of making any change in the current practice of media coverage of major events.

### **Vehicles Hitting Overhead Bridges**

10. **MRS MIRIAM LAU** asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the total number of accidents involving vehicles hitting overhead bridges in the past three years arising from vehicles (including the goods which they carried) exceeding the stipulated height limit and the owners of such vehicles failing to notify the police and the Transport Department beforehand;*
- (b) *how the authorities concerned will enforce the provision in the Road Traffic Ordinance stipulating that the height of heavy goods vehicles should not exceed 4.6 m; and*
- (c) *what measures will be adopted to prevent the occurrence of this kind of accidents?*

**SECRETARY FOR TRANSPORT** (in Chinese): Mr President, since May 1993, there have been 10 reported cases resulting in damage to overhead bridges. Details are annexed. Such damage is believed to have been caused by the vehicles with overheight loads.

Under the Road Traffic (Traffic Control) Regulations, it is an offence to drive a vehicle which, together with its load, exceeds 4.6 m. The law does not provide for any exemption.

To obtain registration, goods vehicles must pass both a documentation check and a pre-registration examination to ensure that, amongst other things, the specified height is complied with. Vehicle heights are also checked at annual inspections. So far we have not come across any vehicle coming for annual

inspection exceeding the prescribed height limit.

As a matter of course the Director of Highways will examine any footbridge/flyover that has been damaged to determine whether, apart from repairs, any other measures need to be taken. For example, because of the number of incidents involving the footbridge across Lung Cheung Road at Wong Tai Sin, its main span has recently been rebuilt to increase the headroom to enhance safety.

As regards preventive measures and publicity, detailed advice is already included in the Code of Practice for the Loading of Vehicles. This advice will be reinforced at Transport Department's regular meetings with representatives of the trucking industry. An article will also be included in the summer edition of the Department's Road Safety Quarterly.

Annex

Damage caused to footbridges/flyovers  
by overheight vehicles over the last three years

<i>Date</i>	<i>Location</i>
22 October 1993	Footbridge at Lung Cheung Road near Wong Tai Sin.
13 January 1994	Footbridge at Lung Cheung Road near Wong Tai Sin.
23 July 1994	Footbridge at Clear Water Bay Road near Ping Shek Estate.
20 August 1994	Footbridge at Wong Chuk Hang Road near Aberdeen Sports Ground.
11 October 1994	Footbridge at Lai Chi Kok Road near Cheung Shun Street.
11 November 1994	Footbridge at Chai Wan Road near Wan Tsui Road Junction.
11 March 1995	Footbridge at Lung Cheung Road near Wong Tai Sin.

<i>Date</i>	<i>Location</i>
3 April 1995	Vehicular Underpass at Castle Peak Road near Fung Kat Heung, Yuen Long
29 May 1995	Footbridge at Lung Cheung Road near Wong Tai Sin.
1 May 1996	Footbridge at Lai Chi Kok Road near Cheung Shun Street.

### **Personal Safety of Hong Kong Residents in Border Areas**

11. **MRS SELINA CHOW** asked (in Chinese): *Will the Government inform this Council whether :*

- (a) it has any information showing the number of cases in which Hong Kong residents were robbed or had their property stolen while crossing the border at Lowu and Shenzhen in the past three years;*
- (b) the police has taken the initiative to conduct investigation with a view to ascertaining the actual number of pick-and-steal crimes, including those which have not been reported, so as to understand the actual situation regarding the occurrence of such crimes at the border;*
- (c) the police will co-operate with the Mainland Public Security Bureau to combat pick-and-steal crimes committed by pickpockets from both territories; and*
- (d) the authorities concerned will reflect to the Mainland authorities either directly or through the liaison officers of the Public Security Bureau stationed in Hong Kong, the situation regarding the occurrence of robbery and theft crimes at the border and urge them to improve law and order at the Lowu border area, so as to safeguard the property and personal safety of Hong Kong residents travelling between the territory and mainland China?*



**SECRETARY FOR SECURITY** (in Chinese): Mr President,

- (a) the number of reported cases of Hong Kong residents being robbed or having their property stolen while crossing the border at Lowu and Shenzhen are as follows:

<i>Year</i>	<i>Robbery</i>	<i>Pick-Pocketing</i>	<i>loss*</i>
1994	0	14	234
1995	0	9	109
1996 (Jan - Apr)	0	1	32

\* These cases are reported as loss but some of them may involve pick-pocketing.

- (b) The police set up a dedicated Task Force in December 1994 to tackle the problem of pick-pocketing at Lowu. The Task Force collates and analyzes relevant data and intelligence on pick-pocketing activities at Lowu to identify the patterns and blackspots of such crime. As can be seen from the figures at (a), the problem has been contained but the police will closely monitor the situation and take appropriate measures accordingly. The police have not conducted any survey on the number of non-reported cases of such crime.
- (c) The Police maintain close liaison with the Shenzhen Public Security Bureau through the Border Liaison Channel to combat crimes at the border between Lowu and Shenzhen, including pick-pocketing.
- (d) We have well-established channels of communications between the Police and the Shenzhen Public Security Bureau to take up matters related to crime at the border. Given such channels, it is not necessary to go through the liaison officers of the Public Security Bureau stationed in Hong Kong on this matter.

**Public Utilities' Engagement of Debt Collection Companies**

12. **MR ALBERT CHAN** asked (in Chinese): *Recently, I have received complaints from the public that Hongkong Telecom has engaged debt collection companies to collect arrears in payment from its customers, which has caused harassment to the customers concerned. In view of this, will the Government inform this Council:*

- (a) *whether it plays any monitoring role over the engagement of debt collection companies by public utilities companies to collect arrears from their customers; and*
- (b) *to which government departments the public can go for lodging complaints about such harassment?*

**SECRETARY FOR ECONOMIC SERVICES** (in Chinese): Mr President,

- (a) existing legislation governing the operation of the public utilities companies does not contain provisions empowering the relevant authorities to regulate the employment of debt collection agencies to collect arrears from customers. Of the public utilities companies which are subject to government regulation, only three fixed telecommunication network services operators, that is the Hong Kong Telephone Company Limited (HKTC), New T&T and Hutchison Telecommunications, and the Hongkong Telecom International Limited (HKTI) employ debt collection agencies to collect outstanding payments from customers. We understand that the debt collection mechanism is subject to close monitoring by the companies concerned to avoid harassment to their customers. For instance, in the case of the HKTC and the HKTI the debt collection agencies are thoroughly vetted by the companies, correspondence issued by the agencies to customers needs the prior approval of HKTI or HKTC, and the agencies are instructed not to contact the customers at unsocial hours.
- (b) Should members of the public encounter harassment from debt collection agencies, they should lodge a complaint with the company to which the debt collection agencies work. Failing a satisfactory

resolution of the problem, members of the public should report the case to the police. They may also solicit assistance from the relevant monitoring authorities if they so wish; for example, cases relating to telecommunications companies may be directed to the Office of the Telecommunications Authority.

### **Security at Public Hospitals**

13. **DR DAVID LI** asked: *It was reported recently that the lax security arrangements in Queen Elizabeth Hospital had given rise to an incident in which a patient, who had been reported missing, was found three days later to be hiding on the roof of the Hospital. In this connection, will the Government inform this Council:*

- (a) of the number of cases involving the disappearance of patients from public hospitals in the past three years; and*
- (b) of the security measures currently adopted by public hospitals to prevent patients from running away and whether the public hospitals will step up these measures?*

**SECRETARY FOR HEALTH AND WELFARE:** Mr President, given that the statistical data on disappearance of patients are captured and collated on a systematic basis by the Hospital Authority only since January 1996, the requested information is not available for 1994 and 1995. However, a total of 159 such cases were reported in the first quarter of 1996, a majority of which involved Vietnamese boat people, illegal immigrants or drug addicts.

Patients wishing to leave the ward to which they have been assigned should first inform the hospital staff, who will monitor closely the number and location of individual patients. Furthermore, standard procedures are in place to contact the family and to initiate a search in cases where patients are found missing. Assistance from the police will also be sought, if necessary.

Given the nature of hospital services, additional measures to prevent patients from running away must be balanced against their interest to enjoy freedom of movement and an open ward environment. A number of measures

have been adopted in the last few years to strengthen the internal security of public hospitals. These include security access control system, electronic tagging system for babies, automatic door alarm and close circuit television. Apart from training programmes aimed to sharpen the security awareness among hospital staff, each hospital has also appointed an officer to co-ordinate security measures and to train up the responsible personnel.

### **Five-year Comprehensive Redevelopment Programme**

14. **MR FRED LI** asked (in Chinese): *With regard to the Five-year Comprehensive Redevelopment Programme from 1996-97 to 2000-01 recently announced by the Housing Authority (HA), will the Government inform this Council:*

- (a) *whether units will be reserved in the redeveloped public housing estates for rehousing those affected tenants who are included in the Programme; if so, please provide a list showing the details;*
- (b) *of the number of public rental housing sites which will be used to build Home Ownership Scheme flats after clearance, thus reducing the chance of the affected tenants in being rehoused locally;*
- (c) *how the HA will ensure that the number of new public housing units is adequate for rehousing affected public housing tenants locally; and*
- (d) *in regard to Blocks 5 to 6 of Lam Tin Estate which have been included in the redevelopment programme for the third time, what the reasons were for deferring the redevelopment works of these two blocks twice before and, in view of this, what measures the HA will take to ensure that the latest Comprehensive Redevelopment Programme will be completed on schedule?*

**SECRETARY FOR HOUSING** (in Chinese): Mr President, a proportion of units will be reserved in some new public rental housing estates for rehousing tenants affected by the recently announced Comprehensive Redevelopment Programme (CRP) during the planning period from 1996-97 to 2000-01. Details

of rehousing arrangements will only be decided nearer the time of formal announcement of clearance.

CRP sites to be used partly for construction home ownership flats are mainly located in the urban areas and Tsuen Wan, including Tsz Wan Shan, Wang Tau Hom, Lok Fu, Sau Mau Ping, Lam Tin, Yau Tong, Ko Chiu Road, Tin Wan, Wan Tsui and Shek Yam. These Home Ownership Scheme developments will not significantly affect the local rehousing of CRP tenants.

In planning the CRP, the HA considers the demand for local rehousing and the availability of reception flats, including both new and vacated flats, and will, as far as possible, ensure that sufficient reception flats are available to meet demand. Affected tenants may choose new or vacated flats depending on their own needs, preferences and financial situation. Some may choose to move out of the original districts, or to purchase home ownership flats.

Redevelopment of Blocks 5 and 6 of Lam Tin Estate was planned for 1999-2000 when the relevant CRP was announced in 1995. The timing has been rescheduled on one occasion only to 2000-01 when the CRP for the period from 1996-97 to 2000-01 was announced recently.

The redevelopment was rescheduled by one year because the construction programme of the relevant reception estates depends on the timing of relaxing airport height restrictions in East Kowloon. As these restrictions will be relaxed when the Hong Kong International Airport at Kai Tak is replaced by the new airport at Chek Lap Kok, which is scheduled to open in April 1998, the revised timing will enable us to maximize the development potential of the relevant reception estates.

### **Opening-up Contract Officer Posts**

15. **MR IP KWOK-HIM** asked (in Chinese): *It is learnt that since the Government started to open up the posts previously held by contract officers for competition by civil servants, for over a year only one-fifth of such posts have been opened up. In this connection, will the Government inform this Council:*

- (a) *of the total number of posts which have been included in the "opening up" arrangement and the departments to which these posts belong, as well as the expected date at which all these posts will be opened up;*
- (b) *whether the progress of opening up these posts is on target; if not, what plans are in place to speed up the progress; and*
- (c) *whether the Government has encountered any difficulties in opening up these posts; if so, what the difficulties are?*

**SECRETARY FOR THE CIVIL SERVICE** (in Chinese): Mr President, the opening up arrangement was introduced in December 1994. It applies to positions in promotion ranks which are occupied by agreement officers whose agreements expire on or after 1 September 1995. Such a position will be opened up for competition when an overseas agreement officer who is a permanent resident seeks a further agreement modelled on local conditions or when a local agreement officer seeks a further agreement on his existing terms. When a position is opened up, the incumbent and eligible officers one rank below can apply to compete for the position. A selection board would be formed to select the most suitable person for the position.

We estimated that 591 agreement officers in promotion ranks whose agreements expire on or after 1 September 1995 would be affected by the arrangement. A breakdown of these agreement officers by departments is at Appendix. Since the introduction of the opening up arrangement in December 1994, 124 positions have been opened up for competition and 41 positions are in the process of being opened up.

There are situations where the opening up arrangement does not apply to the 591 positions mentioned above. These include officers who choose to renew their agreements on overseas terms; local officers who have been approved to transfer to the permanent and pensionable establishment before the temporary suspension of such applications on 31 October 1995; and officers who decide not to seek renewal of their agreements. So far, 231 positions were not opened up for any one of the reasons above.

The opening up of the remaining positions would depend on when and how the officers choose to seek further employment with Government. An officer is only required to exercise his option for further employment 12 months before the expiry of his agreement.

The opening up arrangement is being implemented and there are no major difficulties.

## Annex

Breakdown of agreement officers in promotion ranks by departments  
(as estimated in 1994)

<i>Department</i>	<i>No. of officers</i>
Architectural Services	40
Buildings	18
Civil Aviation	25
Civil Engineering	103
Health	13
Environmental Protection	22
Government Flying Service	22
Government Secretariat	22
Housing	40
Industry	13
Information Services	12
Legal	99
Legal Aid	14
Lands	20
Official Receiver's Office	24
Radio Television Hong Kong	28
Rating and Valuation	10
Transport	12
Water Supplies	10
Other departments	44
Total	591

**Green Manager Scheme**

16. **DR JOHN TSE** asked (in Chinese): *Regarding the Government's implementation of the Green Manager Scheme which aims to reduce the consumption of paper and electricity in government departments, will the Government inform this Council:*

- (a) of the government departments which have appointed Green Managers, and the respective ranks which they hold, since the implementation of the Scheme;*
- (b) of the breakdown by department of the savings achieved in the consumption of paper and electricity since the implementation of the Scheme;*
- (c) whether the Government has other follow-up plans to achieve further reduction in the consumption of the above resources; and*
- (d) of the departments which still submit reports to the Planning, Environment and Lands Branch on the progress of the Scheme?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Chinese): Mr President,

- (a) Since the implementation of the Green Manager Scheme in January 1994, all 19 government branches and 67 government departments have appointed Green Managers. They are usually at directorate or branch/departmental secretary level.
- (b) The breakdown by department/branch of the savings in paper/electricity consumption is at Annex. Overall, the savings achieved in 1995 are:
  - paper consumption decreased by 22%;
  - waste paper collection increased by 11%; and



- electricity consumption decreased by 6%.
- (c) Further reductions in the consumption of electricity are expected to be achieved through the energy audit programmes conducted by the Electrical and Mechanical Services Department for selected public buildings, which have saved \$10 million in electricity consumption since 1993. \$6 million has been set aside to implement energy saving measures which require capital investment for the next three years for 20 government buildings. To promote further reductions in paper consumption, the Government has commissioned a life cycle study to establish whether the use of recycled paper could help reduce the consumption of virgin pulp. Green Managers will also be encouraged to achieve further reductions in paper consumption.
- (d) All the 19 branches and 67 departments submit quarterly reports to the Planning, Environment and Lands Branch.

Annex

Branch/department	Paper Consumption	Remarks	Electricity Consumption	Remarks	Waste Paper Collection	Remarks
	Difference 94 1-4 qtr c.f. 95 1-4 qtr		Difference 94 1-4 qtr c.f. 95 1-4 qtr		Difference 94 1-4 qtr c.f. 95 1-4 qtr	
D of Adm, CS	-43.66%		1.20%		219.60%	
Central Policy Unit	15.83%	50 more reports		Joint user	-8.12%	
Chinese Lang Division, CS	41.64%	Bilingual Laws Advisory Committee		Joint user	-37.94%	
Civil Service Branch	-6.54%			Joint user		
Civil Service Trg Dev Institute, CS	39.56%	Self learning packages	8.41%			
Constitutional Affairs Branch		No figure for 94		Joint user		
Economic Services Branch	-13.15%			Joint user	-45.65%	
Education and Manpower Branch	-16.18%			Joint user		
Finance Branch	-44.88%			Joint user		
Financial Services Branch	247.15%	New activities	38.74%	New Division set up	255.00%	
Health and Welfare Branch	-13.86%			Joint user		
Home Affairs Branch		No figure for 94	-99.77%		-98.49%	
Housing Branch		No figure for 94		No figure for 94		
PELB and WB	5.97%		-1.84%		176.52%	
Political Adviser's Office	21.05%			No figure for 94		
Recreation and Culture Branch	19.44%	New Ordinances	10.45%	Excluding Rev Tower	8.25%	
Security Branch		No figure for 94		No figure for 94		
Trade and Industry Branch	-1.08%			Joint user		
Transport Branch	-28.84%		0.10%			
Agriculture and Fisheries Dept	0.00%		0.68%		3.15%	
Auxiliary Medical Services	2.94%		1.15%		-1.58%	
Architectural Services Dept	45.12%	due to ISO9000 documentation	0.60%		-3.89%	
Audit Department	-6.21%			Joint user		
Building Department	18.24%	New forms due to office removal		No figure for 94		
Census and Statistics Department	-15.52%		38.17%	due to By-census & GNP Proj.	-26.04%	
Civil Aid Services	-3.73%		4.53%		29.01%	
Civil Aviation Department	-1.38%		6.29%		3.29%	
Civil Engineering Department	-25.91%		-2.19%		-17.27%	
Com for Adm Complaints		Some figure missing	82.59%	new office	40.00%	
Companies Registry	-32.73%			Joint user		
Correctional Services Department	2.67%		18.41%	New Division and new equipment		

Customs and Excise Department	40.64%		4.94%		-26.12%
Drainage Services Department	5.88%			Move to new office in 95	
Education Department	-28.91%		-4.35%		10.38%
Branch/department	Paper Consumption	Remarks	Electricity Consumption	Remarks	Waste Paper Collection
	Difference 94 1-4 qtr c.f. 95 1-4 qtr		Difference 94 1-4 qtr c.f. 95 1-4 qtr		Difference 94 1-4 qtr c.f. 95 1-4 qtr
Elect & Mech Services Dept	9.53%		-1.47%	Kln Workshop & E Div HQ Incl.	-66.91%
Envrionmental Protection Dept	3.50%			No figure for 94	3.80%
Fire Services Department		No figure for 94		No figure for 94	
Government Flying Service	-17.25%		3.88%		-55.46%
Gov't Land Transport Agency	11.17%			Joint user	
Government Laboratory		No figure for 94		No figure for 94	
Gov't Property Agency	-27.52%			Joint user	
Gov't Supplies Department	0.21%		-3.40%		
Department of Health	9.75%		3.40%		18.55%
Highways Department	-6.61%		25.72%	New office included in Nam Fung C	5.25%
Home Affairs Department	-8.43%		10.99%		31.46%
Hong Kong Monetary Authority		No figure for 94	13.74%	Extension of office & OT	
Hospital Services Department	-5.88%		-2.85%		133.11%
Housing Department	-22.68%		1.24%		34.26%
ICAC	66.97%	New activities	9.98%		-27.89%
Immigration Department	-4.32%		4.48%		434.27%
Ind Police Complaints Council	14.85%		5.63%		17.65%
Industry Department	-1.47%		-0.13%		250.89%
Information Services Department	-20.46%		5.79%		1.58%
Information Tech Services Dept	-19.92%			Joint user	-18.98%
Inland Revenue Department		No figure for 94	-14.14%		-14.10%
Intellectual Property Department	7.70%		4.57%		
Judiciary	43.05%	Office expansion & new services	4.01%		68.68%
Labour Department	26.00%	New Code of Practice	4.44%		-16.66%
Land Registry	-12.62%			Joint user	
Lands Department	-3.67%			Joint user	
Legal Aid Department	19.86%			Joint user	
Legal Department		No figure for 94		Joint user	
Marine Department	-9.94%		1.09%		-9.91
Official Receiver's Office		No figure for 94		Joint user	
Planning Department	-45.43%		10.21%		
Post Office	-3.48%		1.73%		-9.71%
Printing Department	-99.44%		13.97%		-8.71%
Public Service Commission		No figure for 94	4.56%		
Radio Television HK	-12.75%		2.33%		-4.23%
Rating and Valuation Department	11.30%	due to Rate Asst Sect	22.86%	due to expansion of office	-0.75%
Regional Services Department	18.52%		21.12%		-1.49%
Royal HK Police Force	6.35%		12.15%		14.15%
Royal Observatory	-18.93%		-2.99%		39.42%
SC on Disciplined Ser S & CS	-26.19%		-4.17%		75.00%
SC on Civil Services S & CS	-33.82%		-14.54%		0.00%
Student Financial Asst Agency	0.52%		7.67%		
Social Welfare Department	5.00%		11.62%		-60.57%
Telcommunications Authority	15.12%		39.11%		-22.72%
Territory Development Dept	28.57%	operational rqd - more reports	8.89%		-6.31%
Trade Department	-12.01%		2.06%		24.18%
Transport Department	3.72%			Joint user	
Treasury	-14.29%			Joint user	
TV & Entertain Licencing Authority	-0.29%			Joint user	
University Grant Committee	-1.43%		28.36%	New accommodation from September 95	101.36%
Urban Services Department	8.09%		2.31%		-4.63%
Water Supplies Department		No figure for 94		No figure for 94	
Overall	-22.08%		-5.52%		10.87%

\* The overall total and the percentage cover only those department/branches which have submitted both figures for 94-95 for comparison.

**British Citizenship for Non-ethnic Chinese Minorities**

17. **MISS EMILY LAU** asked: *In view of the statement by the Shadow Secretary of State for Foreign and Commonwealth Affairs on 1 May 1996 that the Labour Party would give full support to a government bill to grant British citizenship to the non-Chinese ethnic minorities in Hong Kong, will the Administration inform this Council whether it has stepped up efforts to urge the present British Government to bring forward such a bill in the United Kingdom Parliament and, if so, what the British Government's response is?*

**SECRETARY FOR SECURITY:** Mr President, the Hong Kong Government has consistently supported the case of non-Chinese ethnic minorities with sole British nationality for the grant of British citizenship. The British Government's guarantee, announced by the Prime Minister on 4 March 1996, of admission to and settlement in the United Kingdom in the unlikely event that they ever came under pressure to leave Hong Kong was a significant improvement on previous assurances given to this group. We will continue to put our case to the British Government whenever the opportunity arises. We welcome the support for this case from any quarter.

**Airline Check-in Counter Indicators at Kai Tak**

18. **MR HOWARD YOUNG** asked: *Regarding airline check-in counter indicators along the passage way leading to the vehicle drop-off area at the Departure Hall level of the airport at Kai Tak, will the Government inform this Council:*

- (a) *when such indicators were last updated; and*
- (b) *why indicators of some airlines which have been in operation at the*

*airport for quite some time have still not been put up?*

**SECRETARY FOR ECONOMIC SERVICES:** Mr President,

- (a) The airline check-in location signage along the passage-way leading to vehicle drop-off area at the Departure level will be updated when there are changes in the location of the airlines check-in areas. It was recently updated in April 1996.
- (b) There is not enough room along this passage-way to provide check-in location signage for all scheduled airlines serving Hong Kong, which at present comes to 52. The Director of Civil Aviation has consulted the Transport Department and the Airlines Operators Committee on this issue. To ensure that the location signage is readable by motorists and passengers in the cars, it has been agreed that check-in location signage be provided for 14 airlines with the highest passenger throughput at Kai Tak. These airlines together carry 83% of the total departing passengers.

### **Gambling Activities on Vessels Departing from Hong Kong**

19. **MR CHIM PUI-CHUNG** asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the current number of passenger vessels based in Hong Kong which carry passengers from Hong Kong to the high seas to take part in gambling activities on board such vessels;*
- (b) *whether it has considered introducing legislation to control gambling activities which take place on board such vessels outside the waters of Hong Kong; and whether there is any legislation regulating the provision of entertainment, food and beverage as well as steam bath activities on board such vessels; and*
- (c) *whether it has received complaints about betting on horse races of*

*the Royal Hong Kong Jockey Club through illegal bookmaking on board such vessels; if so, how the authorities concerned have handled such complaints?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): Mr President, my reply to the question is as follows:

- (a) According to our knowledge, there are two vessels which carry passengers from Hong Kong to the high seas on which gambling activities have reportedly taken place. As the reported vessels are not registered in Hong Kong, any such activities on board these vessels in international waters are not subject to Hong Kong laws (please see (b) below);
- (b) Government has not considered introducing legislation to control gambling activities on board such vessels outside Hong Kong waters because Hong Kong laws cannot be enforced outside Hong Kong, except on board a Hong Kong registered vessel, in which case persons committing offences in international waters are liable to prosecution under Hong Kong laws.

The Merchant Shipping (Safety) Ordinance (Cap. 369) regulates shipping safety in general. All passenger vessels based in Hong Kong and which operate excursion voyages from Hong Kong have to be inspected by Government Surveyors to ensure that they comply with our safety standards before they are allowed to clear the port of Hong Kong.

Regarding entertainment, under the Places of Public Entertainment Ordinance (Cap. 172), a licence will be required if public entertainment is provided on board a vessel within Hong Kong waters. The Urban Council and the Regional Council are the licensing authorities in their respective areas.

Regarding food and beverage, the Director of Health has advised that provisions under the Quarantine and Prevention of Disease Ordinance (Cap. 141) deal with investigations into food poisoning outbreaks and the sanitary conditions on board ocean-going vessels.

There is no particular legislation regulating steam bath activities on board such vessels; and

- (c) the police have advised that no complaints have been received about illegal bookmaking on horse races of the Royal Hong Kong Jockey Club on board these vessels.

### **Code of Banking Practice**

20. **DR LAW CHEUNG-KWOK** asked (in Chinese): *Will the Government inform this Council whether the Hong Kong Monetary Authority has considered the feasibility of the following proposals when drafting the "Code of Banking Practice":*

- (a) *before "selling" new banknotes at a price in excess of their face value, note-issuing banks be required to obtain approval from the Government and state clearly how the profits so generated will be used;*
- (b) *in offering retail monetary products to customers, banks be required to clearly set out in the relevant documents the "annual effective interest rates" to be charged and the penalty provisions for early settlement of loans;*
- (c) *everyday language be used in contracts made between banks and their retail banking customers;*
- (d) *formulating a set of guidelines on business conduct for compliance by debt collection agencies employed by banks; and*
- (e) *drawing up relevant guidelines to protect bank customers' right to privacy, having regard to some recent cases in which certain banks have changed the terms and conditions of their credit card contracts to the effect that they have the right to disclose the personal data of customers to a third party; and*

*if so, what the results are; if not, why not?*

**SECRETARY FOR FINANCIAL SERVICES** (in Chinese): Mr President, the Code of Banking Practice (the Code) covers the most commonly used banking services available to personal customers such as deposits, loans and credit cards. All issues raised in the question, apart from the first one, have been included in the draft outline of the Code. The issue of legal tender notes raised in part (a) of the question is specifically regulated by the Bank Notes Issue Ordinance and is outside the scope of the Code. In this connection, nothing in the laws of Hong Kong requires bank notes to be sold at their face value. There is indeed an established market for the sale of new and used notes as collectors' items where notes are transacted at prices different from their face value. The pricing of the notes sold to, for example, collectors remains a matter for the note-issuing banks.

The Working Group on the Code (the Working Group) is consulting the banking industry associations and the Consumer Council on the draft outline before proceeding to the detailed drafting of the Code. We are therefore not in a position at this stage to give definitive statements on specific recommendations on issues raised in parts (b) to (e) of the question. Nevertheless, the areas being considered by the Working Group in relation to these issues (using the same numbering as in the question) are as follows:

- (b) The Working Group will consider the need for authorized institutions (AIs) under the Banking Ordinance to provide general descriptive information to customers about the retail banking products being offered. In the case of loans and credit cards, this information may include, among other things, the basis on which interest will be calculated (including the need to specify the annualized percentage of interest) and the related fees and charges (including the penalty charges for early redemption or late payment);
- (c) The Working Group will consider the need for the terms and conditions in contracts between AIs and their customers to be expressed clearly in plain language to the extent that it is consistent with the need for legal certainty;

- (d) The Hong Kong Monetary Authority, in response to the complaints concerning the use of debt collection agencies by AIs received through the hotline established in April, issued a letter to all AIs in May 1996. AIs were advised to instruct their debt collection agencies in writing that the agencies must not resort to intimidation or violence, either verbal or physical, against any person in their debt recovery actions, and that AIs and their debt collection agencies must not try to recover debt from third parties including referees, family members or friends of the debtor if these persons have not entered into a formal contractual agreement with the AIs to guarantee liabilities of the debtor. Furthermore, AIs were asked to stop passing information about referees or third parties other than debtors or guarantors to their debt collection agencies. Further guidance on the use of debt collection agencies will be covered in the Code. The Working Group has agreed that this section, together with the section on personal referees, should be prepared and issued in advance of the rest of the Code. It is expected that these two sections will be issued around the end of June 1996; and
- (e) All AIs need to comply with the Personal Data (Privacy) Ordinance in the collection, use and holding of customer information. The Code will also provide further guidance on the confidentiality of customer information, such as the need for AIs to define clearly and specifically the circumstances in which customers' confidential information may be disclosed and to explain in a clear manner the reason for and the scope of disclosure when seeking customers' consent.

## **MOTION**

### **INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

#### ***THE SECRETARY FOR SECURITY to move the following motion:***

"That -

- (a) the Dangerous Drugs Ordinance (Cap. 134) be amended in section 51(2), by repealing "\$50,000" and substituting



"\$450,000";

- (b) the Dangerous Drugs Regulations (Cap. 134 sub. leg.) be amended in regulation 5(7), by repealing "fifty thousand dollars" and substituting "\$450,000".

He said: Mr President, I move the motion standing in my name on the Order Paper.

Section 100A(1) of the Interpretation and General Clauses Ordinance (Cap. 1) provides that the Legislative Council may, by resolution, amend any ordinance so as to increase the amount of any fine specified in that ordinance, as well as the amount of any fine specified in that ordinance as an amount that may be prescribed in subsidiary legislation made under the ordinance.

The motion before Members seeks to:

- (a) increase the maximum level of the fine specified under section 51(2) of the Dangerous Drugs Ordinance, from \$50,000 to \$450,000, as an amount that may be prescribed in subsidiary legislation made under the Ordinance; and
- (b) increase the maximum fine specified in Regulation 5(7) of the Dangerous Drugs Regulations, from \$50,000 to \$450,000, which may be imposed by the court for any offence in contravention of the record-keeping requirement stipulated in the Dangerous Drugs Regulations.

The Dangerous Drugs Regulations set out, *inter alia*, record-keeping requirements to be adhered to by an authorized person when supplying a dangerous drug. This is to ensure that full particulars of the acquisition and supply of dangerous drugs are recorded. Such records facilitate the monitoring of the acquisition and supply of dangerous drugs by authorized persons. The present maximum penalty stipulated under Regulation 5(7), and capped by section 51(2) of the principal Ordinance, for any offence in contravention of the record-keeping requirements, is \$50,000 and imprisonment for three years.

Taking into account the fact that the fine has not been revised since 1969, the seriousness of the offence, the community's concern about the problem of illicit sale of dangerous drugs, and the need to keep the fine at a sufficiently high

level to maintain its deterrent effect, we propose to increase the maximum level of fine from \$50,000 to \$450,000.

The Action Committee Against Narcotics, as well as the medical and pharmacist professions have been consulted and are in support of the proposal.

The Administration is determined to tackle the problem of illicit sale of dangerous drugs. As part of our overall efforts to tackle the problem, we have proposed to tighten the record-keeping requirements on the acquisition and the supply of dangerous drugs, through amendments to the Dangerous Drugs Regulations which are tabled in this Council this afternoon. The Amendment Regulations, if effected, will remove certain exemptions or alternative arrangements which are liable to abuse. The proposed increase in the maximum level of fines will serve to maintain the deterrent effect of penalties for offences in contravention of the record-keeping requirements.

Mr President, I beg to move.

*Question on the motion proposed.*

**DR LEONG CHE-HUNG:** Mr President, I support the motion on behalf of the medical profession. Having said that, I have to say that this does not touch the core of the matter. There are obviously black sheep in the medical profession, for example, who are basically peddling drugs, using the good name of medical treatment. What is being done now is not enough really to protect this particular movement. And I do hope that in the course of time, the Government, through different channels, could look into the ways and means to actually impinge or convict the illegal sale of drugs, even through the medical profession, as drug peddling and not just as keeping improper records. Similarly, the rampant illicit sale of drugs, in pharmacies and dispensaries across the counter, which are supposed to be sold only on prescription must also be tackled. I would urge the Government to really look at the core of the matter, for by just raising the fines, you are only touching the tip of the iceberg. Thank you.

**SECRETARY FOR SECURITY:** Mr President, I would like to thank Dr the

Honourable LEONG Che-hung's support for this motion. I certainly take to heart his urging that the Government should continue to look at and examine our legislation governing the sale of dangerous drugs to see how it may be improved and we will certainly do so. I hope that we will also have support of members of the community across different sectors and I hope we will get some useful advice and suggestions from them when we hold another meeting of the Governor's Summit on Drugs tomorrow. Thank you, Mr President.

*Question on the motion put and agreed to.*

## **BILLS**

### **First Reading of Bills**

#### **DOGS AND CATS (AMENDMENT) BILL 1996**

#### **TELECOMMUNICATION (AMENDMENT) BILL 1996**

#### **FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL 1996**

*Bills read the First time and ordered to be set down for Second Reading pursuant to Standing Order 41(3).*

### **Second Reading of Bills**

#### **DOGS AND CATS (AMENDMENT) BILL 1996**

***THE SECRETARY FOR ECONOMIC SERVICES to move the Second Reading of: "A Bill to amend the Dogs and Cats Ordinance."***

He said: Mr President, I move that the Dogs and Cats (Amendment) Bill 1996 be read a Second time.

The purpose of the Bill is to provide the legal and institutional structure necessary to support regulations safeguarding members of the public from serious attacks by dogs.

Existing legislation requires that a dog be kept on a leash in a public place, prohibits the keeping of a dog which persistently annoys or menaces neighbours or passers-by and prohibits anyone from allowing an unmuzzled ferocious dog into a public place. If a magistrate receives a complaint that a dog is dangerous, he may order that the animal be destroyed or kept under proper control. These provisions apply to dogs in general, without reference to specific breeds.

The Bill has three main provisions.

First, it enables a police officer or any other authorized officer to seize and detain any dog that has bitten or attacked any person and, subject to the outcome of any appeal, to destroy the dog if it has caused the death of a person. A dog can also be destroyed in circumstances where it cannot be seized without a serious risk to public safety or if a magistrate orders its destruction.

Secondly, the Bill provides for appeals against various decisions made, and actions taken, by the Director or an authorized officer under the Ordinance to be considered by the Administrative Appeals Board.

Thirdly, it proposes that a Dogs and Cats Classification Board be established to determine, on application to it, the breed of a dog or cat. The Board will have 11 members appointed by the Director of Agriculture and Fisheries after consideration of nominations made by tertiary education institutions, animal welfare associations, veterinary surgeons' organizations, dog breeding organizations and the Police Force.

Once the Bill has been passed by this Council, the Government intends to introduce Regulations which will classify dangerous dogs into three categories, namely, fighting dogs, known dangerous dogs and potentially dangerous dogs and set out the specific controls applicable to each category.

The "fighting dogs" category will consist of the Pit Bull Terrier and similar breeds. These dogs are liable to attack a person without provocation or warning and may inflict serious injuries or death. The proposed regulation will ban importation and breeding of such dogs. Possession of such a dog will also be prohibited unless it is neutered and covered by insurance to a value of not less than \$100,000 to indemnify damage caused by the dog. If the breeder of an existing fighting dog surrenders his dog to the Director for destruction during the

transitional period of 120 days, he will receive an *ex-gratia* payment of \$3,000.

The "known dangerous dogs" category will consist of individual dogs classified as such by a magistrate on application to him that the dog has a history of attacking and injuring people. Possession of such a dog will also be prohibited unless it is neutered and covered by insurance to a value of not less than \$100,000 to indemnify damage caused by the dog.

The "potentially dangerous dogs" category will consist of breeds including among others Staffordshire Terriers, Bull Terriers, and American Bulldogs. These breeds do not normally attack people without provocation but they have the size, strength and potential ferocity of a guard dog. Such dogs are capable of inflicting serious injuries on people if they attack.

Under the proposed regulation, it will be an offence to allow a dog in any of the three categories to go into or remain in a public place unless it is both on a leash and muzzled.

Mr President, I commend the Bill to this Council.

*Question on the motion on the Second Reading of the Bill proposed.*

*Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).*

## **TELECOMMUNICATION (AMENDMENT) BILL 1996**

***THE SECRETARY FOR ECONOMIC SERVICES to move the Second Reading of: "A Bill to amend the Telecommunication Ordinance."***

He said: Mr President, I move that the Telecommunication (Amendment) Bill 1996 be read a Second time.

It is the intention of the Administration that laws which may have impact on press freedom or the freedom of expression should be amended or repealed. Following a comprehensive review of all relevant legislation, sections 13C and 28 of the Telecommunication Ordinance were among the provisions identified which might affect press freedom or freedom of expression.

Section 13C(3)(a) empowers the Broadcasting Authority to include a condition in a radio licence under which the licensee may be required not to broadcast radio programmes which would contravene a direction by the Governor in Council or the Broadcasting Authority, or other regulations. This provision is considered excessive.

Clause 2 of the Bill repeals section 13C(3)(a). This is in line with the repeal of a similar power regarding television programmes. We will follow this up at the mid-term reviews of the radio licences by deleting the condition in those licences which reflects this section.

Notwithstanding the repeal of section 13C(3)(a), the Broadcasting Authority will retain the power to regulate the standards of radio programmes, and the courts will have the power to ban programmes in specific circumstances, as set out in section 13M of the Telecommunication Ordinance.

Section 28 makes it an offence to transmit a message known to be false by telecommunication. This provision is considered too vague and onerous.

Clause 3 of the Bill accordingly replaces section 28 by a new provision which prohibits the transmission of false or deceptive distress, safety or identification signals. This is in line with the requirements of Article 47 of the Constitution of the International Telecommunication Union.

Mr President, I commend this Bill to the Council.

*Question on the motion on the Second Reading of the Bill proposed.*

*Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).*

## **FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL 1996**

***THE SECRETARY FOR EDUCATION AND MANPOWER to move the  
Second Reading of: "A Bill to amend the Factories and Industrial  
Undertakings Ordinance."***

He said (in Cantonese): Mr President, I move the second reading of the Factories and Industrial Undertakings (Amendment) Bill 1996.

The Bill has two main purposes. The first is to empower the Commissioner for Labour to issue suspension notices and improvement notices. The second is to make it an offence for the non-compliance of the suspension notices or improvement notices by the parties concerned.

Under the existing Ordinance, the Commissioner for Labour does not have the power to stop related persons from working in a construction site, or any works or the operation of machinery therein. Even if the Commissioner may have reasons to believe that there is an imminent risk to the workers concerned, he has to apply for an order from a magistrate to do so.

Because the application for a court order usually takes considerable time, a serious accident could occur in the interim at the construction site concerned if the risks involved have not been effectively eliminated. The Bill therefore recommends that the Commissioner for Labour should be empowered to issue a notice to the proprietors and contractors concerned to suspend immediately any hazardous work, or the use of dangerous equipment, which is likely to give rise to an imminent risk of serious bodily injury to the workers.

The Commissioner for Labour will prepare clear departmental guidelines to ensure that a suspension notice will only be issued after internal clearance by officers of the appropriate rank in the Labour Department. The guidelines will also ensure that consistent standards are being applied. Any person aggrieved by the issue of a suspension notice may apply in writing to the Commissioner for Labour for a review. He can also appeal to the Administrative Appeals Board if he is not satisfied with the result of the review.

For less serious situation where workers are not exposed to an imminent risk, we propose that the Commissioner for Labour should be empowered to issue improvement notices to require proprietors and contractors to rectify breaches of the legislation within a specified period. Since ignoring an improvement notice is an offence, I believe that the new measure is more effective than the present system of issuing offenders with advisory letters. Proprietors and contractors should be more motivated to take positive measures to improve safety at work.

Since the new legislation does not require proprietors or contractors concerned to do anything new under the existing Ordinance, in the interest of

improving industrial safety we propose that the new legislation should come into force immediately.

Finally, the Bill proposes that the maximum penalty for contravening a suspension notice should be \$500,000 and 12 months' imprisonment, with an additional maximum fine of \$50,000 per day for every day that the contravention continues. These are set deliberately high because of the seriousness of the offence and the imminent risks it poses to life and limb.

Mr President, I beg to move.

*Question on the motion on the Second Reading of the Bill proposed.*

*Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).*

## **Resumption of Second Reading Debate on Bills**

### **IMMIGRATION (AMENDMENT) BILL 1996**

#### **Resumption of debate on Second Reading which was moved on 24 April 1996**

**MR AMBROSE LAU** (in Cantonese): Mr President, the Immigration (Amendment) Bill 1996 in its original version seeks to clarify that, if a request has been made to the Vietnamese Government for the repatriation of a certain Vietnamese migrant (VM), the court shall not find that the purpose of his detention has failed or become spent under section 13D of the Immigration Ordinance (the Ordinance) unless the request has been rejected by the Vietnamese Government or unless the court finds that, under the circumstances, the VM has been detained for an unreasonable period of time. The Secretary for Security has explained the background for the Bill when submitting it to this Council on April 24, 1996.

A Bills Committee was set up by this Council to study the Bill of which I was the Chairman. The Committee has held discussions with the Administration and considered submissions from six deputations. The Committee has also considered written representations from a number of interested organizations, professional organizations in law and individuals.



In studying the Bill, the Committee received strong objections to the contents of the Bill from some of the deputations. I will now concentrate on outlining the main issues of concern studied by the Committee.

Concern has been raised that the Bill seeks to reverse a decision made by the Privy Council, and the Committee doubts whether the reversion of the ruling of the Privy Council by way of legislation was appropriate in principle.

The Government considers that there is nothing wrong to propose an amendment to the law in respect of a court ruling. It argues that in Hong Kong's constitutional system, there is separation of powers among the Judiciary, the Executive and the Legislature. The Judiciary is vested with the task of interpreting the law, the Executive, to propose legislation which it considers to be in the public interest, and the Legislature to decide whether or not to enact the legislation. Hence, there is no question of disrespect to the Judiciary. The Administration has stressed that it is Government policy to detain VMs pending their removal from Hong Kong. The Administration believed that, prior to the Privy Council judgement, "pending removal" meant the time taken for arrangements to be made for the repatriation of a VM to Vietnam, including the time taken to secure a response from the Vietnamese authorities to the request for repatriation. The Court of Appeal supported this view, but the Privy Council ruled otherwise. In so doing, it created the loophole that undermines the detention policy. It is essential that the law be amended to carry out the necessary policy in the public interest. The proposed amendment is merely to restore the legislation to what was believed to be the true position before the Privy Council ruling.

The Committee is gravely concerned that if the Bill provides for arbitrary detention, it would contravene Article 9 of the International Covenant on Civil and Political Rights (ICCPR). The Article guarantees, *inter alia*, that "no one shall be subject to arbitrary detention". If the Bill contravenes any part of the ICCPR, it could be repealed by the court in accordance with Article VII(5) of the Letters Patent.

Mr President, Members must have known that the application of the ICCPR as applied to Hong Kong is restricted by certain saving clauses, and one of them relates to immigration legislation. In the view of some of the

deputations, the saving clause to the ICCPR entered by the United Kingdom on behalf of Hong Kong has no application to the Bill since the Bill does not relate to the entry into, stay in and departure from Hong Kong of a person not having the right to enter and remain in Hong Kong. The Bill does not affect the immigration status of any VM in Hong Kong. Members of the Committee have therefore sought clarification of the Administration's position concerning the applicability of the saving clauses.

The Government argues that the Bill does not tolerate arbitrary detention. It only provides the required legal framework to implement a detention policy relating to a mass influx of illegal immigrants from Vietnam. That policy is reasonable and necessary. The Administration also takes the view that the Bill is immigration legislation within the savings clause entered by the United Kingdom on ratification of the ICCPR in 1976. Hence, in regard to Hong Kong, the Bill is also within the applicability of the savings clause. The effect of the proposed amendment is to add, until Vietnam responds to a request for repatriation, a provision that it is a detention purpose to detain "pending response of the receiving country", in addition to "pending removal". This piece of legislation serves the immigration purpose relating to entry into, stay in and departure from Hong Kong as well as regulation of these matters. Therefore, there is no need for the Bill to be bound by the ICCPR and there is no inconsistency between the Bill and the Constitution.

As regards whether the Bill, if enacted, would lead to indefinite detention of those VMs who, because they are non-nationals of Vietnam, will not be accepted by the Vietnamese Government for return, the Administration explained that since August 1994, the Vietnamese Government has demonstrated very clearly its intention to give an acceptance or a rejection in every case. The Administration stresses there is no question of indefinite detention because the court, in applying section 13D(1A) of the Immigration Ordinance, has the power to find that the detention is unlawful by applying the "reasonable time" test.

Another issue of concern is that the Bill would undermine in determining the legality of detention in *habeas corpus* proceedings, the court's ability to consider all relevant evidence, one aspect being the Vietnamese Government's policy of not accepting non-Vietnamese nationals. The detention would only become unreasonable or unlawful when the Vietnamese Government had formally rejected a request for approval to remove the person concerned. However, this is something that cannot be controlled by the Hong Kong Government.

The Administration is of the view that there is no restriction upon a court in

considering whether detention has in its view become too long and therefore unreasonable under the Ordinance. The court's power to examine the detention purpose is not removed, but simply postponed until the relevant facts have been made available, that is, a response from the Vietnamese Government on whether or not to accept the VMs for repatriation. Without establishing these facts, any decision made by the court would be speculative and second guessing the reaction of a foreign Government.

To allay the above concern, the Administration has proposed Committee Stage amendments (CSA), which, in the Administration's view, will more clearly reflect its detention policy of VMs in that the purpose of their detention "pending removal" includes "pending a response from the Vietnamese Government" as to whether the migrant concerned is accepted for repatriation. The court, in applying the principles of reasonable length of detention, may at any time order the release of a detainee.

In deliberating the CSA proposed by the Administration, Members of the Committee hold different views. Some Committee Members consider that the Bill as amended will clearly state the Administration's policy of detention which is necessary and reasonable and have indicated that Members of the Liberal Party and the Democratic Alliance for the Betterment of Hong Kong will support the amended Bill. A Member of the Association for Democracy and People's Livelihood has indicated that on balancing the Administration's detention policy and the issues of human rights, Members of his party will support the amended Bill.

During the deliberation of the Bill by the Committee, the Legal Adviser indicated that the Bill, as amended in accordance with the proposal made by the Administration, could clearly reflect the Administration's detention policy towards VMs and would provide a stronger rationale for the Administration to successfully refute the allegation in respect of the Bill's permission for arbitrary detention. The Bill would also be consistent with the provisions of the ICCPR and the Letters Patent.

Some Committee Members have indicated their opposition to the amended Bill because it would undermine the foundations of freedom enjoyed in Hong Kong and would have grave implications on human rights.

The Honourable Miss Margaret NG holds the view that that purposed CSA is ambiguous. Later, she would move an amendment to the proposed Section 13

(1AB) in accordance with the proposals of the Bar Association. I will leave it to her to explain to Honourable Members details of her proposed amendment.

I believe that other Members would also elaborate on their views later. The above report is made by me as Chairman of the Bills Committee.

Mr President, my personal view is that the Administration's detention policy is reasonable and the Bill as amended can clearly reflect its policy objective.

With these remarks, I support the amendment proposed by the Government.

**MR CHAN KAM-LAM** (in Cantonese): Mr President, in order to plug the loopholes in the existing legislation, the Government drew the attention of this Council to the need of amending the Immigration Ordinance to ensure that the Administration can continue with its policy of detaining Vietnamese migrants (VMs) who are pending repatriation, without being overruled by the court again.

The Democratic Alliance for the Betterment of Hong Kong (DAB) thinks that given the actual needs of Hong Kong and having taken into consideration the fact that provisions ensuring a certain degree of human rights have been included in the amendment, we will support the amendment. Our concern is that if this amendment is not passed promptly, many VMs will take advantage of the loopholes in the Ordinance and lodge appeals to the court. We are also concerned about the possibility that VMs holding false identity proofs may be released.

In fact, the cost for VMs of making use of this opportunity and taking this step to "try their luck" is, indeed, minimal because the Legal aid Department will provide them with assistance in respect of the legal fees incurred in the hearings.

The amendment now introduced by the Government to this Council mainly seeks to stipulate in clear terms that the court shall not rule that a VM has been rejected by the Government of Vietnam unless and until the Hong Kong Government has been formally notified, either directly by the Vietnamese

authorities or indirectly through the United Nations High Commissioner for Refugees, of the former's refusal to accept the return of the VM; or the status of the VM has not been cleared by the Vietnamese authorities within a reasonable period of time.

Some organizations for the protection of the interests of VMs oppose the amendment citing notions such as human rights. The DAB is of the view that this amendment is not in the least related to human rights. The Ordinance as amended will not subject VMs to indefinite detention because they can still apply for judicial review on the ground that they have been detained for an unreasonable period of time.

Furthermore, human rights should not just be some abstract principles, rather, they should be concrete and realistic. The people of Hong Kong have expressed their wish very clearly and the loopholes in the Ordinance need to be plugged. It is obviously contrary to the wish of Hong Kong people if we only have regard for the human rights of the VMs.

We all know that all along, the work done by the Hong Kong Government in handling the problem of VMs has been unsatisfactory. In my view, government policies have to take public feeling into consideration. The people of Hong Kong have fully fulfilled their obligation towards the VMs. Nonetheless, both the Hong Kong Government and the British Government have consistently failed to strive for the best interests of Hong Kong in the international community, and Hong Kong has been accused by organizations upholding the interests of VMs of treating VMs in an inhumane manner. Affected by the "Vietnam War complex", the Government of the United States has shown vacillation in its policy towards VMs, thus prompting VMs to slip into delusions that are impossible to realize.

In order to tie in with the arrangements reached in international conventions, the Hong Kong Government has implemented the Comprehensive Plan of Action under which the departments concerned, in execution of their duties, no longer take in each and every incoming VM disregarding the migrant's wish. In spite of this arrangement, I urge the Administration to announce the abolition of the port of first asylum policy as soon as possible with a view to

stopping VMs from indulging in unnecessary delusions. Although changes have been made to the procedure of accepting VMs, it does not mean that Hong Kong will accept no more incoming migrants. The majority of the VMs think that they stand a chance of emigrating to western countries so long as they stay in Hong Kong for the screening process.

Mr President, while we are in support of this amendment today, we understand that this amendment bill will still result in the release of some VMs who have been rejected by the Government of Vietnam. No doubt, some migrants claiming the ground of detention for an unreasonably long period will also be ordered to be released by the court. In this connection, the DAB would question the Government as to how it is going to address the issue. To have the VMs integrated into society subsequent to their release is not feasible. This will only make them think that they can stay in Hong Kong eventually and thus discourage them from returning to Vietnam. Besides, the integration of VMs into society is totally unacceptable to the people of Hong Kong.

The Honourable Albert HO of the Democratic Party opined earlier that we neither have the reason nor the evidence to show that Hong Kong people are against the integration of VMs into society. We would like him to look at the public's response towards the signature campaigns held recently in various localities all over the territory as well as the community's strong appeal conveyed through the mass media urging the Government to immediately repatriate all VMs stranded in Hong Kong. The voices of the petitioners outside the Legislative Council today is also a clear manifestation of the kind of evidence that Mr HO was asking for. It is my hope that Mr HO can respect public opinion and make the Democratic Party change its decision when casting the vote.

Mr President, I urge the Government to continue to think of ways to solve the problem of being unable to locate the VMs upon release in order to assure us of a full settlement of the problem of VMs, which has been a nuisance to Hong Kong for over a decade, before the Hong Kong-British Government has the sovereignty of Hong Kong transferred in an honourable way.

I so submit.

**MISS MARGARET NG:** Mr President, I understand the anxiety of those who feel threatened by the lawless minority among the Vietnamese migrants. I sympathize with the difficulty of the Administration in trying to solve this vexing problem. But this Bill is completely wrong. In its over-reaction to the recent Privy Council decision in which four Vietnamese migrants were released, the Administration is seeking to introduce a bill which would seriously compromise our most valuable safeguard of the liberty of the individual. It is unwarranted. It sets a dangerous precedent. I strongly urge this Council to vote against the Bill.

The Administration has indicated that amendments to the Bill will be introduced at the Committee stage. On that basis, they invite this Council to pass the Bill. I have studied those amendments with great care. In my view, these amendments do not overcome the fundamental objection against the Bill. Moreover, they contain an ambiguity which can be totally damaging.

I have, by notice to you, Mr President, indicated that, should the Bill pass its Second Reading, I will seek to remove that ambiguity by means of an amendment at the Committee stage. You will no doubt deal with that matter if and when it arises, at that stage. However, Mr President, I hope that that stage will never come. We should reject this Bill now, without hesitation. We are dealing here with a principle which must be upheld if personal liberty is to be given effective protection: the principle that nobody can be deprived of his liberty save where the law expressly allows, and whoever exercises that power of detention, must prove to the court that he does so strictly according to law.

This principle is accepted by the Administration. In the Privy Council decision I have referred to earlier, the principle is once again re-affirmed:

"If a jailor could justify the detention of his prisoner by saying "in my view, the facts necessary to justify the detention exist", the fundamental protection afforded by a *habeas corpus* would be severely limited."

Does this Council wish to erode that protection? Can this community afford to allow that protection to be eroded in the face of the severe challenges to

human rights in the run-up to 1997?

*The power of detention under section 13D of the Immigration Ordinance*

Mr President, the subject matter of the Bill is the detention of Vietnamese migrants under section 13D of the Immigration Ordinance. The relevant provisions empowers the Director of Immigration to detain a Vietnamese migrant "pending removal".

It is therefore for the Director of Immigration to prove the facts necessary to justify to the court that this is indeed the case.

This is what the present law requires. The Administration has made it clear that they do not wish to disturb this requirement. Yet the Bill they have put before this Council runs directly contrary to it, by restricting the court's power to hear all the relevant evidence, and makes its own determination on whether a detention is still for the purpose of pending removal. Clause (2)(a) of the Bill in effect prohibits a court from finding that the purpose of a Vietnamese migrant's detention has failed or become spent except in the narrow case, where the Government of Hong Kong had been notified that a request for the approval to remove him to Vietnam had been rejected.

Thus the court is, in effect, precluded from determining any facts except whether a notice of rejection by the Vietnamese Government has been received. And where no such notice has been received, the court is precluded from finding that the purpose of detention pending removal has failed. This can hardly be called a real "determination" at all.

*Arbitrary detention*

Further, this Bill is also open to the criticism of arbitrary detention. Making the lawfulness of the detention, in effect, dependent on a notice being issued and received, given the track record of the Vietnamese authorities, may certainly be criticized for arbitrariness. It flies in the face of common sense, that whether or not there exists strong proof that a person has no chance of being accepted by the Vietnamese Government, the only piece of evidence the court can be concerned is with the notice of rejection —or the lack of it.



Article 9 of the International Covenant on Civil and Political Rights (ICCPR) guarantees that "No one shall be subjected to arbitrary ..... detention". The Bill therefore contravenes the ICCPR. Whether it is thereby inconsistent with the Letters Patent or not, it will be very wrong for this Council to pass such a law.

*The Privy Council decision and purpose of the Bill*

Mr President, not only is the Bill wrong and undesirable. It is also wholly unnecessary. According to the Administration, this Bill has been introduced in order to plug the "loophole" created by the Privy Council decision which undermines our detention policy regarding Vietnamese migrants.

But what is in the decision which the Administration seeks to counter? What is the "loophole" that the Administration seeks to close? In his speech introducing the Bill on 24 April, the Secretary for Security told this Council the decision which has created the problem:

"[the Vietnamese migrants] argued that the Vietnamese authorities had a policy of not taking back non-nationals, that they were non-nationals and, thus, if they applied to return they would be rejected; consequently, the purpose of their detention is therefore spent and they could no longer be detained. The Privy Council accepted these arguments ....."

He also described the "loophole" in these terms:

"..... there is a real risk that fraudulently obtained documents may be produced by them [that is, the VMs] to seek release from detention. In the Administration's view, this is a potential loophole which should be closed as quickly as possible."

It was also felt that the Privy Council had not given sufficient weight to the fact that it took a long time for the Vietnamese Government to respond.

But these are matters of evidence and a finding of fact which can and should be dealt with by new evidence. Now, the Secretary had told us that effective action had already been taken. The Minister for Foreign and Commonwealth Affairs had since visited Vietnam. The Vietnamese Government had agreed to study the problem. Responses to request for

repatriation in the last six months had been expeditious. In their response to the Bar Council's comments on the Bill, the Administration said, in no uncertain terms: "If they [the Privy Council] had had the facts, we believe they would have decided differently." If so, what problem can the Administration possibly have defeating any future application for *habeas corpus* for the release of Vietnamese migrant, on the argument that non-Vietnamese residents will be refused repatriation?

In any case, as the Secretary had told this Council on 24 April, all Vietnamese migrants within the terms of the Privy Council's decision who came to the Administration's knowledge had already been released. Far from dealing with a real, substantial and pressing problem, we are being asked to legislate on speculation for the famous hypothetical. The Administration is truly making a mountain out of a mole hill.

The entire need for the Bill can be said to be built on a spider's net of errors. The Secretary for Security said that the long period for obtaining a response from the Vietnamese authorities should not "in general be treated as evidence of refusal or rejection by them." The court has never done so. The Secretary said that the Administration is "only seeking to ensure that in deciding claims by Vietnamese migrants that they are non-nationals, the court may not assume that they will not be accepted back unless the Vietnamese authorities have rejected them." There was never such an assumption. In any case, the Bill does far more than just preventing such an assumption from arising.

Finally, in a letter dated 4 May, the Secretary told Members of the Bills Committee that the need for legislation arose from the Privy Council not supporting the view that "the time taken to put in place the arrangements for the repatriation of Vietnamese migrant to Vietnam [includes] the time taken to secure a response from the Hanoi authorities to our request for his return."

In reality, the Privy Council decision expressly referred to the provision in section 13D(1A) of the Ordinance, and said that in deciding what is a "reasonable period" of detention before detention becomes unlawful, the court must take into consideration "the extent to which it is possible to make arrangements to effect his removal" and "whether or not the person has declined arrangements made or proposed for his removal".

There is simply no justification to tamper with the present law, and no justification to interfere with the Privy Council's decision, which in such a timely fashion, reaffirms one of the most important functions of our courts in safeguarding the liberty of the individual. This is what the rule of law has been called into being to defend: the liberty of the least of us against the mightiest of the state machinery.

Mr President, the rule of law is a seamless garment. Rend it anywhere, and it is damaged in the whole. Compromise a part, and we compromise it entirely. There is not one rule of law for us, and other for VMs. Do not let anyone tell us that the compromise is only temporary, and all these provisions will be scrapped in a year or so, when all the VMs will have been sent home. But by then, it will be too late. If this Council accepts and passes this Bill today, we will be telling the world that we are prepared to compromise our stand in protecting the individual against unlawful detention. The harm of that compromise will not be confined to any migrants or illegal entrants. It will be the first tear that rends asunder the fabric of our rule of law.

Thank you, Mr President.

**MR CHAN WING-CHAN** (in Cantonese): Mr President, the problem of Vietnamese migrants (VMs) has been plaguing Hong Kong for more than 10 years, imposing a heavy burden and making an extremely adverse impact on our economy, community and law and order. Let us recall more than 10 years ago when the people of Hong Kong, with a spirit of humanitarianism, provided assistance to the Vietnamese people who fled Vietnam for political reasons or as a result of change in social situation. But as the problem lingered on, the Vietnamese refugees who subsequently came to Hong Kong were no longer political refugees. Instead, they were economic refugees or so-called VMs. It seems that Hong Kong should come up with a solution instead of letting this issue drag on indefinitely.

Mr President, a change of the above-mentioned policy does in no way mean that the Hong Kong Government does not promote humanitarianism. Moreover, overseas communities have also been indifferent to this issue. It is

impossible and extremely unreasonable for Hong Kong to shoulder the burden alone.

The trouble stirred up by the VMs at the Whitehead Centre this time where they burned up their personal information in an attempt to delay the screening process and repatriation is believed to be connected with the release by the Hong Kong Government, in response to a precedent set by the Privy Council, of the VMs rejected by the Vietnamese Government. It is precisely because of such "release operations" that the VMs harboured an illusion that they would be able to arouse the society's concern by means of riots. At the same time, they burned up their personal information in the hope that they could continue to be stranded in Hong Kong and could even avoid being repatriated.

Therefore, the Hong Kong Federation of Trade Unions holds that the Government should strengthen the management of VM camps and stop releasing the VMs. It should also provide proper counselling service in the VM camps and rid the VMs of their illusions. But the ultimate solution is to repatriate "all" the VMs as soon as possible. Therefore, the Government's move of "mending the fold after the loss of a sheep" by amending the Immigration Ordinance to empower the Government to continue to detain VMs awaiting repatriation is worth supporting. As regards the worry expressed by some human rights bodies that the amended Ordinance would undermine the Court's power, the Government has already made the assurances. There is nothing they should be worried about.

I have been extremely concerned about the repatriation of VMs. Let me question the Government with all my good intentions: If the Hong Kong Government cannot solve the VM problem before 1 July 1997, will the "Britannica" be provided with additional bedspaces to take the VMs back to Britain when Governor PATTEN will take the cruise back home on his retirement?

These are my remarks.

**MISS CHRISTINE LOH:** Mr President, I am afraid that what we will do today if we pass this Bill is to make a blueprint for the neutralization of those safeguards that are supposed to protect fundamental human rights in this community.

Our fundamental rights are supposed to be secure because we supposedly have an Administration that respects our rights so much that they will not knowingly infringe them. And we are supposed to have an independent Judiciary that would not countenance those infringements. And furthermore, this Council would not authorize any encroachment on our rights, and that all three are constitutionally bound to observe international standards of human rights protection.

Unfortunately, the progress of this Bill shows how flimsy these safeguards can be under pressure.

The Bill is intended to undo the effect of the decision rendered by the Judicial Committee of the Privy Council in the *Tan Te Lam* case. The Administration says the Bill plugs a loophole carelessly poked in the law by that decision. But the Bill does not merely rearrange legal technicalities. It throws aside fundamental principles of the common law, as they were applied by one of the most respected courts in the common law world. What the Administration calls a "loophole" is in the fact the minimum space that the Judicial Committee regarded as necessary to safeguard human liberty.

The Judicial Committee agreed with the High Court in Hong Kong that, as a matter of fact, the appellant Vietnamese detainees had no prospect of repatriation — or perhaps I should use the word "removal" since that is the legal term — because Vietnam does not regard them as its nationals and will not accept the repatriation of non-nationals. On this factual basis, the Committee held that the Administration had no power to detain the appellants. The Committee accepted the Administration's general policy, however, of detaining Vietnamese migrants pending their removal. But in the appellants' circumstances, where that purpose could not be carried out, the Committee did not regard the missing formality of an express rejection by Vietnam as a good enough reason by itself to keep them behind bars. It held that the lawful purpose of their detention was spent and ordered their immediate release.

Mr President, you might find the talk of "spent purposes" sounds very technical, but the Judicial Committee made it clear that its legalisms, its legal reasoning arose from concern for human liberty. The Committee expressly reaffirmed the long-standing, common law principle that "the courts should

always regard with extreme jealousy, and these are the words of the Privy Council — "extreme jealousy", any claim by the executive to imprison (an individual) without trial and allow it only if it is clearly justified by the statutory language relied upon."

What we have in this decision is an example of the independent Judiciary doing its job well. While paying due deference to the underlying policy, the Judicial Committee restrained the Administration from treating particular individuals unfairly in their particular circumstances.

Despite its notional respect for human rights and judicial supervision, however, the Administration has shown no respect for the judges' concerns in this case. Officially, the Administration has attacked nearly every aspect of the decision as mistaken or misconceived. The Administration implausibly depicts the Judicial Committee as being bumbling legal oafs who misconstrued Vietnamese government policy, got the facts wrong about the appellants' nationality, failed to appreciate the importance of the Administration's detention policy, and gave too little thought to the effect the decision would have on the policy.

Some comments emanating from the Administration have verged on calls for a more compliant Judiciary. The Refugee Co-ordinator, Mr Brian BRESHIHAN, attacked the Judicial Committee for "not listening to the sentiments of the local community" and he said he looked forward to its replacement by a court that might do so in the future.

I am not at all persuaded by the Administration's intemperate action to the Judicial Committee's decision. It sounds to me like the whinging of a litigant who is upset about losing his case. Unfortunately, the Administration has turned rash words into rash action in the form of this Bill.

The Administration is proposing some cosmetic changes to the Bill to mollify its critics, but nothing that truly alters its basic effect. While the Bill as originally drafted tells the judges the answer that they are expected to give in the future, the Bill as the Administration proposes to amend it tells the judges more subtly which questions they should not ask in the future. Either way, the Bill will prevent the judges from examining again whether a formal Vietnamese response, pending which a particular individual remains in detention, is really worth waiting for in that individual's particular circumstances.

The Judicial Committee has already concluded that for certain individuals, Vietnam's response is predictably unfavourable and does not justify the continuing deprivation of their liberty without trial. However, we go about overruling that decision — the detention that we authorize will be arbitrary, unjust and inappropriate.

Despite its troubling implications, the Bill has been pressed forward with irresponsible haste. Legislators were pressured to make extraordinary arrangements for the Bill to be passed from First Reading through enactment in a single day. Such unnecessary urgency would have prevented us from exploring the Bill's implications at all, and would have made this Council into a rubber-stamp. As it is, we will be voting on amendments that have had only a cursory examination.

The Administration brushes aside constitutional objections to the Bill by claiming that the International Covenant on Civil and Political Rights, although entrenched in the Letters Patent, does not apply to the Bill. This is because of the weasel words in the Letters Patent, "as applied to Hong Kong." The Administration interprets these words as meaning that it has reserved the right to disregard international human rights standards as they apply to immigration legislation. If the argument prevails, it will allow it to prevail, it will be the fruition of a long history of equivocation about human rights, which the Administration always purports to champion while simultaneously taking care not to bind its own freedom of action too tightly.

This Council has the power to override the Judicial Committee's decision. But we should hesitate before we join the Administration's rush to dismantle legal safeguards that protect the fundamental rights of an unpopular minority. Our own considered decision may well be the last one of those safeguards in this instance.

Of course, the political landscape may make such hesitation difficult for some. The Vietnamese detainees have long overstayed their welcome here. The riot two weeks' ago at Whitehead Detention Centre casts an even longer shadow over them. The prevailing mood is deeply hostile to them.

But, Mr President, none of the political factors have any real bearing on the merits of the Judicial Committee's decision, which was limited to a narrow set of

circumstances that affect only a fraction of the detainees. The decision moderates the Administration's detention policy, but comes nowhere near overturning it. But these political factors do add up to precisely the type of circumstances where people most in need of the protection afforded by the judicial supervision that this Bill is set to undermine.

If we enact this Bill, we will demonstrate in what political circumstances fundamental rights are not legally secure in Hong Kong. The only question is whose right will they be next time.

Mr President, for these reasons, I will vote against the Bill, with or without the Administration's cosmetic amendment. The Bar Council's amendment that the Honourable Miss Margaret NG will be proposing goes some way towards preserving the judges' ability to take account of all the circumstances in a particular case, and I will therefore support that amendment.

**MRS ELIZABETH WONG:** Mr President, I need not rehearse or repeat the arguments put before me by my honourable friends, but I think it is important to satisfy ourselves that the proposed amendment is devoid of arbitrariness in detaining people, or there is every danger that the law in its amended version, as proposed by the Government, might be invalidated and struck down by the courts.

I am a layman, so I should hope to speak in layman's terms. I believe, in layman's terms, that the common law requires the observance of safeguards to prevent the arbitrary detention of an individual. The revised Bill, which will be amended at the Committee stage, will include the expanded meaning of the concept in "detained pending removal", that is, to include, in the case of a Vietnamese, asylum seeker awaiting a response from the Government of Vietnam. Consequently, a Vietnamese asylum seeker who is a subject of a deportation order will be detained, not only pending his removal but also pending a response to the request for his removal from the Government of Vietnam.

Now, to ordinary people like me, I think it spells trouble. I think it is a case of double arbitrariness. Now, while the legislature is ordinarily entitled to modify or override any common law principle, Article 7 of the Letters Patent now prohibits the enactment of a law that restricts the rights and freedoms enjoyed in Hong Kong under the common law or statute law. To attempt to modify this is to override the common law principle, and this will be to restrict the right to



freedom from arbitrary detention under the common law, in violation of Article 7 of the Letters Patent.

So, Mr President, if in passing the Bill it means crossing constitutional lines and the whole question of constitutionality is subject to challenge, if in passing the Bill it means that this Council will violate the right to equality of protection of individuals before the law, if in passing the Bill the right to a fair trial and the right to freedom from arbitrary detention is denied, we will be doing not only the Vietnamese or any other asylum seekers a grievous injustice, we will indeed do grievous injustice to this Council by passing a Bill which is basically wrong.

I have heard the sentiments of the local community. I have also received some petitions, and I think many of the petitioners have spoken loudly, clearly, eloquently, but they may not have fully grasped the legal aspect of this Amendment Bill. I think it is up to us, I think it is incumbent upon this legislature, to vote on the point of principle on which, I suggest, we should all make a stand. There are many in the community, I am sure, who support the protection of the rights of the individual, the dispossessed, the marginalized, the poor and the elderly. Hong Kong people are very kind. I think it will be doing them an injustice if we were to suddenly change the spirit of everything by passing a Bill which is ill or badly understood. There are many among us who value personal freedom and the protection of equal rights before the courts to obtain a judicial decision.

Mr President, I appeal to my fellow councillors, honourable colleagues, to vote against the Bill.

**MR NGAN KAM-CHUEN** (in Cantonese): Mr President, the commitment which the people of Hong Kong have shown toward Vietnamese migrants (VMs) over the past 20 years can at least be described as reaching the height of benevolence, if not attaining boundless beneficence.

We have the largest number of VMs in Asia, which totalled 19 000 people. Our expenditure relating to VMs is also the largest, amounting to \$7.3 billion over the past 20 years. Moreover, the United Nations High Commission for Refugees (UNHCR) still owes the Hong Kong Government \$1 billion.

This figure does not imply much. As long as the expenditure is reasonable and the burden is within their means, the Hong Kong people will definitely not be too mean. But, the riots which occurred in Whitehead Detention Centre two weeks ago have utterly destroyed the tolerance, forgiveness and forbearance with which the Hong Kong people have treated VMs. Some VMs who resist repatriation have not only refused to be grateful to our well-meaning acts, but have also chosen to repay good deeds with malice.

Some people have queried us, saying that our poor and inhumane treatment of VMs has led to the frequent occurrence of riots in detention centres. But, the fact is that the kind of care which the Hong Kong people have provided to VMs has not been restricted to satisfying their needs according to basic humanitarian standards. Out of a mere respect for the rule of law and the principle of equity, we, through the Legal Aid Department, and at taxpayers' expense, have also provided financial assistance to those VMs whose identity has not been confirmed by the Vietnamese authorities, so that they can appeal to the High Court, the Court of Appeal and even the Privy Council for the purpose of overturning "pending removal", the legal basis used by the Government to keep them under long-term detention. According to a conservative estimation, the expenditure involved will amount to millions of dollars.

At present, there are 7 000 VMs whose identity has not been confirmed and 960 of them have been kept under detention for at least 18 months. If they all go through the aforesaid channel to seek a review of the Hong Kong Government's action of keeping them under detention the expenditure will be enormous. More importantly, Hong Kong will have to continue to shoulder the responsibility of looking after these people. It is extremely unfair to the people of Hong Kong.

I believe all VMs have realized that they will certainly be repatriated before 1997. That is why they have attempted to avoid the fate of repatriation by staging their last struggles at all risks and all costs.

It is anticipated that similar riots may still occur in detention centres in the year to come. Although we are stepping up the pace of repatriation and the number of VMs is decreasing, the departments responsible for security still have to increase their staff and equipment. The burden of expenditure will ultimately be put on the Hong Kong people.

At present, many southeast Asian countries have gradually accomplished the Comprehensive Plan of Action. In addition, the UNHCR has started to distance itself from the matter and stop getting involved. There is no reason that Hong Kong should alone shoulder this historical burden indefinitely, especially when China has specified 1997 as the deadline of solving this problem.

The Democratic Alliance for the Betterment of Hong Kong is in support of amending the Immigration Ordinance. It is hoped that this can do away with unnecessary problems which will hinder the progress of repatriation and indefinitely increase our burden. We reiterate that the Government should repatriate all VMs as soon as possible.

Mr President, I support the amendment proposed by the Government.

**MR LEUNG YIU-CHUNG** (in Cantonese): Mr President, I am well aware of the fact that the problem of Vietnamese refugees has been a heavy burden to Hong Kong in the past two decades and huge amounts of taxpayers' money have been spent on them. I also fully understand that many Hong Kong people are infuriated because although we have fulfilled our moral obligations towards these refugees, be they political or economic refugees, violence kept breaking out in the boat people camps and we remain the subject of criticism of the international community. I know that most of the people of Hong Kong yearn to exhaust every means to resolve the refugee problem as soon as possible — whether it means the implementation of the closed camp policy, the demand for the abolition of the port of first asylum policy, the calling for the United Kingdom to be fully responsible and having them promise to take in all refugees stranded here after 1997, or the introduction of this Immigration (Amendment) Bill tabled today. However, I do not think that this Bill is a solution to the refugee problem.

Although many Hong Kong people bear great resentment towards the Vietnamese refugees and feel that we should not be soft with them, whether legally or policy-wise, as a responsible Legislative Councillor however, I hope that my honourable colleagues will, before casting their votes, consider very carefully the problem this Bill will bring to our whole society. It is true that if we want to gain political capital and please the people, the easiest thing to do is to support this Bill of the Government. But I hope that Members will sit down and

think it over for our decision today will affect the personal freedom of hundreds and even thousands of people; our decision will have a far-reaching and negative bearing on the rule of law and human rights that all Hong Kong people cherish.

First of all, will this Bill which the Government wants so anxiously to introduce today be of much help in solving the refugee problem? This answer is no. The reason is very obvious. The passing of this Bill or otherwise will not make any difference in the number of refugees stranded in Hong Kong because this Bill will by no means change the status of anyone, regardless of whether they are boat people or refugees. In other words, vetoing this Bill will not turn more people into refugees and will certainly not give anyone the permanent right of abode in Hong Kong. Therefore it will not attract further influx of Vietnamese.

This Bill will only result in a difference in the number of inmates in closed and open camps. Many worry that allowing one more refugee to move from a closed camp to an open camp will further compromise the law and order of the society and thus wish to have all refugees locked up in the closed camps. I can understand their worries, especially when the ruthlessness of some refugees can be learned from the television, newspapers and news media recently. Of course, I cannot guarantee that all refugees moved to the open camps will not pose any threat to the law and order of the society, nor can I assure that they will not cause any nuisance to the residents in the neighbourhood. But the problem is: do all Vietnamese kill, set fire and loot? Are all Vietnamese refugees criminals and thus have to be locked up? Is the crime rate among Vietnamese in the open camps really higher than the overall crime rate of Hong Kong? Honourable colleagues, I fully support the idea that those who break the law should be punished severely but we should not enact a piece of legislation to "round up" all Vietnamese and have them all — male or female, old or young — locked up in the closed camps just because we are afraid that some individuals among the Vietnamese refugees would threaten the law and order of the society or inflict a nuisance to residents in the neighbourhood. At all events, it is unjustified to lock up the whole community and deprive them of their basic personal freedom only because we are worried that a handful of them might break the law! By the same token, we will not legislate to lock up all young people or impose a curfew on them after midnight just because a handful of them go against the law or loiter in housing estates late at night.

Mr President, other Members have already, from the legal perspective, described in detail how this Bill will jeopardize the rule of law (especially the

authority of the court) and people's personal freedom, as well as setting a very undesirable precedent. This I do not intend to repeat. What I want to stress is, if Members finally decide to pass this Bill today, it will in no way help resolve the refugee problem while the negative effect the Bill elicits will far exceed the so-called "advantages" which the Government wants to achieve.

I oppose this Bill today not to protect Hong Kong's international reputation from being criticized by the international community denouncing that Hong Kong people have double standards on human rights, that is, opposing on one hand any suggestion that impairs our people's human rights while passing on the other legislation that is in breach of the standard for human rights; nor do I oppose it for fear that Hong Kong people may become refugees themselves in future and so we might as well help the Vietnamese refugees secure their personal freedom now. What I am concerned about is really very simple but very important, that is, whether the passing of this Bill will result in anyone (be it one or several thousand) being detained for no reason and deprived of their basic personal freedom. I have reason to believe that this can be the case and therefore object to the Second Reading of this Bill. Nevertheless, if the Bill passes through Second Reading, I will vote for the Honourable Miss Margaret NG's amendment. I truly hope that all colleagues here, especially those who intend to vote in favour of the Government, will think twice for your vote will have a significant impact on the freedom of hundreds and even thousands of people, among whom are old and young, many in their prime of life, and still many of them are youngsters and children. If we go along with public opinion to bully and oppress the weak, or lock them up and sacrifice their freedom for administrative convenience, are we still qualified to be considered as Members who respect human rights?

**MR CHEUNG HON-CHUNG** (in Cantonese): Mr President, the Privy Council has recently ruled that the Hong Kong Government should no longer detain the non-Vietnamese-national boat people who may be rejected by Vietnam. The substance of this ruling is ambiguous. Upon the handing down of this ruling by the Privy Council, some migrants who had long failed to produce valid documents managed to produce photocopies of a kind of Overseas Taiwanese Resident Certificate, only that even the Taiwanese Government cannot confirm whether such Certificates are genuine or not. Subsequent to this ruling, the British Hong Kong Government has so far released several hundred Vietnamese

migrants (VMs). This measure has a great impact on the VMs and many of them, including over 7 000 migrants who have not been fully screened by Vietnam, have tried to secure a release by resorting to the same channel.

The recent incident at the Whitehead Detention Centre whereby inmates rioted and committed arson clearly demonstrates to us that the whole thing has been carefully planned and their prime objective is first to loot and burn down the administration building of the Centre. Once their files are destroyed, the VMs can present new identity proofs, including papers of doubtful authenticity, that is, papers that fall in with the loophole in the Privy Council's ruling. Therefore, the Privy Council's ruling has brought endless trouble to Hong Kong's policy on refugees. Secondly, it is obvious that the incident is directed against staff of the Correctional Services Department (CSD) responsible for managing the Centre. When they should have been making an escape whereby not even one second was to be spared, many VMs rather chose to go back and forth the various quarters of the CSD officers to vandalize and set fire to the property than to pick the easiest route in the first place and run for their lives. Why is this so? Many Legislative Councillors of the Democratic Alliance for Betterment of Hong Kong (DAB) visited the Centre the next day to acquire an understanding of the situation. They found that the Centre had been so badly damaged as if a war had been fought. We were all astounded. Had the CSD officers not escaped in time, the casualties would have been hard to estimate. The VMs' vandalism was a law-breaking behaviour which made us boil with anger. We shall have to think conscientiously of a way to resolve the matter as soon as possible and to bring those VMs who have broken the law to justice.

How are we going to deal with the VMs' escalating violence and resistance? How are we to keep the order of VM centres effectively? How are we to punish the trouble-makers? How are we to prevent the recurrence of similar incidents? How are we to continue to implement the repatriation schemes? Do we need to allocate more resources? These are matters that we have to probe carefully.

Of course, some advocates of humanitarianism would think that the amendment to the Immigration Ordinance and the riot in the Centre are two separate matters. In fact, there is clear connection between the two.

All along, Hong Kong people have had regard for humanitarianism in treating the VMs. This explains why in the past even when there were incidents where VMs escaped from camps, they were not treated as if they had escaped

from prison and were only sent back to the camps upon apprehension. They have been tolerated once, twice, and this excessive tolerance gradually enhances their aggressiveness, impairs the morale of the CSD officers and what's more, strikes a blow to the spirit of the rule of law in Hong Kong.

It has to be two-way course to practise humanitarianism. The people of Hong Kong have regard for humanitarianism in treating the VMs and sympathize with what they have been through. But on our part, residents in the neighbourhood of the camps have to live in fear, worrying that their personal safety may be threatened by migrants who managed to escape. The VMs rioted and inflicted injuries on the CSD officers and the police. Can this be regarded as humanitarianism? The people of Hong Kong treat the VMs with courtesy and in a humane manner. Yet, what we are given in return is just violence.

Let me reiterate this, the VM problem must be resolved as soon as possible. Otherwise, if things keep dragging on, it will have a greater impact on the whole society of Hong Kong. The people of Hong Kong can no longer tolerate the VMs' violent behaviour. We should not allow the VMs to acquire dependence and be indulged in any delusion. Nor should we avail them of "loopholes" in the Ordinance that they can take advantage of, making them think that their nationality cannot be clearly defined. The grey areas in the law have to be cleared, otherwise, the VMs will become international "human balls" and this heavy burden will once again be laid on Hong Kong.

Mr President, the DAB supports the Government's amendment to the Immigration Ordinance so that the loopholes concerned can be plugged. Some colleagues in the Legislative Council think that this amendment as proposed by the Government may breach the International Covenant on Human Rights (ICHR) and may subject detainees to indefinite detention. However, one of the provisions of the Ordinance has made it clear that the court is empowered to order the release of anyone considered to have been detained for an unreasonably long period. This provision can guard against indefinite detention. The Legal Adviser has also pointed out that this amendment may not necessarily violate the ICHR.

Mr President, anyone entering Hong Kong illegally is considered an illegal immigrant (including those VMs who have been screened) unless he has been granted refugee status in accordance with the conditions laid down by the United Nations. The Hong Kong Government's policy towards illegal immigrants has

always been clear, that is, unless the local government has expressly indicated that it will not accept those people, the migrants have to be sent back to their country of origin. This ruling of the Privy Council will change the Hong Kong Government's policy towards illegal immigrants. Even before the Government of their country of origin has refused to accept them, so long as the illegal immigrants can produce some evidence which may prompt the local government to refuse to accept them, such immigrants may be released.

Unless we negate the Hong Kong Government's policy towards illegal immigrants, we see no reason for raising objection in today's debate. If we quote human rights as an excuse, does it imply that the Hong Kong Government's policy towards illegal immigrants in the past has been against human rights?

Mr President, with these remarks, I support today's amendment.

**MR ALBERT HO** (in Cantonese): Mr President, I speak on behalf of the Democratic Party (DP) to oppose the Second Reading of the Immigration (Amendment) Bill 1996. Our rationale is simple, that is, if the Immigration (Amendment) Bill 1996 is passed, it will only undermine the court's power to protect basic personal liberty, thereby setting an undesirable legislative precedent while rendering no help in resolving the Vietnamese migrant (VM) problem. I have just listened to the speeches of several Members who are in support of the amendment moved by the Government, but I cannot quite understand their points. Do they think that this Bill is a panacea for the VM problem? They keep on saying there are loopholes in the legislation, but do they really understand what the said loopholes are?

In the first place, I must state clearly that the passage of this Government Bill or otherwise will not change one fundamental policy principle. Neither the Government nor any Members today requests for any changes to the principle that there must be a purpose for the detention of any VM. The VMs are detained pending screening before the screening procedure; they are detained pending repatriation if they are found to be non-refugees after the screening procedure. This principle is not subject to any changes. Another policy principle is that if there is no chance of them being repatriated or if they will not be repatriated in the foreseeable future, they should be released on recognizance or be released. They are released on recognizance because there is no clear response. If there is a clear response to the effect that the VMs should be sent



back to Vietnam, then they will have to report to the Immigration Department and be prepared for repatriation in accordance with the conditions for release on recognizance. So far, no one has ever proposed that this fundamental policy be amended or revised.

What changes will be brought by this Bill? To put it simply, the Government was not happy with a recent Privy Council judgement, particularly because in the process of forming such a judgement, it was concluded by the court after it has heard all the relevant evidence that the Vietnamese Government has implemented the policy of refusing to accept non-nationals of Vietnam. In the entire legal proceeding, the Hong Kong Government in fact stood a good chance or should even take up the responsibility of producing counter-evidence. Its responsibility was to convince the court that on the basis of probability, the Vietnamese Government did not have such a policy. If that argument sufficed, the Government should have succeeded. By then, any appeal by the VMs applying for release on recognizance as a result of this policy would be rejected. However, the Government failed. In other words, until now, the court has accepted the fact that the Vietnamese Government will not take back VMs who are non-nationals of Vietnam. This is the crux of the matter.

The Government in fact can still clarify the matter with the Vietnamese Government and produce more forceful and authoritative official documents in order to refute the court's ruling. It may submit new evidence in the next round of proceedings. I believe the court cannot refuse accepting new evidence. However, the Government does not do so but seeks to amend the law in order to restrict the court's ability to examine evidence. Mr President, is it a practice tantamount to putting the cart before the horse? Is it desirable to circumscribe the court's ability to hear various evidence whereby the court may exercise its power to protect personal liberty? Our answer is definitely in the negative.

Mr President, if this Bill were passed into law, it will bring about the most preposterous and the most unreasonable consequence, and in fact it is already happening as the Vietnamese officials have declared through various means, either openly or privately, either directly or indirectly, that they will not accept VMs who are non-nationals of Vietnam. In fact, we are all aware that, in the case, detention of VM is pointless because they will have no chance of being repatriated. Therefore, they should be released on recognizance. However, the Government still insists on detaining them compulsorily just to wait for the Vietnamese Government's official papers to confirm its so-called open policy. In fact, is it necessary for the Government to do so? What is the point of so

doing? The only consequence is that the freedom of these VMs will be unnecessarily deprived of and they are subject to arbitrary and inappropriate detention.

Mr President, when the Bill was introduced, many legal professionals, human rights groups and legal groups raised a lot of points to prove that this Bill would constitute a breach of the International Covenant on Civil and Political Rights (ICCPR) and the Bill would therefore be void under the Letters Patent. All these are well-respected groups, including the Hong Kong Bar Association, Human Rights Watch/Asia, Hong Kong Human Rights Monitor, Amnesty International, JUSTICE Hong Kong, Refugee Concern Hong Kong and so on. How can we not pay regard to their opinions? The Government has repeatedly mentioned that even if the Bill is inconsistent with the ICCPR, these provisions are covered by the reservations to the ICCPR. In other words, the Hong Kong Government does not have to be bound by this international covenant on human rights, including Article 9 of the Covenant, when it comes to the immigration legislation.

In this aspect, I must thank the Hong Kong Human Rights Monitor for providing us with some information. We can see from the information provided that the United Nations Human Rights Committee has issued guidance on the legal interpretation of the Covenant and the guidance is contained in the Human Rights Committee General Comment No. 24 (52), paragraph 8 of which states that:—"provisions in the Covenant that represent customary international law ... may not be the subject of reservations. Accordingly a state may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proved him innocence ....". Therefore, basing on the above information and the guidance issued by the United Nations Human Rights Committee, I hope that the Government will not continue to think that they can use the reservations as protection and disregard the articles as laid down in the international covenants on human rights.

Mr President, in a nutshell, this Bill does not plug any loophole and the Government is only striving to enjoy greater power to detain the VMs. The purpose of the detention is to await a solid response from the Vietnamese Government. The Government disregards the fact that it has already been well aware of the content of this response. In order to achieve its ends, the

Government even goes as far as undermining the power of the court and disregarding international covenants on human rights. The DP therefore finds this approach absolutely unacceptable.

Mr President, the above is an analysis of the legal aspects of the Bill. I have noted that many of my colleagues have quite a lot of worries. I therefore will devote the second part of my speech to the consequences of passing or vetoing the Bill.

Firstly, I wish to emphasize that at present, only 200-odd VMs have been released in the wake of the Privy Council judgement. There is no evidence to show that or to substantiate the argument that a large number of non-national VMs will be subsequently released. However the case is, this is a principle of basic human rights. If they should be released, we should respect their rights.

Secondly, many people worry that the VMs may produce fraudulent identity documents, resulting in more people applying for release on recognizance from detention by citing this Privy Council judgement. I believe at such a late stage, the information concerning the VMs should have been submitted to the Government long, long ago. I definitely cannot believe that the VMs can easily produce fraudulent documents in support of forged identity. Moreover, I believe that there are many experienced experts in the Immigration Department who can identify the fraudulent documents. In fact, the Hong Kong Government always institutes prosecutions against users of fraudulent documents and deports quite a number of people from Hong Kong, including foreign nationals, on the ground that they use fraudulent documents. Therefore, I will never doubt about the Government's competence in this aspect.

Furthermore, I will not be misled into believing that the VMs will riot in the wake of this judgement. No matter whether or not the recent riot in the Whitehead Detention Centre is related to this Privy Council judgement, I believe that after this incident, the VMs should be well aware that even if they destroy the information kept inside the VM detention centres, they cannot achieve the aim of extending their stay in Hong Kong because the Immigration Department has extra sets of information in hand. They should be well aware that their efforts are of no avail. With this lesson in mind, and subsequent to the promotion and education campaigns conducted by the Government, they will not, I believe, adhere to the belief that they can use the Privy Council judgement to apply for release on recognizance by taking irrational actions.

It is also groundless for us to believe that more VMs will be attracted to Hong Kong as a result of this judgement. There is not the slightest trace to suggest that this worry is well-founded. If it is so unfortunate that some VMs are affected by this judgement, thinking that they can stay in Hong Kong after coming here, then the basic reason lies in the Vietnamese Government's declaration of its policy of not accepting VMs who are non-nationals for repatriation. It has nothing to do with our detention policy. If they know that there is a chance for them to stay after coming to Hong Kong, they will not mind how long they will have to be detained. On this ground, if they believe the Vietnamese Government does uphold the policy of not accepting VMs who are non-nationals of Vietnam, then their coming to Hong Kong will not be curbed even if we revise our detention policy or enhance the power of detention of the Government. I would like to reiterate that the VMs who can leave the VM detention centres as a result of the Privy Council judgement are not released unconditionally, they are released on recognizance. If we come to the knowledge that the Vietnamese Government is going to take them back, they will still be repatriated.

Mr President, I think the Government should face the reality. If the Vietnamese Government genuinely implement the policy of not accepting VMs who are non-nationals of Vietnam, it is pointless for the Government to continue detaining the VMs. If the Vietnamese Government does not have such a policy and it is just a kind of misleading reports, or if the Vietnamese Government is still making up her mind, then the Government should seek clarification from the Vietnamese Government as soon as possible so that the problem can be completely resolved.

Our Legislative Council is fully returned by election and we should exercise due care when scrutinizing this Bill. We should never pass any bill that is inconsistent with international covenants on human rights, that will undermine the power of the court, that will jeopardize our rule of law in the future or that will affect the court's power to protect our right to liberty. This is our basic duty. For the long-term interests of Hong Kong, it is imperative for us to stand by this principle, to protect our rule of law and to protect our human rights. This is of paramount importance not only to the hundreds or thousands of VMs, but also to the millions of us who are to straddle 1997.

In view of the above, the DP lends its unreserved support for the Honourable Miss Margaret NG's amendment in order to clarify the objective of this policy. Of course, we will, in the first place, oppose the Second Reading of the Bill.

**MR CHIM PUI-CHUNG** (in Cantonese): Mr President, the problem of Vietnamese migrants (VMs) has been perplexing Hong Kong and the people of Hong Kong for over 10 years. Certainly, the restraints and criticisms on the Government have also been countless. The main reason is that Hong Kong is after all a place under the administration of the United Kingdom and it is also a British colony. Last time when the British Foreign Secretary visited Hong Kong, he said what he did was done on behalf of Hong Kong, and if the problem could not be solved eventually, the responsibilities had to be under taken by the people of Hong Kong. From this we can profoundly and fully appreciate the way in which the British Government has acted hypocritically and shirked its responsibilities. Under these circumstances, both the Hong Kong Government and Members of the Legislative Council should have argued strongly on just grounds and have the port of first asylum policy abolished.

In fact, we immensely sympathize with the VMs. Who would be willing to do so if not being forced? All along, Hong Kong has been a place for refugees. Now that we have such achievements today, we should take care of people in other regions. However, "it is difficult to look the persistently poor" as the saying goes, and we also have a legal system to observe. Now that we have come to this state today, we have to criticize the British Government first for having betrayed the interests of the people of Hong Kong and making herself appears like a great and impressive nation of the world, who can look after the interests, even human rights, of various parties. Secondly, we also have to denounce the United States Government for putting Vietnam in such a state, what is more, it frequently plays little tricks which perplexes Hong Kong and subject it to restraints with uncertainty.

At the same time, I reproach those so-called international human rights bodies for frequently making criticism on Hong Kong. Every region has its own policies. Those bodies are not universally representative. It is because people's ideas and ideals differ, and nobody can say his ideas are absolutely correct. We should consider the actual situations before we act. Therefore, the fact that those so-called human rights bodies of overseas countries have criticized Hong Kong in respect of the VM problem, paying no attention to the reality, will only make the people of Hong Kong disrespect them more and welcome them less. Of course, we sympathize with the sufferings of the VMs as they have been in custody for a long period and are unable to achieve their goals and ideals.

Another matter that the Hong Kong Government has failed is to persuade the VMs. Although in recent years, Vietnam is apparently still a communist society, the fact is that the former Saigon, now known as Ho Chi Minh City, has already had the characteristics of a free market. Many Taiwanese are now making investments there, so are many Hong Kong people. We have even learnt from the media that many Taiwanese men have gone to Vietnam to get married. This serves to prove that Vietnam is a region that is progressing towards lifting social and economic restrictions. The Hong Kong Government should make positive efforts to persuade the VMs and introduce to them the present situation of Vietnam.

Moreover, we all know that when the VMs stay here, the people of Hong Kong and that Hong Kong Government have to spend a lot of money on them. Therefore, the Government should implement an effective policy, granting them allowances to enable them to return to Vietnam, so that they can at least run some small businesses or have a small amount of capital. This is at least better than subsidizing their living expenses every month without achieving the goals of both sides.

Mr President, today I speak in opposition to the Government's amendment. This is because Hong Kong is an executive-led territory, but in fact the Government practises fascist administration, the so-called executive-led administration, with respect to a lot of matters. Undeniably, there are still some 17 000 VMs in Hong Kong, and the judgement of the Privy Council is favourable to them. Now that the Government is amending the law, I think such law should be applied to punish the VMs who will be coming to Hong Kong in future. This is because if a person has been prosecuted before and has been acquitted, and then he was re-arrested immediately afterwards, I think this will be unfair to him. This is exactly the situation of the VMs now. Therefore, if the Government can guarantee that the legislation we are now going to pass will not have legal effects on the VMs who have been stranded in Hong Kong, then I will support it. However, if the legislation is directed against the VMs who have been stranded in Hong Kong, seeking to achieve another kind of executive-led administration, I personally will oppose it absolutely. Therefore, I will listen to what the Secretary for Security will say in reply later on. He may think that the one vote I am going to cast is not important, as I forecast that the voting result will be 30 votes to 27 votes, and he will win by three votes. But if he thinks the one vote I cast is important, he has to guarantee that if the amendment is passed later, it will

not affect the VMs who are now stranded in Hong Kong, then, I will support the Bill. If he does not guarantee, I will oppose it.

We have so many lawyers in this Chamber now but all of them cannot put forward a clear legal point of view. I am not a member of the legal profession but I cannot help laughing at them.

Mr President, even if the Bill is passed later on, I think the Government should face the reality in solving problems. As 1997 is approaching, many Secretaries have to join the transition, and they have to take into consideration the common interests of many sides. Of course, the reason I oppose the Bill is different from those of Members who are the so-called democrats. In any case, we have to strike a balance between the practical problems of Hong Kong people and other pragmatic and objective factors.

Mr President, these are my remarks.

**MR LAW CHI-KWONG** (in Cantonese): Mr President, originally I did not intend to speak today because I did not take part in the work of the Bills Committee. But after hearing the speeches made by a number of Members, I just cannot help airing my opinions. This is because I have been unable to understand: what is the relationship between today's amendment to the relevant legislation and the principal policy on boat people? Why were there so many questions about the policy on boat people? It is even more difficult for me to understand why the riots in the Whitehead Detention Centre were being constantly discussed and what relationship do the riots have with today's amendment.

I gradually understand what it is about after hearing the speeches delivered by Members. It is all because some people are unable to rid them of the logical confusion. Some people said we had given too much human rights to the boat people, who have nonetheless committed offences. Therefore, we have to strip them of their human rights. This concept is very dangerous indeed. If a person commits mistakes, we should apply the law in a fair manner to give a verdict and impose punishment on him instead of revising legislation to strip him of the basic rights conferred to him by law. If this Council continues to do so, I just cannot help worrying about the future situation for basic human rights in Hong Kong.

For this reason, I hope colleagues in this Council can sort out clearly what we are doing today before making a decision.

**PRESIDENT:** Mr LAW Chi-kwong, please speak to the question.

**MR LAW CHI-KWONG** (in Cantonese): Thank you, Mr President. I think I have finished my speech. I only hope that Members can consider clearly the issue we are discussing today instead of discussing the Government's basic policy on boat people.

**MRS SELINA CHOW** (in Cantonese): Mr President, the Government put forth the Immigration (Amendment) Bill 1996 with an aim to prevent the Vietnamese migrants (VMs) from seeking for an early release on the ground of their being holders of foreign passports before the Vietnamese authorities respond that their return to Vietnam is rejected in the light of the Privy Council decision. In the opinion of the Liberal Party, the relevant amendments are not in conflict with the International Covenant on Civil and Political Rights (ICCPR). The Government has taken the initiative to amend the wordings of the original amendment and has avoided over-circumscribing the power of the courts in giving consideration to various factors. So the Liberal Party is in support of the amendment Bill.

The present amendments only seek to plug the known legal loopholes so that the control originally intended is more clearly conveyed. It does not seek to strip the VMs of their deserved rights by means of any new control. It can be said that the amendment does not intend to make any changes in principle, therefore, we are not worried that there will be any difference from the original legislation in essence.

As to the power of the courts, the latest version of the amendment Bill safeguards that the courts will not be subject to any unnecessary restraints. On the one hand, before deciding whether it should release a VM or not, the court has to consider, among many other factors, whether the Vietnamese authorities have given a reply. On the other hand, the court may also order the release of a VM if it thinks that the duration of detaining the VM has been unreasonably long. As the power of the court has not been circumscribed and the limits of authority of the Director of Immigration have been clearly stipulated in the legislation, we do not think we will face the danger of arbitrary detention.



Those who regard this amendment as a human right issue have in fact disregarded that every country or region has the right to exert immigration control.

When the VMs arrived in Hong Kong, the relevant departments explained to them clearly the choices available to them and the screening policy, but they have still chosen to come ashore and be screened. This is an effective and internationally accepted policy which has been endorsed and supported by the United Nations High Commissioner for Refugees (UNHCR). Under this policy, the VMs who have been screened out have to be detained pending removal. For those who have been proven as beyond repatriation, the Government will release them. During the period of their being detained, they are not living like prisoners but are living relatively free in the camps. Their major loss is just the freedom to integrate into Hong Kong society. However, this is a restriction every illegal immigrant has to be subject to.

Human rights organizations have been constantly criticizing that Hong Kong is not humane enough in treatment the VMs. Their argument is based upon the fact that they do not accept Hong Kong's screening policy, hence insisting that the illegally immigrating VMs are refugees. They are also discontented with the standard of living in the detention centres. They refuse to accept the fact that, so far, the internationally accepted screening policy has been proven to be successful and there has never been any case of persecution on the repatriated VMs. In regard to living standard, opinions differ. In the last financial year, the Hong Kong Government, the British Government and the UNHCR have spent a total of more than \$0.9 billion, that is, \$3,700 a month is spent on every VM on average, which include money used in maintaining the detention centres, salaries of staff, medical expenses, living expenses and expenses on food and daily necessities. As compared with ordinary members of the public, perhaps no one cannot say that we have ill-treated them.

The constant criticisms made by the human rights organizations on Hong Kong are not only unfair to us, but "well meant" as they may be, they have also led to undesirable effects because their comments make the VMs refuse to give up their fantasies, and they have resorted to every means to resist repatriation.

The urgent thing to do is not to argue whether Hong Kong can treat the VMs in a more humane way. Instead, it is to consider how we can dispel the fantasies of the VMs of staying in Hong Kong to wait for opportunities so that we can speed up the pace of repatriation of more VMs. Recently, the Government has paced up the progress of the Orderly Repatriation Programme and this has led

to more VMs taking part in voluntary repatriation. Last week, more than 700 VMs have been voluntarily repatriated as they knew that the Hong Kong Government was determined to speed up their repatriation, so they preferred to opt for voluntary repatriation.

This phenomenon is just good enough to confirm the need, as we have repeatedly emphasize in the past, for a timetable for repatriation to enable the VMs to appreciate their actual situation and discourage them from any unnecessary fantasies. The Liberal Party applauds the present determination shown by the Government. But we still want to emphasize that both the Hong Kong and Vietnamese Governments must carefully plan the technical arrangements for speeding up repatriation in order to avoid chaos. At the same time, the Vietnamese Government should be adequately prepared for receiving its returning nationals and enabling them to build up their homes again.

After all, we must abolish the policy of having Hong Kong as a port of first asylum so as to totally uproot the VMs' fantasy that if they have the opportunity to come to Hong Kong, they can then migrant to overseas countries.

As we all know, only 1 600 people took part in the Voluntary Repatriation Programme last year. Adding up those who opted for orderly repatriation, the total number was only 2 300 people, which is entirely divorced from the target of 1 800 people per month set by the steering committee of the Comprehensive Plan of Action in March last year. The main reason was that the American Congressmen have complicated the issue by making the VMs falsely believe that they would have a vantage chance, and therefore, they refused to voluntarily return to Vietnam. Eventually the second channel proposal made by the United States Government has melt into thin air. However, to be fair, the American officials responsible for the refugee problem are not unaware of the difficulties faced by Hong Kong. They also hope to step up the pace of repatriation. The current Resettlement Opportunity for Vietnamese Returnees Scheme is designed to give a last chance to those VMs who insist that they are refugees. They will be given a second screening in Vietnam provided they believe that they are eligible to be regarded as refugees and will voluntarily return to Vietnamese before 30 June. I hope that from today onwards until the deadline of the Scheme, the UNHCR, the United States Government and all those who have influence over the VMs in the detention centres, including all human rights organization and all those who have worked for the Scheme, can explain the Scheme to the VMs and advise them to make good use of this opportunity and voluntarily apply

for returning to Vietnam.

Mr President, Members who have just spoken in opposition to this amendment proposed by the Government has totally ignored the actual problem of illegal VMs whom Hong Kong has been taking on for many years and they often regard these illegal immigrants as legitimate residents in Hong Kong. This is an idealism divorced from the reality which will not be accepted by any of the countries in the world which are now facing the problem of illegal immigrants. Judging this by international standard, the way in which Hong Kong handles this problem is not worse than that of the major democratic western countries. In view of the actual situation in Hong Kong, the passage of the amendment proposed today will make the VMs in the closed camps give up their fantasies. However, if the amendment were negatived, this may induce the VMs to continue indulging in fantasy. This will not only hinder the progress of repatriation but also cause anxiety and worries to the people in Hong Kong. Our Honourable Members who are flaunting human rights, are you doing justice to Hong Kong?

Mr President, the Liberal Party will give full support to the amendment proposed by the Government.

**MISS EMILY LAU** (in Cantonese): Mr President, I speak in opposition to the amendment of the Immigration Ordinance by the Government.

First of all, I would like to respond to the Honourable Mrs Selina CHOW's speech. I believe, Mr President, you and I are doing justice to the people of Hong Kong. I believe, Mr President, you will remember that, during the 1991 election, there were strong opposition against the Vietnamese refugees and migrants. However, Mr President, you and I still insisted in our constituency that we should take a humanitarian stand towards the Vietnamese migrants (VMs). I did that in 1991 and I still do so in 1996. I hope that in future Members who have a conscience and I will take a humanitarian stand towards the weak who come here to seek our help. Certainly, we also hope that we will have the ability to help these people. More importantly, we have to consider that we are a community of refugees, half of our population are refugees and the other half are the descendants of refugees. The Chinese Communist Party will take over Hong Kong in 405 days, who knows what will happen then? Therefore, I believe everyone should ponder on the past and future and think about both our background and our future. Now that Hong Kong is in such an advantageous

position that we can look after some of the weak, I hope we can try our best to do so. I do not hope today's debate on the amendment to an Ordinance should agitate Hong Kong people and arouse once again their hatred towards the VMs. There are only 405 days before China will take over Hong Kong and we are all much perturbed. We should now pull ourselves together in times of trouble and the general mood should not be one of hostility to a small group of people in our society. Therefore, Mr President, I totally agree to what the Honourable LAW Chi-kwong has just said, that we are discussing the amendment to an Ordinance and we should not wander away from the topic of discussion.

I will not talk too much either, because I totally agree and accept the ideas the Honourable Albert HO of the Democratic Party has proposed just now. I think the main aim of the Government in proposing this amendment is to plug the loophole of the Privy Council's rulings. However, I agree with Mr Albert HO that the action taken this time will weaken the power of the court to protect the personal freedom of the individual, and I am very worried about this. Although the Legal Adviser of this Council has informed us that the court may not rule that the amendment proposed by the Government has contravened the International Covenant on Human Rights, I believe the Government knows that very soon some groups will go to the court to challenge the new amendment proposed by the Government if the amendment proposed by the Honourable Miss Margaret NG today were negated and the Government's hope fulfilled. In the unfortunate event that the court really rules that the amendment proposed by the Government has violated the International Covenant on Human Rights, and if this Council has passed this amendment, I believe this will bring us disrepute and make us feel embarrassed.

Many Members have just asked why the international community still fail to understand the painstaking efforts made by Hong Kong after we have done so much. I believe Hong Kong people understand that Hong Kong has already made great efforts, both financially and otherwise. Why do the international community still criticize us, making many Hong Kong people and Members unhappy? The reason is that for no reason at all, sometimes we would do something like the proposal of an amendment by the Government today. In fact, the issue itself is not too serious, I totally agree with Miss Margaret NG that the Government is overreacting. At present, there are 7 000 VMs whose status has not yet been determined, some of them may be ethnic Chinese and some of them may not be Vietnamese. The Vietnamese Government may not take back all of them. Now, the Government declares that there is no need to say anything more,

that we do not agree to this policy of the Vietnamese Government, therefore, we have to wait until the Vietnamese Government gives us a reply in writing as confirmation. However, the Vietnamese Government will sometimes take a long time before giving us a reply, therefore, we are worried about whether the problem of arbitrary or indefinite detention will arise. The Government says that the court can make a decision, but the court also wants to take a look at this provision. If we say that we have to wait for the Vietnamese Government's reply in writing before confirming, I think this will restrict the power of the court. The Government has already mentioned at a meeting of the Bills Committee that this amended Ordinance will have a regressive effect on the power of the court, as to have regression means to restrain, therefore I regret it very much that there is the proposal by the Government to amend the Ordinance relating to the protection of personal freedom. Since this amended Ordinance will erode or challenge the power of the court, or will even violate the International Covenant on Human Rights, I cannot support the Government's amendment.

Mr President, I would also like all of us to think this over: if the Government's amendment is passed today, what message will we give to the international community? Why does Hong Kong still have such a bad reputation after we have done so much and spent so much money? Do the Government and Members have to make a self-criticism? Is it true that when some people hold a demonstration, the Government will be scared and will say that we have to comply with public feeling and throw human rights out of the window without bothering about it?

I feel all the more bewildered as Members have confused this issue with the Whitehead incident. I believe none of us will support the use of violence by the VMs. We hope we can treat them well and we have been trying our best to do so. The situation is very difficult, but we will not support the use of violence. Mr President, pressure will only intensify if this incident were to be linked up with the Whitehead incident because the Whitehead incident will make the public, especially the residents in your constituency and mine, very angry. Is it true that we cannot support the amendment because the residents are angry, or else we will lose in the next election? Mr President, I do not know whether I can stand for election again, maybe you are luckier than I am, in fact, the question is it is hard to tell what our future will be .....

**PRESIDENT:** Miss LAU, please speak to the question.

**MISS EMILY LAU** (in Cantonese): Therefore, I believe we should not bow to these evil forces. We have to uphold our principle and express our views, I will therefore oppose the Government's amendment. If we are not successful, although I find the amendment proposed by Miss Margaret NG may not be good enough — in my understanding, her amendment is reverting the amendment to its original state before the proposed amendment by the Government. I sincerely hope that this can be done. Under the circumstances that we have no choice, I will support the amendment proposed by Miss Margaret NG on behalf of the legal sector and the Bar Association.

I hope all my colleagues can try their best today to give the vulnerable and the disadvantaged in our society a message concerning how we are going to treat them. Also, we should let the international community know that the Legislative Council and the Hong Kong Government still take a humanitarian stand in dealing with the problem of VMs.

Thank you, Mr President.

**MR BRUCE LIU** (in Cantonese): Mr President, on behalf of the Hong Kong Association for Democracy and People's Livelihood (ADPL), I am speaking in support of the Government's amendment. We are not trying to gain any political capital from making the decision, our decision to do so is based on facts and the overall interests of Hong Kong.

First, Hong Kong has been doing quite a good job in respect of its detention policy, and the arrangements for handling Vietnamese migrants (VMs). Hong Kong has really been treating them well and they have not suffered any maltreatment. In the international community, what Hong Kong has been doing is consistent with the international human rights standards.

The policy of "detention pending repatriation" for VMs is a necessary albeit unwelcomed policy. The policy has struck a balance between the ability to take on the burden and the responsibility of the Hong Kong community on the one hand, and the human rights requirements and standards of the international community on the other.

The ADPL supports the amendment Bill because it gives a clear definition of "pending removal", and the purpose of detention pending removal will not be easily defeated. The court, on the other hand, needs to consider an objective fact first, that is whether the Vietnamese Government has responded to the Hong Kong Government's request for repatriation. If no response has been given, the purpose of "pending removal" will not be defeated. VMs applying for a writ of *habeas corpus* may still make a request for their release on the two grounds as follows:

Firstly, an applicant may produce sufficient evidence to prove that although the Vietnamese Government has not responded, the purpose of "pending removal" has been defeated as far as the applicant is concerned. For example, similar to those in the Privy Council case applying for a writ of *habeas corpus*, if they can produce substantial documentary proof to prove that they are not Vietnamese nationals or that they are Taiwanese, or any other relevant proof, the court will still give due consideration to the details of the individual cases and proofs before deciding whether or not a writ of *habeas corpus* should be granted. But if the proofs given by the VMs are not authentic or are supported by forged papers, then the VMs' application for a writ of *habeas corpus* will hardly succeed.

Secondly, if the detention periods of the VMs have been unreasonably long and the VMs are still "pending repatriation", they may apply to the court for a writ of *habeas corpus* based on the reason set out in section 1A. Therefore, detention "pending repatriation" is not for an indefinite period and is limited by "whether the detention has been imposed for an unreasonable period".

The Government claims that the amendment made this time has not violated the Bill of Rights or the International Covenant on Human Rights. If any VM, members of the community or organizations disagree with this legal opinion, they are fully entitled under the legal system in Hong Kong to challenge the courts. However, the ADPL is of the view that the amendment is consistent with international human rights standards and requirements and has struck a balance between the social needs for a "detention policy" and the consideration about human rights. Therefore, we support the Government's amendment.

I so submit.

**MR IP KWOK-HIM** (in Cantonese): Mr President, for more than two decades, Hong Kong has been plagued by the problem of Vietnamese migrants (VMs), which has cost us more than \$7 billion. We cannot see what else Hong Kong people still owe the migrants! Neither can we see what else we, the people of Hong Kong, have failed to do to the international community! I feel that the people of Hong Kong should have nothing to be ashamed of. However, some of the VMs stranded in Hong Kong have not only failed to appreciate what we have bestowed on them, but also requited ingratitude for our kindness by repeatedly stirring up riots. Furthermore, the incessant escalation of the riots have aroused widespread indignation and discontent. To the Hong Kong society, the VMs stranded here have become a "time bomb". The Hong Kong Government should indeed speed up the repatriation of VMs immediately instead of giving them any more indulgence.

The United States Government and Senators have, in the past two or three years, kept giving misleading messages to the VMs stranded in Hong Kong. In June last year, the House passed an Act allowing for the re-screening of the VMs stranded in Hong Kong, rekindling the VMs' false hopes once again. As a result, the Voluntary Repatriation Programme that has been proceeding quite smoothly suffered another setback. With the frequent occurrence of VMs' riots and the escalation of protests, the series of actions from sitting-in and hunger strike to violent riots, arson, assault, hostage taking and so on have all directly threaten the safety of the Correctional Services Department (CSD) staff, the police officers and the public.

Mr President, in fact, the Hong Kong Government has never been harsh to the VMs. After leaving Vietnam, the VMs drifted across the seas and finally came to Hong Kong as illegal immigrants. The Hong Kong Government has already discharged its international obligation and offered adequate personal protection to them by giving them temporary shelters and providing them with food and accommodation. Faced with the "time bomb", the people of Hong Kong should fully support the Government to take every feasible means to repatriate all VMs back to Vietnam expeditiously. We can no longer tolerate this small number of trouble-making VMs, who keep on disturbing the tranquillity of the entire community.



Regrettably, there are still voices from the minority both in the community and in this Chamber which use human rights as an excuse to champion the trouble-making VMs stranded in Hong Kong, thereby indirectly fostering their arrogance and slowing down the progress of the repatriation work of the Hong Kong Government. I think these people should see clearly that at present, it is not the human rights of the VMs that are under threat. It is the human rights of the CSD staff guarding the Whitehead Detention Centre, the human rights of the Hong Kong people living in the vicinity of the VM camps and the lives and properties of the 6 million people of Hong Kong that are under threat.

Some Members in this Council have been emphasizing that we should respect public opinion. I hope they can see clearly that the public opinion in Hong Kong is that penalties should be imposed upon the trouble-makers who committed crimes in the Whitehead Detention Centre and all VMs stranded in Hong Kong should be repatriated before 1997. Mr President, the people of Hong Kong have done more than enough for the VMs and this Council should respect the wishes of the people in Hong Kong people. Even more, I hope that the representatives of public opinion in this Chamber can truly respond to the public's wishes instead of obstructing the repatriation of VMs with human rights as an excuse.

The main purpose of the Immigration (Amendment) Bill 1996 under discussion in this Council today is to stop the VMs from asking the court to rule that they should no longer be detained by making use of the nationality dispute. After amending the Ordinance, the VMs can still maintain their rights to pursue court proceedings and the court can also continue to exercise its discretionary power to rule that the VMs should be released on the ground that the period of detention is not reasonable. In view of this, the amended Bill does not deprive any of the VMs' original rights.

Amending the Ordinance is like racing against time. As far as the current situation is concerned, the later the amendment is to be finalized, the larger will be the number of VMs seeking to exploit this legal loophole by using fraudulent documents to gain permission for release. The Democratic Alliance for Betterment of Hong Kong (DAB) does not want to see any more cases in which the VMs stranded in Hong Kong create troubles and injure others. In view of this, the DAB supports the Immigration (Amendment) Bill 1996 and urges the Hong Kong Government to repatriate all VMs stranded in Hong Kong back to Vietnam before 1997.

Mr President, these are my remarks.

**SECRETARY FOR SECURITY:** Mr President, I am grateful to the Bills Committee under the chairmanship of the Honourable Ambrose LAU for its thorough examination of the Immigration (Amendment) Bill 1996. In the course of scrutinizing the Bill, certain concerns and criticisms have been expressed by a number of organizations and some Honourable Members which have been repeated in a number of speeches today. We have already responded to these criticisms and concerns fully in the Bills Committee, but I should like to take this opportunity to reiterate the Administration's position.

First, a question is asked as to whether we need the Bill at all. The answer is, yes, we do. I have explained that the purpose of the Bill, when it was first introduced into this Council on 24 April, is to close a loophole. Let me emphasize that illegal immigration is a problem which Hong Kong faces every day. Detention of illegal immigrants, including Vietnamese illegal immigrants, is a necessary policy to deal effectively with this problem. We detain illegal immigrants not for the sake of detaining them. The ultimate aim is to effect their repatriation to their countries of origin as soon as possible. Clearly we cannot stand by and watch our policy of detaining Vietnamese migrants being undermined or clouded by uncertainty.

The Bill is necessary to close a loophole which may be exploited by Vietnamese migrants who claim, on the basis of documents which are not even accepted by the Government which purportedly issued them and which had been or may continue to be obtained in its dubious means, that they cannot be repatriated and therefore cannot continue to be detained illegally. We already have to release over 270 Vietnamese migrants in the wake of the Privy Council's judgment. We have no intention to re-detain them until and unless the Vietnamese Government has given clearance for them to return to Vietnam and arrangements are made to effect their repatriation. But Honourable Members should bear in mind, in this context, that there are still about 5 000 Vietnamese migrants in our camps whose clearance has yet to be given by the Vietnamese authorities. Furthermore, so long as this loophole remains unplugged, we face the risk of further arrival of Vietnamese migrants in the future attracted by the prospect of being released into the community. Why should we wish to see Hong Kong exposed to such a risk?

Secondly, there have been misguided accusations that the Bill legislates for

arbitrary and indefinite detention, thereby breaching human rights principles and our obligations under the International Covenant on Civil and Political Rights as applied to Hong Kong. The Administration disagree with such accusations, and in this context, may I draw Honourable Members' attention to the comments by the legal adviser to this Council, as repeated by the Bills Committee Chairman in his speech earlier today. In drawing up the Bill, we were mindful of the need to strike a balance between our detention policy on the one hand and the individual's right to liberty on the other. There is a specific provision in the Bill which makes it clear that it does not, I repeat "not", preclude the courts from finding that a person has been detained for an unreasonable period of time. The remedies of judicial review and *habeas corpus* will continue to be available to all those detained under section 13D of the Immigration Ordinance.

Thirdly, in the course of the Bills Committee's deliberations, some Honourable Members have expressed concern that the Bill might fetter the court's ability to hear evidence before it and to reach its own conclusion. I shall be moving at the Committee stage an amendment which addresses this concern by clarifying the legislative intent of section 13D of the Immigration Ordinance while ensuring that our policy objectives are met. I will explain in more detail when moving the amendment.

I understand that the Honourable Miss Margaret NG, notwithstanding the Committee stage amendment which I shall propose, will also be moving another Committee stage amendment on the grounds that it will further clarify the law. The Administration does not agree with her amendment. The Bill, if amended as I will be proposing at the Committee stage, is sufficiently clear. Ultimately, as it is for every other law, it is for the courts to interpret and apply this law. In the Administration's view, Miss Margaret NG's Committee stage amendment would undermine the legislative intent of the Bill and would effectively put us back to almost square one.

The long-term solution to the Vietnamese migrants problem, whether in respect of Vietnamese migrants who are in detention or those who have been released, is to return them to Vietnam. Honourable Members may wish to note in this context that during the first four and a half months of this year, we have successfully repatriated more Vietnamese migrants than the whole of last year. Nevertheless, much work remains to be done to achieve the objective of clearing the camps by mid 1997. We are redoubling our efforts in this regard. We shall also continue to seek to resolve the problem of clearing the remaining 5 000 Vietnamese migrants, including the so-called non-national cases, for return to

Vietnam through diplomatic channels and in conjunction with the United Nations High Commissioner for Refugees.

In the meantime, it is important that we do nothing to undermine our policy of detaining Vietnamese migrants pending repatriation. The legislative proposal before Honourable Members is necessary for the preservation of that policy. When the Vietnamese migrant problem is completely resolved, which I hope can be achieved before mid 1997, there will be no further need for that part of the Immigration Ordinance dealing with Vietnamese migrants, and we would take steps to repeal it.

Mr President, I recommend the Bill to Honourable Members.

*Question on the Second Reading of the Bill put.*

*Voice vote taken.*

THE PRESIDENT said he thought the "Noes" had it.

Miss Emily LAU and Mrs Miriam LAU claimed a division.

**PRESIDENT:** Council shall proceed to a division.

**PRESIDENT:** I would like to remind Members that they are called upon to vote on the question that the Immigration (Amendment) Bill 1996 be read the Second time. Would Members please register their presence by pressing the top button, and then proceed to vote by choosing one of the three buttons below?

**PRESIDENT:** We are one short of the head count. Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Frederick FUNG, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted for the motion.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the motion.

THE PRESIDENT announced that there were 29 votes in favour of the motion and 26 against it. He therefore declared that the motion was carried.

Bill read the Second time.

*Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).*

### **Committee Stage of Bill**

Council went into Committee.

### **IMMIGRATION (AMENDMENT) BILL 1996**

Clause 1 was agreed to.

## Clause 2

**CHAIRMAN:** Both the Secretary for Security and Miss Margaret NG have given notice to move amendments to clause 2. I will call upon the Secretary for Security to move his amendment first, as he is the Public Officer in charge of the Bill and he had put in his amendment earlier than Miss NG.

**SECRETARY FOR SECURITY:** Mr Chairman, I move that clause 2 be amended as set out under my name in the paper circularized to Honourable Members. The proposed amendment to clause 2 addresses a concern expressed by some Honourable Members and clarifies our legislative intent while retaining the broad principles of the original Bill.

We accept the concern expressed in the course of the Bills Committee's deliberations that the Bill, as originally drafted, may be construed as unnecessarily restricting the court's ability to hear evidence before it and to draw its own conclusions. The proposed amendment removes such a restriction on the court. Instead, it reinforces our legislative intent by making it clear that the purpose of "detention pending removal" includes the purpose of pending a response from the Vietnamese Government.

It is common sense that our ability to repatriate an illegal immigrant, including a Vietnamese illegal immigrant, depends on the willingness of the country of origin to accept him. In reality, when a Vietnamese migrant is screened out as a non-refugee, we will seek the agreement of the Vietnamese Government to accept him for return. When clearance is given by the Vietnamese Government, we then make appropriate arrangements, depending on whether he is to be returned under the Voluntary Repatriation Programme or the Orderly Repatriation Programme, to effect his return. Until then he is detained. That is our detention policy and that, we thought, was the effect of section 13D of the Immigration Ordinance.

However, while the Court of Appeal in Hong Kong supported our interpretation of the law as it stood, the Privy Council did not. In order to ensure that the law reflects clearly our detention policy, we seek to amend it by making clear that the purpose of "pending removal" includes the purpose of pending a

response from the Vietnamese Government. There is nothing in it which gives rise to indefinite or arbitrary detention or in any way infringes common law principles or our obligations under the International Covenant on Civil and Political Rights as applied to Hong Kong.

Mr Chairman, I beg to move.

*Proposed amendment*

**Clause 2**

That clause 2 be amended, by deleting paragraph (a) and substituting —

"(a) by adding before subsection (1A) -

"(1AA) Subject to subsections (1AB) and (1AC), where

-

(a) a person is being detained pending his removal from Hong Kong; and

(b) a request has been made to the Government of Vietnam by -

(i) the Government of Hong Kong;  
or

(ii) the United Nations High Commissioner for Refugees acting through his representative in Hong Kong,

for approval to remove the person to Vietnam,

for the purposes of detention under subsection (1), "pending removal" (等候遣離) includes awaiting a response to the request from the Government of Vietnam.

(1AB) For the avoidance of doubt, nothing in subsection (1AA) shall be interpreted as giving authority to the Director under subsection (1) to detain a person for a purpose other than pending his removal from Hong Kong.

(1AC) For the further avoidance of doubt, nothing in subsection (1AA) shall prevent a court, in applying subsection (1A), from determining that a person has been detained for an unreasonable period.";".

*Question on the amendment proposed.*

**CHAIRMAN:** I propose that the amendments to clause 2, proposed separately by the Secretary for Security and Miss Margaret NG, be debated together in a joint debate.

Committee shall debate the amendments to clause 2, proposed separately by the Secretary for Security and Miss Margaret NG, in a joint debate. I will call upon Miss NG to speak on the amendment proposed by the Secretary for Security as well as her own proposed amendment, but will not ask Miss Margaret NG to move her amendment unless the Secretary for Security's amendment has been negatived. If the Secretary for Security's amendment is agreed, that will by implication mean that Miss Margaret NG's proposed amendment is not approved.

**MISS MARGARET NG:** Mr Chairman, may I thank you now for giving me leave to move an amendment later on in this debate.

Although my amendment is taking the form of an alternative Committee stage amendment, in nature and in spirit, it is more of an amendment to the Administration's amendment for the purpose of clarification.

As I have made clear in my speech in the debate at the Bill's Second Reading, I am against this Bill because it is unnecessary and because it wrongly takes away the court's power to make a real determination about whether the detention of a Vietnamese migrant is lawful or not, that is a real determination about whether the purpose of the detention "pending removal" has failed.



The Administration has largely accepted that the Bill is problematic. They have said so openly. Their Committee stage amendment must, therefore, be understood as an attempt to overcome the relevant criticism while basically maintaining the original legislative intent. The Secretary has repeatedly maintained that the legislative intent remains unchanged.

What, then, is the legislative intent? Mr Chairman, the Administration's intention is clear as stated in paragraphs 17 to 18 of the Administration's brief to the Security Panel on 10 April. It reads as follows:

"What we are seeking is only to clarify that in considering whether the purpose of detaining a Vietnamese migrant has been spent, the Court should give proper weight to a very important factor, namely, whether the Vietnamese Government has rejected the Vietnamese migrant in question.

The proposed amendments outlined above (that is, the Bill) will not take away the court's power to decide on an application for a writ of *habeas corpus* before it. Nor do we seek to fetter the court's discretion."

Mr Chairman, although in my view an amendment to the law is unnecessary, I would have been prepared to accept it if the Bill had kept itself to precisely that. However, such was not the case. It vastly overshoot the target of requiring the court to "give proper weight" to whether a request had been rejected. And it severely enfettered the court's discretion.

Now, in the Administration's Committee stage amendment, the aim must be to cure the overshoot and to release the fetter, so as to reflect the real legislative intent.

However, in redrafting the Bill, an ambiguity had been introduced, I refer to the concluding words of (1AA):

"for the purposes of detention under subsection (1), "pending removal" includes awaiting a response to the request from the Government of Vietnam."

It is capable of a reading consistent with the legislative intent quoted earlier. However, there is a strong possibility of giving it the opposite reading. Because of the ambiguity of the meaning of "include", it is possible to interpret these lines as precluding the court from considering the question whether, overall, the purpose of "pending removal" has spent, once the Director of Immigration is able to show that a response is still being awaited from the Government of Vietnam.

An analogy may make this danger clearer. Say, if a legislation provides "'vehicle" includes a bicycle", then once the court is satisfied that a bicycle is involved, the court does not have to inquire into whether a "vehicle" is involved.

The objection to the Administration's Committee stage amendment is, therefore, in the first instance, ambiguity. Legislation must be clear. Particularly when it comes to legislation directly affecting a person's liberty and an executive authority's power to detain him without trial, no ambiguity can be countenanced by a responsible legislature. We therefore must remove the ambiguity.

A different but even stronger objection would arise if the latter reading is indeed the amendment's true intent, and in any event, its true effect. If this is the case, then there is no difference in effect between the Committee stage amendment and the Bill. The court is still reduced to only concerning itself with whether a request for repatriation has been rejected by the Government of Vietnam. In that case, all the objections I raised in my earlier speech in the Second Reading debate are restored. This remains a Bill which undermines the court's protection of personal liberty. Mr Chairman, I shall not repeat these objections here.

The Administration appears to assure us that this is not the intent, purpose or effect of the Committee stage amendment. The letter of the Secretary for Security dated 4 May 1996, submitting the Administration's draft Committee stage amendment to the Chairman of the Bills Committee, clearly indicated that the legislative intent had not changed. The Secretary said, in paragraph 4, "In this form, the Bill in no way affects the court's ability to consider any evidence before it and to make its own judgement." I emphasize "any evidence".

In paragraph 5 of the same letter, referring to the question of the duration of detention, the Secretary said, that "the time taken to put in place the arrangements for the repatriation of the Vietnamese migrant to Vietnam" must be understood as "including the time taken to secure a response from the Hanoi authorities".

If that is what is meant, then, in my view, clarification is necessary. Clarification is not achieved by (1AB) in the Administration's Committee stage amendment because it is circular — or tautological. If "awaiting a response to the request from the Government of Vietnam" is included in "pending removal", then by definition it is not a purpose "other than" "pending removal". The present (1AB) is simply not good enough.

Mr Chairman, the crux of the matter on whether the court's power is unduly restricted is simple. It can be decided by an answer to this question. Does the court have the power to enquire into whether the purpose of pending removal is spent, in spite of the fact that no rejection has been received from Vietnam? If the answer is "yes", then the court's power is safe. If the answer is "no", then we are back to the Bill: the amendment is a mere travesty. Worse, it may with justice be described as "wolf in sheep's clothing".

To ensure that (1) the ambiguity is removed, and (2) removed in the right direction, I will be proposing my own Committee stage amendment. The main text of my Committee stage amendment is identical with the Administration's Committee stage amendment except for the following words which will be added to the end of (1AB):

"and no court considering whether a person is being detained pending removal shall be precluded from determining that the person is not so detained notwithstanding that a response is awaited to the request from the Government of Vietnam."

Mr Chairman, I appreciate a double negative is not the most straight forward sentence to read, but a little analysis will make its meaning clear. If I may recommend Members to start from the word "notwithstanding", it simply says that, although a response is awaited, this fact in itself would not stop the court from deciding that a person is not being detained pending removal.

It merely removes an impossibility: awaiting response does not preclude the court from finding the purpose of pending removal has failed. But whether this purpose has failed or not remains a matter of evidence and the conclusion the court draws from the evidence. It certainly remains open to the court to decide that the person's detention is pending removal and should not be released.

In this way, the court's power of determination truly remains unfettered while attention is drawn to the factor of awaiting a response from Vietnam. It certainly poses or permits no assumption that the purpose of pending removal has failed merely because response has not been received for a period of time.

Finally, I should clarify one point. I have followed the Administration in using the term "response" from the Government of Vietnam. In doing so, I understand the word in its plain ordinary meaning. This contrasts with the term "notify" or "notification" in the original Bill.

Mr Chairman, for all the reasons I have set out, I strongly urge Members to reject the Administration's amendment and support mine. The defence of personal liberty requires them to do so.

Thank you, Mr Chairman.

**MR ALBERT HO** (in Cantonese): Mr Chairman, before Members decide how to

vote on the Government's amended Bill or the amendments proposed by the Honourable Miss Margaret NG, and whether they support them or oppose them, I would like to ask whether they have fully understood the implications of the amended Bill and the amendments proposed, especially the amended Bill proposed by the Government.

I believe Members have read the Secretary for Security's letter to us, in which it is stressed, on the one hand, that the principal aim of the amendments is to restore the position to what it was before the Privy Council judgement. In other words, the court has to wait until the Vietnamese Government gives a reply and use it as a basis of deciding whether a VM's detention has become spent. This is the situation before the Privy Council ruling. But, on the other hand, the Secretary for Security said that the Bill will in no way affect the court's power, especially its ability to consider any evidence before it. After reading the letter, I started to become confused, and the ambiguous situation involved has also rendered me unable to understand the meaning of the amendments as well as their consequences. When the Administration says that the Privy Council's ability to consider evidence will not be circumscribed, it will mean, in other words, that the so-called loophole cannot be plugged. If so, why should amendments be put forward? What is the purpose of the Amendment Bill? When the Administration states clearly that it does not want to restrict the court's ability to consider evidence, what harm will Miss Margaret NG's amendments bring? In fact, her amendments will only further clarify the situation. In brief, I really feel that the amendments proposed by the Government are ambiguous and so, we cannot support them. On the other hand, the aim of Miss NG's amendments is clear. Whether they support her amendments or not, I believe Members will have their own reasons and basis.

Mr Chairman, when the Second Reading debate of the Bill resumed just now, quite a number of Members criticized our opinions. I think these criticisms are also relevant to the declaration of our stand in regard to the amendments. So I would like to respond.

The Honourable CHAN Kam-lam mentioned that public opinions are clear. The people do not accept VMs' integration into our society and a lot of people have signed up to show support. I do not know whether they had specified that the signature campaign was to oppose the integration of VMs into our society when it was conducted. As far as I know, they did not specify this point to the people. They merely said that they wanted to solve the problem as quickly as

possible. If that was the case, I would render my support. But the point is that now we have some people who can be released under the law due to a number of reasons, and these people can even be eligible for settlement in Hong Kong after being screened in as refugees. I fail to see why the Hong Kong people should always insist on rejecting them. I do not believe that Hong Kong people will always reject others, especially their compatriots from Taiwan.

Mr CHAN Kam-lam also said that we have talked too much about the protection of human rights. He asked us whether we have paid any attention any public opinions. I want to stress one point: when we talk about human rights, our emphasis is that the human rights of everybody should be respected. The principle of human rights will be violated if some people seek to suppress the minority by making use of their own powers, numbers, and ability to command a majority of votes at one point of time.

**CHAIRMAN:** The question is on clause 2, the two amendments to it, not on an earlier debate.

**MR ALBERT HO** (in Cantonese): That is right. But these are the basic principles underlying the support of or opposition to the amendments. So I have to reiterate them. The Honourable Bruce LIU, on behalf of Hong Kong Association for Democracy and People's Livelihood, has put forward some reasons, saying that they will support.....

**CHAIRMAN:** This is not a debate on the earlier Second Reading motion. It is on clause 2 only.

**MR ALBERT HO** (in Cantonese): I understand, Mr Chairman. But the problem is that, following Mr Bruce LIU's line of reasoning, VMs can still submit identity documents in court even though the amendments proposed by the Administration are endorsed. If they are not nationals of Vietnam, they will be released. In that case, they will have no reason to support the Administration's amendments and they should only support Miss Margaret NG's amendments. I hope they can understand the Administration's policy stance. Its stance is to restore the situation to what it was prior to the Privy Council ruling — that is,

the court must wait until the Administration receives a response from the Vietnamese Government before making a decision, rather than vetting their identity and releasing them because of Vietnam's policy of not taking back non-nationals, as was the case with the precedent set last time. So, I hope my colleagues from ADPL can think over it again. I hope they would not vote in the wrong way out of their misunderstanding of the legal implications of the amendments, or of the Administration's policy objective. I hope they will consider the issue carefully before they vote.

Finally, I would like to point out that what Hong Kong is providing to VMs is the just most basic things which ought to be provided. We should not think that we are the most benevolent people because this is not the case in reality. There is simply no detention policy in many foreign countries. Recently, a German Minister who visited Hong Kong in order to understand our situation told us that they have tens of thousands of Vietnamese refugees in their country but there is no detention policy. I am not making comparison, but I want to emphasize that we are not the most benevolent people. What we are doing now is just the most basic things that ought to be done. We should not withdraw from what we are doing; otherwise, the Hong Kong people will feel shameful before the international community.

Mr President, I hope Members can support Mrs Margaret NG's amendments and oppose the Administration's amendments.

**CHAIRMAN:** Does any other Member wish to speak? If not, I shall invite Miss Margaret NG to speak for the Second time, if she wishes to, as she will not be given the chance to speak after the joint debate.

**MISS MARGARET NG:** Mr Chairman, thank you. I do wish to respond, Mr Chairman, because in the earlier stage of debate, many Members in opposing or supporting the Bill had also mentioned the Committee stage amendments. So therefore, Mr Chairman, I hope you will bear with me if I refer to their speeches at that point.

Mr Chairman, firstly, I would like to thank all those Members who had shown support to my amendment, and I am very much encouraged by the principles that they have stated in such eloquent terms. Mr Chairman, they

make the case much better than I can, and I am very grateful for their support.

Mr Chairman, I would also like to make a second, general remark which is that in the course of the debate, whether it is in connection with the Bill or in connection with the Committee stage amendments, there appeared to be a crudeness of approach. It seems to be very, very broad brush. If we are against Vietnamese boat people because of the various things they do, then we support the Bill and oppose my amendment, and therefore if we oppose the Government's Bill and support my amendment then that must be because we support Boat People, including the violence they have shown in the recent incident in Whitehead. Mr Chairman, this is, with respect, not the right attitude. Whatever our view towards the general policy on Vietnamese migrants, whatever our sentiments, we should closely examine the Bill and the amendments for the actual effect. Our duty requires us to do so.

Mr Chairman, some of our Members have taken the opportunity to voice the general view towards the Vietnamese boat people problem, and of course they have the right to do so, but I think we should really keep to the issue on hand and the issue on hand arises from the Privy Council's decision.

The Privy Council's decision has been criticized for making a lot of trouble for Hong Kong, but, with respect, that decision is exceedingly sensible and reasonable, obviously so. And it goes like this. If the Vietnamese Government has a policy of not accepting non-nationals then there is just no possibility of removal. Now, this must be right. If the Government does not agree that there is such a policy or the policy is actually not put into practice, then what the Government ought to do is to overturn this fact by evidence.

Now, are we saying that even if there is no chance for repatriation we should still detain these people until the detention has lasted so long that they could rely now on the second limb of the Bill or the amendment, that is, when they have been detained for an unreasonable period of time? That must be wrong. So, if we pass the Government's amendment, it would mean that we allow the Administration to lock up someone even though the lawfulness is questionable, and that cannot possibly be right.

Mr Chairman, I now refer to specific points raised in different speeches. I shall not go to each and every one of them, but there is one point, for example, by



the Honourable CHEUNG Hon-chung. He referred to the fact that this Bill deals with the treatment of illegal immigrants and that the situation had been changed by the Privy Council decision. He reiterated that our present policy regarding illegal immigrants should not be changed. With respect, he has misunderstood our policy towards illegal immigrants. It is that this Government cannot detain an illegal immigrant unless it is done according to the law. The law says that they may detain an illegal immigrant pending removal. What is required is that the Government, the Administration, should be the people to prove that this purpose is still alive, is achievable.

The Government ceases to have power to detain anybody, any illegal immigrant if it has become unlikely that he can be removed from Hong Kong, that he can be accepted by the country of his origin or suspected country of origin. This policy remains unchanged. Whether it is in the Bill or in the Committee stage, that policy should remain unchanged. I think that the Honourable Mrs Selina CHOW also raised the same point, that we are dealing with illegal immigrants, we are not dealing with the inhabitants of Hong Kong. But narrowly, speaking on the rights of illegal immigrants, on the executive authority regarding illegal immigrants, the situation is the same. If you exercise a power of detention, you must prove that you are exercising that power lawfully. And whether you are exercising that power lawfully or not is for the court to decide, and the court in deciding must have power to look into all relevant evidence. That is what we are talking about. And it is on this point that I claim that the Government's Committee stage amendment is not clear.

Now, Mrs Selina CHOW, in stating the position of the Liberal Party, seems to support the Administration's Committee stage amendment on the understanding that the court's hands are not tied, that the court would still be able to consider the overall question whether the person is being detained for the purpose of pending removal. And I understand that my amendment is not supported by the Liberal Party because it is not necessary. I think this needs to be underlined. And that appears to be the same position as the Honourable Bruce LIU. That is to say, my amendment is not supported not because it states a policy which they do not support but simply because they think it is not necessary. And their understanding of the intent of the Bill is such as not to preclude the court from considering overall whether the person's removal is still possible, notwithstanding no response has yet been received from Vietnam.

Now, I would prefer Members to accept the view of the Honourable Albert

HO that if there is a chance of the present Committee not stating that, if there is a chance of their being wrong, then they should support my amendment because my amendment makes it very clear. It is not against their fundamental view.

Mr Chairman, finally I come to the speech of the Secretary for Security in moving the amendment. The Secretary reiterates the original intent and confirms my view of what he considers the loophole to be, namely, that people may be able to use fraudulent documents. With respect, this argument will not work. The document may be false or it may be true. Now, if it is true, if this person is indeed a non-national and if indeed there is a practice and a policy of not accepting non-residents, non-Vietnamese, then surely there is no point detaining him. So, everything depends on whether the document is false or true. Whether a document is false or true is a matter of evidence and should not be pre-judged. The Secretary cannot be saying that we should lock these people up in case their document is false or in case the document is falsely obtained.

The Secretary also says that the Committee stage amendment of the Administration does not preclude release when a person has been detained for an unreasonable period of time, but Mr Chairman, the time, the duration of detention and the purpose of detention are two different things. If the detention is for an unlawful purpose then even one hour of detention is too long, because if the purpose is unlawful then the executive authority just cannot detain this person. So, the Secretary should not be referring to the second limb because we are really talking about the first limb, which is the purpose of the detention.

At the end of the day, Mr Chairman, I am simply making two points, namely, we must not allow our emotion or our view, general view towards Vietnamese boat people, to get away with our better judgment. We should look at each of the Committee stage amendments in a detached manner, study the effect in law, especially because it would affect the personal liberty of people to come and because it sets a bad precedent because it is ambiguous.

Mr Chairman, if Members generally agree that the law should be clear, I would strongly urge them to support my amendment and vote against the Government's amendment. Thank you, Mr Chairman.

**MRS SELINA CHOW:** Mr Chairman, I hesitate to debate on law with such an eminent barrister, but since the Honourable Miss Margaret NG raised a query as to why the Liberal Party is supporting the government amendment rather than

hers, I will try and explain, although not quite as eloquently as Miss NG has tried to persuade this Council to support her.

Actually, as far as the two amendments go, I think that the one focus that we should zero in on is Miss NG's addition to subsection 1(AB), which reads: "And no court considering whether a person is being detained pending removal shall be precluded from determining that the person is not so detained notwithstanding that a response is awaited to the request from the Government of Vietnam." It took me a long, long time, not being a lawyer, to make out what that meant but I did in the end. What it meant was that, although Miss NG was unsuccessful in defeating the Government's Second Reading of the Bill, and although she has accepted the Government's Committee stage amendment in redefining the phrase "pending removal", which is (等候遣離), which is to include "awaiting a response to the request from the Government of Vietnam", she has chosen to add in the rather longish phrase that I just read out in order to take away on the other hand what on the one hand the Government has given in the amendment to try and make it absolutely clear that the Government's policy of awaiting a response is actually reflected in the law.

What she is doing is in fact to allow the Government to give this clarification on one hand and take away on the other. She is actually giving, under her amendment, the power for the court to disregard the "awaiting response to the request from the Government of Vietnam".

Now, I think that this, of course, may not be acceptable if it were not for subsection 1(AC) which actually is already very plain in the Government's construction, which says very clearly: "For the further avoidance of doubt, nothing in subsection 1(AA)" — that is, the one defining "pending removal" to include "awaiting a response to a request from the Government of Vietnam" — "shall prevent a court ..... from determining that a person has been detained for an unreasonable period." That means that, in spite of that definition on "pending removal", the court is still not being prevented from determining that the person has been detained for an unreasonable period.

Now, in our view, the "pending removal" definition has to be seen in the context of this entire amendment that has been put forward by the Government. We feel that because there is subsection 1(AC), the risk of the so-called arbitrary detention is not there. So, that is why we feel that for the sake of clarity, for the sake of very clearly spelling out the government policy as reflected in the

legislation, and also because of that safeguard in subsection 1(AC), we accept that the Government's construction is indeed better than Miss NG's.

**SECRETARY FOR SECURITY:** Mr Chairman, I shall be brief and I hope simple. The Honourable Miss Margaret NG argues that, even as amended as I now propose, the Bill will still be ambiguous. With respect, there is nothing really ambiguous about it. That is not only my view but also the view, as I understand it, of the legal adviser to this Council.

To amend the Bill as proposed by Miss Margaret NG could once again cast doubts as to whether the purpose of "pending removal" does indeed include "pending a response from the Vietnamese Government". If the effect of her amendment is to permit releases from detention while awaiting a response from the Vietnamese Government as to whether the Vietnamese migrant is acceptable for return, it would drive a coach and horses through our detention policy as I have described earlier. In effect, we will almost be back to square one.

Miss Margaret NG's amendment is not about clarity, but to change the detention policy which I believe is supported by the community. Any Honourable Member's right to propose such a change cannot be gainsaid, but I believe that it would not be in the best interests of resolving the Vietnamese migrants problem, nor is it welcomed by the community at large. I strongly urge Honourable Members to support the amendment which I propose and not to support the Honourable Miss Margaret NG's amendment.

*Question on the amendment put.*

*Voice vote taken.*

THE CHAIRMAN said he thought the "Noes" had it.

Mr Ronald ARCULLI and Mr IP Kwok-him claimed a division.

**CHAIRMAN:** The Committee shall now proceed to a division.

**CHAIRMAN:** May I remind Members they are now called upon to vote on the question that the amendment to clause 2 moved by the Secretary for Security be approved. Would Members please register their presence by pressing the top button, and then proceed to vote by choosing one of the three buttons below?

**CHAIRMAN:** Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Frederick FUNG, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the amendment.

THE CHAIRMAN announced that there were 29 votes in favour of the amendment and 26 votes against it. He therefore declared that the amendment was agreed.

**CHAIRMAN:** Miss Margaret NG, as the Secretary for Security's amendment to clause 2 has been agreed, you may not move your proposed amendment to clause 2 as it is inconsistent with the decision already taken.

*Question on clause 2, as amended, put and agreed to.*

Council then resumed.

### **Third Reading of Bill**

THE SECRETARY FOR SECURITY reported that the

### **IMMIGRATION (AMENDMENT) BILL 1996**

had passed through Committee with amendment. He moved the Third Reading of the Bill.

*Question on the Third Reading of the Bill proposed, put and agreed to.*

Bill read the Third time and passed.

### **MEMBER'S MOTIONS**

**PRESIDENT:** I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debates and Members were informed by circular on 20 May. The movers of the motions will each have 15 minutes for their speeches including their replies, and another five minutes to speak on the proposed amendment, where applicable. Other Members, including the mover of the amendment, will each have seven minutes for their speeches. Under Standing Order 27A, I am obliged to direct any Member speaking in excess of the specified time to discontinue his or her speech.

### **STRENGTHENING OF CIVIC EDUCATION FOR YOUTH**

***MR LO SUK-CHING to move the following motion:***

"That, to cast off the shadow of colonial education, this Council urges the Government to expedite the formulation of a clear and comprehensive policy on civic education and to adopt corresponding measures to actively promote civic education to the youth in Hong Kong in an orderly and progressive manner; so as to nurture our younger generation to be citizens

with national pride and awareness; social responsibility; a positive and enterprising outlook on life; the ability to think independently; cosmopolitan vision; respect for the spirit of democracy and the rule of law; high ethical and moral values and readiness to shoulder responsibilities for national and community affairs."

**MR LO SUK-CHING** (in Cantonese): I move the motion standing in my name in the Order Paper.

Mr President, with Hong Kong's imminent return to China in 1997, the status of the vast majority of Hong Kong people will change from a metropolitan citizen under the current colonial rule to that of a Chinese national in Hong Kong. In order to dovetail with this change in status, the need to strengthen civic education among the youngsters becomes a pressing task. As youths are the future masters of our society, strengthening civic education among the youths has become all the more a task of top priority.

Before 1985, the Hong Kong Government had neither any defined and integrated policy on civic education, nor attached any importance to civic education. It was only until 1984 when China and Britain had signed the Sino-British Joint Declaration for the future of Hong Kong, and consequently promoting in full swing the system of representative government, then the Government started to be concerned about civic education. In 1985, the Education Department (ED) published the *Guidelines on Civic Education in Schools* and it was only then that civic education was elevated to a more important position. Nevertheless, civic education in Hong Kong was still confined within schools. The kind of civic education conducted in Hong Kong is one without the notion of a state. The Hong Kong Government has deliberately replaced the notional state with the society and has evaded the civic education with the sense of state and race.

Over the past 10 years, Hong Kong's policy on civic education has been characterized by the following features:

1. Subjects related to civic education have been cast under the shadow of the colonial education of the past. First of all, the ED merged civic education with History and Geography to become the subject of Social Studies. Subsequently, it changed the subject of civic education to Economic and Public Affairs. These subjects are severely deficient, in terms of substance, national sense, national

consciousness, a balanced democratic education and a sense of civil rights and obligations. The *Guidelines on Civic Education in Schools* published in 1985 listed four main purposes of the civic education curriculum. However, none of these mentioned the status, responsibilities and rights of a national.

2. The Government has not treated civic education as a key subject of education, thus committing only limited resources and manpower to it. Neither has it required that civic education be made a compulsory subject in the curricula of secondary and primary schools. Civic education is just another item of education serving as a specimen.
3. Whilst the 1985 *Guidelines* requires students to have an understanding of the affairs of China, the part on understanding China accounts for only a very small percentage in the entire civic education curriculum. Although it is mentioned in the curriculum that students should "love their country and be proud of being Chinese", the "China" referred to in the *Guidelines* is only an abstract or a historical concept. Moreover, it has not pointed out to students their responsibilities as a Chinese national, that is, their responsibilities towards China.
4. On the question of the relationship between the individual and the Government, it deliberately evades the objective fact that the Hong Kong Government is a colonial administration. Since Chinese people in Hong Kong do not have a say in affairs Hong Kong, the *Guidelines* issued by the ED can only urge students to try their best to influence the Government's decisions through various channels provided by the Government. While it adopts a superficial approach in its interpretation of democratic politics, its views on democracy are one-sided.
5. In the past, civic education was clearly lacking in the cultivation of political ideals. Nor was there any elaboration on political tradition. Obviously, this is because colonialism could not present itself as any political ideal, and given the history of Hong Kong, it would be difficult to produce any fine political tradition.
6. Although the Government has been claiming that the rule of law in



Hong Kong is the pillar of governance, law education was lacking in the civic education of Hong Kong. A survey conducted a couple of years ago showed that our youths were badly in need of an understanding of the rule of law, and that they had had quite a few misunderstandings about it.

In a word, the contents of Hong Kong's civic education in the past concentrated on certain moral and social education topics, aimed at sculpting people into a group of "good citizens" who would abide by some moral requirements and social norms that are almost universally acceptable. The civic education curriculum concentrated too much on the instillation of knowledge, but neglected the need to include the sentiment aspect and the fostering of moral commitment. Without the notion of a state and that of nationality, the sense of group identification, pride and responsibility and the socio-political ideal that could have been derived from such notions fail to impact on the individual's attitude and behaviour. By the same token, it is difficult for civic education in Hong Kong to effect any inspiration on the will of the individuals or to impel them to shoulder social responsibilities.

Mr President, the *Guidelines on Civic Education in Schools* (first draft) published by the ED early this year is more comprehensive than the old one of 1985. It has mentioned such concepts as "national sense of belonging", "sense of national pride", "nationalism", "patriotism" and so on. I support such a move by the ED in facing the reality. I hope that the Government will implement the *Guidelines* as soon as possible, as the first step to strengthen civic education among the youth. However, the *Guidelines* is merely a start for our civic education under the new circumstances. Besides, our civic education policy really should not be confined to within schools.

Considering the problems with Hong Kong's civic education in the past and in face of the new situation brought about by Hong Kong's return to China in 1997, Mr President, it is necessary to make corresponding changes in our policy on civic education so as to meet the requirements of different times and in different circumstances.

Mr President, I am of the view that a new civic education policy for Hong Kong should be targeted on the following new circumstances :

1. In the wake of the change in the political status of Hong Kong residents, civic education must fully reflect the political status of Hong Kong and

the change in the political status of Hong Kong residents.

2. As a highly autonomous special administrative region within China, Hong Kong will be greatly different from the other places in mainland China. Thus civic education in Hong Kong must take into full consideration the special aspects of Hong Kong in relation to China and the uniqueness of Hong Kong residents as Chinese nationals.
3. Under "one country, two systems", how do we deal with the pragmatic relationships between the capitalist institutions of Hong Kong and the socialist ones of mainland China? This is a rather complicated issue. As the interaction between the people of both places becomes closer, the issue becomes all the more complicated; as it is, both sides need to respect each other, and adjustments and improvements need to be made from time to time. In this connection, civic education must make it a prime target to implement the policy of "one country, two systems". Since "one country, two systems" is to be embodied in the Basic Law, civic education in Hong Kong must make the promotion and popularization of the Basic Law its priority task.
4. The promotion of law education is closely related to the education on the Basic Law. Apart from having to understand and promote the Basic Law, Hong Kong residents need also to know about and abide by the laws of Hong Kong as well as the national laws applicable to Hong Kong. Moreover, they have to respect the differences between the laws of Hong Kong and that of China. This should feature strongly in the contents of law education within civic education in Hong Kong.
5. Hong Kong is predominantly a Chinese society, and Hong Kong residents should have a good knowledge of the history and culture of the Chinese people, through which they should establish a sense of national identification and national pride. For this reason, how to strengthen the concept of Chinese nationality is naturally another important topic in Hong Kong's education.
6. While colonial rule provides no favourable conditions for the nurturing of a sense of social belonging and social responsibility, the eventual return of Hong Kong to China should offer more favourable conditions to the promotion of social education. We must make good use of this

opportunity.

7. Since the principles of "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" will be practised, civic education in Hong Kong must include education on democracy in order to establish a correct concept of democracy, to foster the public's understanding of democratic politics as well as their attitude and capability in the active participation in politics.
8. Human rights education should also form an important part of civic education in Hong Kong. Apart from knowing their own civil rights, the youth should also acquire an in-depth understanding of their civil responsibilities and obligations.
9. Moral education is an indispensable component of civil education. If the youth can establish a correct view on life and a proper set of moral values during their teens, it would help not only in the development of their personality, but also in the forming of a firm concept of nationality and social consciousness. It is worth mentioning that the fine moral norms held in esteem by the Chinese people should be the norms we imbue in our youths.
10. As citizens of a metropolis, Hong Kong residents should see the world in a wide perspective and understand the status and role of China in the international community, the relationships between Hong Kong and the world at large, as well as the responsibilities of the individuals as members of the human race. In this way, they would not end up with narrow emotions of nationalism.

Mr President, civic education should be multi-faceted. Therefore, apart from school education, the joint efforts of the Government, society, the district communities, the mass media, popular culture, social organizations and the families are also essential. In the co-ordination of the various sectors of the community and in the promotion of civic education, the Government, in particular the ED and the Home Affairs Department, should assume an active leading role. Meanwhile, schools should be at the forefront in the promotion of civic education. Apart from integrating subjects such as languages, history and geography in particular into the contents of civic education in the formal curricula of schools, schools should also educate students through extra-curricular activities

in order that civic education can be promoted in a diversified way. Besides, I suggest that the Government should seriously consider making civic education an independent and compulsory subject.

Mr President, whether or not civic education can be effectively implemented depends on the knowledge, attitude and capability of educators who are engaged in civic education. In this connection, the Government should squarely address the problem of teacher training and put in more resources.

With these remarks, Mr President, I move the motion.

*Question on the motion proposed.*

**PRESIDENT:** Mr LAU Chin-shek has given notice to move an amendment to this motion. His amendment has been printed on the Order Paper and circularized to Members. I propose that the motion and the amendment be debated together in a joint debate.

Council shall debate the motion and the amendment together in a joint debate. I now call on Mr LAU Chin-shek to speak and to move his amendment. After I have proposed the question on the amendment, Members may express their views on the motion and the amendment.

THE PRESIDENT'S DEPUTY, DR LEONG CHE-HUNG, took the Chair.

***MR LAU CHIN-SHEK's amendment to MR LO SUK-CHING's motion:***

"To delete "to adopt corresponding measures" and "in an orderly and progressive manner"; to insert "awareness to uphold human rights;" after "to be citizens with"; to delete "respect for the spirit of democracy and the rule of law;" and substitute with "the courage to strive for full-scale popular election for the realization of democracy, maintaining judicial independence and sustaining the rule of law;" and to insert ", thus genuinely relinquishing the colonial rule" after "national and community affairs"."

**MR LAU CHIN-SHEK** (in Cantonese): Mr Deputy, I move the amendment standing in my name in the Order Paper to the original motion of the Honourable LO Suk-ching.

In fact, in any country or society, there is the existence of civic education. Before we discuss civic education for youths, we have to define the goal, method and contents of civic education.

Civic education is not the equivalent of patriotism education or party-oriented education, nor is it political indoctrination. History tells us that equating civic education with top-down political indoctrination as mentioned above was the source of historical tragedy. In the 1930s, there was the militarist education of Japan; for the Kuomintang, there was party political tutelage by the Nanjing government; in 1949, there was the political education by way of the creation of the New Socialist Man in China. All of these are the best illustrations.

The goal of civic education is not imbuing youths with some specific political thinking and spoon-feed them with some specific ideology. Rather on the contrary, it is most important for civic education to provide youths with the soil which will foster independent and critical thinking among the new generation.

Since the goal of civic education is not the imbuing of political thinking, we therefore have to consider in what way can we achieve that goal.

In my view, civic education oriented by bureaucrats is very often the most conservative and the most controversial. Government bureaucrats tend to whitewash their work, avoid the important issues and dwell on the trivial ones only. They cannot present the full picture to the youths.

The planning of an integrated civic education can best be directed by non-governmental effort and implemented by way of schools, social service agencies and non-governmental organizations, with the government being responsible for the provision of financial resources. It is by so doing then the goal and form of civic education can play a supplementary role to each other.

I would like to point out that an integrated civic education requires an

overall plan of which comprehensive contents are of utmost importance. By comprehensiveness, I mean "comprehensiveness in terms of scope" and "comprehensiveness in terms of history"; "scope" is the horizontal breadth, and "history" the vertical depth.

In the past, the colonial education of Hong Kong did not stress on the promotion of any civic education. However, while the education system of Hong Kong has often consciously emphasized on the economic success of the territory, the gap between the rich and the poor has never been made part of the contents of education. Also, neither would the education system tell the youths what is democracy and human rights, as though the people of Hong Kong only need to be some economic animals and politics, human rights and social justice are things to be avoided! Today, the public's consciousness of democracy and human rights have been somewhat enhanced, and yet, we can still hear various kinds of absurd assertions like "the Provisional Legislature is also a manifestation of democracy", or "the repeal of the Bill of Rights Ordinance has nothing to do with human rights", and so on. Such kinds of deliberate neglect and misguidance serve to disable the new generation youths from establishing a correct understanding of democracy and human rights which would promote democratic development and protection of human rights. In order to truly break away from the colonial rule, we must let our youths have access to civic education comprehensive in terms of scope and history, instead of taking the specificity as the general. We must also enable them to think critically and let them choose whatever political, economic and social lifestyle they deem to be right for them.

"Comprehensiveness in terms of history" is no doubt something more worthwhile for us to attach importance to; this is because without a comprehensive knowledge of history, we simply cannot expect the youths to be able to have a basis solid enough for them to think and to propel the forward movement of society. Regrettably, when we look at the world around us, we can see that quite a number of regimes inevitably make deliberate efforts to imbue new generations with a distorted picture of the history, fearing that the people would rebel against those in power. A glaring example is that in recent years, Japan has time and again distorted the historical facts of her invasion of China during the Second World War. The kind of civic education championed by the Japanese Government is merely intended to continue the spirit of militarism of the previous generation. Well, does it worth to promote this kind of nationalism and racism?

As Hong Kong will soon be reverted back to China, it is certainly very meaningful to introduce to the youths of Hong Kong the history of China. However, I must point out that a comprehensive understanding of history is not just the history of the Opium War and the Chinese people's sufferings over the century. When Hong Kong is reverted back to China, the younger generation have to know about also the history of the civil war between the communists and the nationalists, that of the Cultural Revolution, that of the "June 4th" incident and so on. This year is the 30th anniversary of the Cultural Revolution. Surprisingly, China has made no mention at all of the Cultural Revolution and seems to be hoping that people would forget this part of the history. This is really disappointing. To know history, we must know it in full. One cannot just choose the part that is favourable to those in power and try deliberately to forget about the other side of it. Mr TO Kit has correctly remarked in his column: "Communist China told the British that co-operation should be comprehensive rather than selective. Similarly, the Hong Kong people and Chinese people have every reason to demand Communist China to know about the Chinese people and to understand the modern history of China in a comprehensive rather than selective manner. The national sentiment of Hong Kong people should be not just directed towards the reversion to China in memory of the 150th anniversary of the Opium War, but should also be directed towards the reversion in memory of the Cultural Revolution."

Mr Deputy, 400 days or so from now, a flag will be lowered and another hoisted in its wake. Of course, it is the hope of every one of us in Hong Kong that the passing of the colonial era is not the beginning of another!

With these remarks, Mr Deputy, I move the amendment. Thank you!

*Question on the amendment proposed.*

**MR ALBERT HO** (in Cantonese): Mr Deputy, in these few months, it can be said that Hong Kong has learned a most educational lesson in civic education. The Beijing Government has stated that our present elected legislature is not desirable and is against the Basic Law. Therefore, they have to set up a provisional legislature and are prepared to appoint people who will readily listen to the Chinese Government to the provisional legislature. They will then be in a position to pass the laws the Central Government wants to pass. Moreover, they

no longer have to squarely face whether the provisional legislature really has a legal basis, and whether it is against the Basic Law and the Joint Declaration or the wishes of the general public. Anyway, the present atmosphere is that what the Central Government has said has become the truth and what it has decided has been effected. As a Hong Kong citizen who loves his country and his nation, there is no way for him to raise his opposition. Once we stick to our principle and keep on opposing, we will be labelled as undesirable nationals who are not patriotic. Will such incidents be extended to Hong Kong and become civic education characterized by Chinese socialism? The thought of this really scares me. After all, we have to choose between these two: do we want our next generation to be nationals who are acquiescent to the Government as in the past colonial days, or do we want them to be patriotic nationals who uphold democracy, freedom, human rights and rule of law, and who can think independently and be able to make a clear distinction between right and wrong?

Mr Deputy, we are moving towards a democratically elected representative government. The people of Hong Kong advocate human rights such as the rule of law, freedom of speech, equal opportunities and non-discrimination, and their expectations are ever-increasing. It is just like the wheel of the times, ever-advancing and absolutely impossible to be turned back.

Civic education should also head in this direction and be on a par with the democratic times. Other colleagues of the Democratic Party have already stated clearly our views on democracy and civic education. Today, I only intend to talk about some shortcomings in the promotion of civic education at present, hoping the Government will improve in future.

The Committee on the Promotion of Civic Education which falls under the ambit of the Government and which draws its funds from the same is responsible for promoting civic education through two operational models.

Most of the funds of the Committee is allocated to the various subgroups, including the subcommittees of the 19 districts, to be used in producing teaching kits on human rights and the spirit of the rule of law, organizing civic education day exhibition and seminars and producing posters, pamphlets and promotional radio programmes. Also, the Committee will sponsor other non-profit-making voluntary organizations, social service organizations and so on through the "Sponsorship under the Community Participation Scheme" to introduce some other civic education activities in the community, for example, to promote female



equality, to urge the elderly to care for their interests, and to respect the rights which the mentally retarded are entitled to.

A few years ago, the Committee received an annual appropriation of only about \$2 million from the Government. It is only in 1995-96 that the amount has been increased to over \$10 million. Of this, however, only about \$2 million (20% of the total appropriation) goes to the "Sponsorship under the Community Participation Scheme". According to the Committee's annual report, the Committee has so far only approved 261 out of the 904 applications for sponsorship, giving a success rate of less than 20%. In two years from the 1993 to 1995 the Committee has only allocated \$2.14 million to sponsor 62 activities under the "Sponsorship under the Community Participation Scheme".

Mr Deputy, for voluntary organizations such as the Democracy University, youth centres, community centres, women's centres and other voluntary organizations, civic education is practised through actual participation, taking an enthusiastic part in community affairs and the promotion of civic awareness. This is something commendable and deserving very much of our support.

I hereby strongly urge the Government to increase the appropriation to these voluntary organizations so that they can implement their own plans. Besides, it should also subsidize more non-profit-making voluntary organizations to promote civic educational activities of different styles, kinds and areas, so that more people can be benefited.

Mr Deputy, the objective of enhancing civic education for the youth is to foster the ability of our next generation to think independently and critically and to develop their analytical power, so that they can make a clear distinction between right and wrong and be willing to participate in community affairs enthusiastically, be brave enough to assume civic responsibilities and to strive to uphold civic rights. In addition, they should insist on protecting basic human rights, the spirit of the rule of law which is everyone is equal before the law, and the rights which a national should be entitled to. It is impossible to separate human rights, democracy and rule of law, and democracy and rule of law can only be realized through an independent judiciary, a respect for human rights, and equal opportunities for the general public to participate in elections. This is very important and it is on this basis that we support the Honourable LAU Chin-shek's amendment because it can better reflect the specific objective and spirit of civic education.

Finally, I would like to mention that in some totalitarian and autocratic countries, civic education is only putting across some rigid ideologies or parochial nationalism within an established framework. We should not follow suit. We do not want to see that appropriation for civic education will be affected by the political situation after 1997 which may result in the denial of appropriation for many plans promoting democracy, human rights and the rule of law because the plans fail to receive acceptance from the Government.

With these remarks, I support both the amended motion and the original motion of the Honourable LO Suk-ching.

**MR DAVID CHU:** Mr Deputy, I second the Honourable LO Suk-ching's appeal. We must make our youths ready for the post-colonial era. I do not support the Honourable LAU Chin-shek's amendment which is too politically oriented. Let me explain.

I have long advocated educating our children about their obligations as well as their rights. Our youths must be taught right from wrong. They need our guidance. If we are not providing it, then we were at fault and cannot blame anyone else for their troubles and our failings.

For years, our Government has been reluctant to introduce moral education, which is a major component of civic education. Some of our opinion makers appear embarrassed about promoting our cultural heritage and communal identity.

This is so partly because some in our midst have imposed on society the western view that morals should not be taught. They say morality is subjective and ambiguous. I say this is not so. They say Hong Kong is a western society and must do things which liberal westerners approve. I say this is nonsense because many in the west are also calling for the return to moral standards and family values which had made their countries successful. More and more westerners are rejecting the liberal ideology and embracing tradition. Our 4 000 years of civilization and 2 500 years of Confucian teaching have clearly passed the test of time.

There are many points in Mr LO's motion. I will discuss several of them. One of these is his call to us to help Hong Kong decolonize. By this he means the end of mindless copying of things western. By this he means we have

something intrinsic in our ways which we should nurture, not toss away. By this he means we should distill what is good in other societies and keep out the bad. By this he means we should instill pride and personal dignity in our youths. By this he means educating our youngsters to lead, not to follow fads, to do things for themselves rather than expect foreigners appointed by the Queen to do things for them. I was raised in America, and let me tell you, everyone respects someone who is true to his roots, true to himself. Nobody thinks much of a pet monkey, however well it can mimic.

When our Government does agree to civic education, it concentrates on letting people out to vote and sue for their human rights as defined by activists. I agree democracy is important. Human rights are important. The independent Judiciary is important. The Basic Law in fact enshrines these for our future. We go to the polls once every four years. We sue for human rights once in a blue moon. We try to avoid the court if we could. We, however, take with us our moral being every second of the day for all our lives. I am convinced that civic education devoid of moral education is like wearing shoes without bottoms.

The civic education I envisage is one that also instructs our youths of their duties as much as their liberty. The latter without the former is a recipe for anarchy. I would like to have a civic education that echoes the sentiment so well expressed by John F KENNEDY: "Ask not what your country can do for you, but what you can do for your country". That country, in our context, is China, of which Hong Kong is a highly autonomous but inseparable part.

Only when our youths can strike the balance between commitment to society and their personal freedoms are they truly educated, truly responsible, truly free. A slave to fashion — fashion of clothes, fashion of ideology — is still a slave even if he thinks he is free. We must have the correct civic education to inoculate our children against the moral laxity and cultural licence that are causing decay to many western societies —societies which we should sometimes pity rather than admire.

I support Mr LO's motion. You can be sure I will continue to push for thorough civic education into the Special Administration Region era just around the corner.

**MR CHOY KAN-PUI** (in Cantonese): Mr Deputy, it can be said that the Government has all along failed to address the development of civic education in Hong Kong. It was not until 1985 that the Education Department issued the *Guideline on Civic Education in Schools*. However, this is just the beginning. We are still far from having a clear and integrated policy on civic education. Moreover, civic education implemented in Hong Kong has been developed in the absence of the concept of national awareness. As Hong Kong happens to be going through the latter part of the transition period, it is imperative for the Government to formulate without delay a comprehensive policy, which should put special emphasis on the missing elements, including nationality, politics and culture, in order to fill the vacuum created as a result of colonial education.

Last year, the Hong Kong Institute of Asia-Pacific Studies of the Chinese University of Hong Kong was commissioned by the Shatin District Board to conduct a survey on the civic awareness of youths in Hong Kong in the latter part of the transition period. The findings of the survey showed that youths tend to adopt a passive and negative attitude towards politics and public affairs. Another survey by the Institute also reveals that as far as national awareness is concerned, the youths in Hong Kong have a very strong sense of self-group awareness (dominated by Hong Kong people) while their national awareness is comparatively weak. Moreover, the youths in Hong Kong have relatively low confidence in national development in the future. In recent years, civic education has been incorporated in subjects like social education and Chinese language, and other extra-curricular activities in the primary and secondary curricula. But it is regrettable that emphasis is often placed on imparting knowledge at the expense of the cultivation of emotional link and the nurturing of moral integrity. As a result, students are unable to apply what they learn and would only passively take part in group activities, without knowing how to learn from participating in these activities. So how could they actively take part in social affairs and social life?

Given that Hong Kong is to revert to China and for the purpose of making up for our inadequacy, civic education in future should emphasize and focus itself on education about the nation. This will enable the new generation to understand and exercise their civil rights as well as fulfilling their obligations. Furthermore, this will broaden their views so that they will voluntarily develop a sense of mission towards the development of Hong Kong, China and the world.

On the other hand, education on affection should be strengthened to tie in with the unidirectional development of civic education which has always been rational. In so doing, the new generation will truly know and feel what the civil responsibilities and rights of a member of a nation should have. It is believed the pursuit of democracy, the rule of law and freedom, coupled with the affective element of patriotism, can further promote the development of national civilization.

As regards the contents of civic education, the Hong Kong Progressive Alliance proposed that Chinese history, traditional culture, geography, and education on national affairs should be enhanced and the Basic Law, which is particularly important to the Hong Kong Special Administrative Region, should also be included. In my view, it is of paramount importance that the mental development of youngsters be enhanced from both the national and affective aspects.

Mr Deputy, one more point worth mentioning is that civic education should not be confined to the school. As civic education is closely related to the entire society, young people can learn through different channels. The Government should take the leading role to actively promote civic education. As educators are the front line staff of civic education, their quality will exert a profound influence. As a result, teacher education is indispensable. It is indeed necessary for the Government to allocate more resources to strengthen the knowledge, attitude and abilities of teaching staff in respect of civic education so that they can lead the new generation to become the pillar of society and to regard building society and the nation as their own responsibility.

Mr Deputy, with these remarks, I support the original motion of the Honourable LO Suk-ching. Thank you.

**MR HENRY TANG** (in Cantonese): Mr Deputy, Britain has ruled Hong Kong for half a century. In respect of its colonial policy, I believe the Hong Kong Government has to a greater or lesser extent, wilfully or unwilfully tended to dilute the national sense of Hong Kong people. We can have some idea of this by reviewing the history of civic education in Hong Kong.

In the '50s, schools in Hong Kong offered Civics which was one of the subjects of the Hong Kong Certificate of Education Examination. However, as

the course only emphasized on briefing students on the organization of the Government and the political systems of other places, students were purely required to elaborate and memorize the information supplied. Therefore, even though the subject was examined, it did not help to raise students' concern with the community, neither did it enhance their knowledge about their motherland, not to mention understanding their nation. Later, subjects such as "Economic and Public Affairs" and "Social Studies" only concentrated on helping students know about social issues and local affairs. Little is mentioned about topics such as "country", "nation", "civil rights and obligations" and so on.

Some senior frontline educators have pointed out that in the '50s or '60s, even the term "Beijing" was not allowed to be mentioned in geography textbooks. At that time, some schools which hoisted the Chinese national flag on certain festivals would be warned by the Education Department as they had breached the Education Regulations, and they would even be prosecuted.

In 1985, the Hong Kong Government finally issued the *Guideline on Civil Education in Schools*. However, as its contents were too general and unrealistic and there was a lack of resources and manpower, it was regarded by educationalists as "totally empty talks".

Today, the new 1996 *Guideline* is issued after a long wait. People naturally have high expectations of it. Educationalists and members of the Preparatory Committee hold different views on the future orientation of civic education. The main difference in opinion is: after 1997, between education on democracy and human rights, and that on the nation, how should the choice be made and how could they be co-ordinated?

Mr LAU Siu-kai, a member of the Preparatory Committee, once said, "The emphasis of civic education after 1997 should be placed on two aspects: first, enhancement of the concept of the State, the sense of nation and knowledge of the history of the Chinese nation, in order to enhance the sense of belonging to the State and the nation; second, the introduction of teaching on the Basic Law in the curriculum .... Although education on democracy, human rights, and environmental protection is also important, it is not a pressing matter after 1997". Mr LAU's comments resulted in strong reactions among educators, who think that education on democracy and human rights, and education on the nation should be complementary to each other rather than mutually exclusive.

I think school children in Hong Kong are now experiencing an important change at this transitional moment. Hong Kong students will encounter the approach of 1997 and the change from being British Dependent Territory Citizens to Chinese citizens and residents of the Special Administrative Region. What is more, the future of these youths is tied to the political and economic developments in China. The potentials of these future masters can be allowed full play in the vast market of China. Therefore, civic education in our schools is duty-bound to deepen their understanding of mainland China, and to enhance their sentiments towards the State and the nation, and their knowledge of the Basic Law.

However, if in the past 10 years, our students fail to know —

why Hong Kong people strived for direct election in 1988;  
what happened on 4 June 1989;  
who Mrs Anson CHAN is;  
why Mr Chris PATTEN has often been reprimanded;

or, if our students still spit on the ground;  
Even peep through the diaries of their younger brothers and sisters;  
Or even vie with an old woman when boarding a bus;

how can we expect them to possess a sense of national pride or even share the responsibilities for the development of the State and the nation?

Hence, I think both the concept of democracy and human rights, and the sentiments for the State and the nation should play an equally important role in the civic education in Hong Kong.

Similarly, other areas such as human rights education, international education, the rule of law education, sex education, environmental protection education, ethics and so on are also extremely important. So, I propose:

- (1) that the various aspects of education mentioned above be included in a formal curriculum to form an independent integrated subject. However, students may decide freely whether they will sit for the Hong Kong Certificate of Education Examination.

- (2) that the Government should not burden schools with the responsibility of civic education. The Education Department should strengthen the work of the Committee on the Promotion of Civic Education and the Civic Education Resource Centre so that adequate support can be given to schools.
- (3) that a curriculum development officer be appointed for civic education to co-ordinate and supervise the development and operation of civic education.
- (4) that sufficient resources be put in to ensure proposals in the *Guideline* can be smoothly implemented.

Over the last 10 years, Hong Kong has experienced turbulent times in the social, economic and political fronts. In comparison, however, our civic education has been so-called "infiltrating" that is to say "optional". Indeed, if we require our students today to make up for the time lost in the last 10 years and be prepared for the coming of a crucial era, it is going to be an arduous task for civic education.

Mr Deputy, these are my remarks. The Liberal Party will support the original motion of the Honourable LO Suk-ching.

**MR CHENG YIU-TONG** (in Cantonese): Mr Deputy, there are only 400-odd days before 1 July 1997 when China will resume sovereignty over Hong Kong. All sectors of the community in Hong Kong have been making preparations for this significant change. After the formulation of the Basic Law, all of us clearly understand the significance of Hong Kong's reversion to China, that is, the century old colonial rule over us will come to an end, we will uphold the spirit of democracy and the rule of law, establish "one country, two systems" and implement "Hong Kong people ruling Hong Kong" and a high degree of autonomy.

Youths are the future of society and the kind of young people we have will generally determine what our future society will be like. The most valuable resource behind the development of Hong Kong is people of talent. Therefore, how we can make the youths understand the significance of the reversion of Hong Kong in 1997 is a very important task. Only on such a basis can the continuous



development, prosperity and stability of Hong Kong be guaranteed.

There has never been civic education in Hong Kong. The mode of colonial education in Hong Kong is that of educating subjects where the rulers demanded those under their rule to be abjectly obedient citizens. It would be best if these subjects are indifferent to everything and keep their noses to the grindstone in order to create more wealth for the colonial government. Such kind of education has produced a whole lot of people who are working machines, they only care about material gains and mock themselves as "the rootless". Mentality as such will surely be unsuitable for the future development of Hong Kong.

The youths in Hong Kong shoulder the mission entrusted by history. How can they know clearly the meaning of "being Chinese" and understand that "they are Chinese?" The most urgent task is to instill in youths the appropriate civic education which meets the above ends. However, the civic education first launched in Hong Kong in the middle of the '80s obviously fails to meet this requirement.

Mr Deputy, we have been criticizing the system of colonial rule in Hong Kong over a long period of time because the most serious shortcoming of this system is that the Government does not want the local people to acquaint themselves with their motherland such that people cannot acquaint themselves with their own country, nation and culture, and they should only become meek and obedient citizens who would not criticize the essence of this system which is undemocratic and which arrogates all powers to itself.

Education in Hong Kong has for a long time excluded education on our country and nation or our root. It seems that great calamities will befall just on the mention of the country or the nation. I remember when the "Charter on Youth" was drafted, the representatives of the Hong Kong Federation of Trade Union proposed at the meeting that the clause "youths in Hong Kong have to understand their own nation and culture" should be added. However, it was considered that it was too sensitive to be inserted. After experiencing many hardships, we finally managed to add the clause "as far as possible give youths the opportunity to broaden their outlook on life". Mr Deputy, this incident happened in the '90s.

We can see from this that, under the influence of colonial education, youths can have only little understanding of the national conditions of China and they do not have much political, economical, social or cultural knowledge of mainland

China. Moreover, their concept of the race is weak and they have little sense of belonging to their nation. As they have not been nurtured in the environment of Chinese culture, they cannot aptly identify the derogatory criticisms made by the West against China. All these phenomena rightly reveal the true nature of colonial rule, hence we can say that these are the "endowment" of colonial rule. Therefore, civic education should aim at inculcating in the youths a correct outlook on life, and promote then correct sense of value and sound judgement.

Mr Deputy, I think Hong Kong's reversion to China is an opportune time at which we should strengthen civic education for the youths. We should emphasize education on our country and nation. Approaching from the three aspects of cognition, emotion and behaviour, we should cultivate our students' sense of pride in the good traditions and glorious history of our nation, let them realize and feel that the vicissitudes of our nation is closely intertwined with our personal interests, let them consider the prosperity of our country as their responsibilities, obligations and sacred mission, so that they can set their orientations anew and that they will also have a genuine Chinese heart besides having black eyes, black hair and yellow skin.

Moreover, Hong Kong has always been a city that upholds the rule of law. Youths should seriously learn and understand the Basic Law in order to carry through and continue to uphold the spirit of the rule of law in Hong Kong after 1997. As for democratic spirit, I think we should get the public and the youth to know that the system practised in the past for more than 100 years has deprived us of our political rights. It was only after the discussion on the future of Hong Kong had been made then we started to have some kind of elections. Article 45 and 68 of the Basic Law have set a target for all members of the legislature returned by general election and the Chief Executive. We have to work towards and realize this goal through practice. We should turn Hong Kong from a place under British rule into a special administrative zone under Chinese sovereignty; from a place governed by the British into that governed by Hong Kong people and having a high degree of autonomy; and from a place under colonial rule into a democratic and liberal place where human rights and the rule of law are protected and upheld, with prosperity and stability maintained.

Mr Deputy, I so submit.

**MR AMBROSE LAU** (in Cantonese): Mr Deputy, in order to expedite the formulation of a clear and comprehensive policy on civic education, the

Government must, first and foremost, understand why it is imperative to strengthen civic education for youngsters and then set out, on this basis, the priorities of civic education.

It is imperative to strengthen civic education for youngsters because there are only some 400 days left in the run up to the return of Hong Kong of China. This is a turning point with historical significance that commands the residents of Hong Kong, in particular young people, to receive this great watershed in history by adjusting themselves in terms of cultural identification and psychological preparation. During the May Fourth New Cultural Movement, which marked the dividing line of modern history and contemporary history, the leading campaigners at the time had attached paramount importance to the provision of education to enlighten the people. LIANG Qichao advocated the idea of the "New Citizen"; LU Xun vigorously pressed for "the nurturing of oneself" and CAI Yuanpei suggested "the complete development of character" through education. History has proved that the enlightening May Fourth New Cultural Movement had played a distinguished role in the development of the modern history of China. From the lesson we learn from history and in view of the end of colonial rule in Hong Kong and Hong Kong's reunion with China, we have to put stress on the psychological development of youngsters in order to cultivate new qualities in them which are peculiar to their nation and culture so that they can adapt themselves to this handover and commit themselves to the notions of "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" after Hong Kong is to be reverted.

The kernel of the enlightening May Fourth Movement lied in patriotism and nationalism. Similarly, as Hong Kong is going to be returned to China, national education should be taken as the theme and the key point of civic education for youngsters. Such have been pinpointed as the theme and the key point of civic education for there is a lack of national pride and national awareness among youngsters as a result of persistent colonial education in Hong Kong. This is not conducive to Hong Kong people who will be taking charge of the territory and of the realization of "one country, two systems" and "a high degree of autonomy" after the handover in 1997.

Mr Deputy, national education, being the theme of civic education for youths, falls in two parts. First, education on Chinese culture and secondly, education on the Basic Law.

Education on national culture is important as it serves as an important

channel to facilitate national identification. While a national community consists of many other inherent features, the nation itself is primarily one aspect of culture. National renaissance is, in substance, the renaissance of the national culture. I share the views of Professor YU Ying-shi, an American Chinese academic, on the relationship between culture and nation. He is of the view that the Chinese people love their nation because it creates their own culture — the Chinese people love their culture because only when they go by the values and behavioural pattern born of their own culture then they would feel free and easy. Indeed, identification with the nation and the state is premised on the identification with culture. Yet, education on Chinese culture that schools in Hong Kong have provided is, obviously, inadequate. Therefore, the Education Department should allocate adequate resources to expeditiously strengthen education on Chinese culture when designing teaching materials.

Mr Deputy, another key point of civic education is that education on the Basic Law should be enhanced in schools. The Basic Law is the fundamental statute book of the Hong Kong Special Administration Region after the handover in 1997. It should thus be the best teaching material to nurture our younger generation in national pride, social responsibilities and the spirit of democracy and the rule of law. However, given that the Basic Law is a serious and technical code of laws, teaching it clause by clause in schools may not produce the desirable results. In this connection, I suggest that the Education Department should make civic education an independent subject, focusing and laying stress on Chinese culture as well as the Basic Law while at the same time, incorporating other areas of civic education to make this subject attractive and interesting both in terms of contents and ways of teaching.

Mr Deputy, in respect of the theme and the key points of civic education and I mentioned earlier, the Government should, as a concerted action, allocate adequate resources not only to strengthen the teaching materials, but also expedite the training of enough teachers specifically for civic education. In the meantime, the Education Department should create the post of Curriculum Development Officer exclusively responsible for civic education to beef up co-ordination and the evaluation of the work concerned.

Mr Deputy, I so submit.

**MR BRUCE LIU** (in Cantonese): Mr Deputy, the young people of Hong Kong have always been referred to as "the rootless generation", lacking both knowledge

and recognition of their own nation and their own culture. At this juncture when Hong Kong's sovereignty is to be reverted in 1997, many educationalists call for the promotion of national education and patriotic education. It is mentioned in the *Guidelines on Civic Education in Schools* recently published by the Education Department about the need to foster our students' sense of belonging to the nation and the need to enhance their identification with Chinese culture. The Hong Kong Association for Democracy and People's Livelihood (ADPL) agrees that we should foster in our next generation the concept of the nation with a view to assisting them to look for their roots. However, when fostering their concept of the nation, we must avoid turning national education into "Party-loving education" and avoid the scenario in which civic education is reduced to a promotional or inculcating tool for the rulers. To prevent the above doubts from becoming reality, we must preserve the existing environment where academic freedom and publishing freedom are upheld. That is to say, we must give the schools and the teachers a free hand to make decisions on the contents of lessons. At the same time, the publishers should also enjoy freedom in compiling textbooks without being examined by the Government. Any practices of compelling schools to teach specific contents or deleting from textbooks specified contents by administrative means will not only deprive the students of their right to know but also limit their thoughts, it is also not conducive to the development of civic education and is not appropriate in a free society such as Hong Kong.

The wording of the motion moved by the Honourable LO Suk-ching comprises a lot of idealistic attributes of citizens, such as social responsibility, cosmopolitan vision and so on. The ADPL agrees that these attributes are the attributes that should be possessed by the citizens and they form part of the objectives of civic education. In particular, I would like to talk about the importance of independent thinking. Provided that the younger generation is capable of critically analyzing different beliefs and opinions and identifying the beliefs behind different political assertions and stances, they could make responsible and rational decisions even in the face of a variety of social problems. At the same time, provided that the younger generation is capable of thinking independently, they will be in a position to differentiate between "loving the country" and "loving the Party". When promoting civic education, schools should emphasize on training the students' ability to think critically and reflect on themselves, so that they can be better equipped to protect their civil rights and fulfill their civil obligations and responsibilities.

The ADPL also lends its support to the amendment moved by the Honourable LAU Chin-shek. One of the core issues of civic education is to

explore the relationship between citizens and the Government with regard to rights and obligations. Democracy, liberty, human rights and the rule of law are the important principles of determining the relationship between the Government and the citizens. This is also a prerequisite for a democratic and free society. We should foster the next generation's awareness of democracy, liberty, human rights and the rule of law and provide ample space for their thoughts to explore the direction in which our future political system will go.

Regarding the means to promote civic education, the Education Department has always been encouraging schools to promote civic education through a permeation approach. In fact, this approach of permeating the contents of civic education into various academic subjects has quite a lot of shortcomings. First of all, it is not systematic in that there is no teacher specifically tasked to co-ordinate the relevant course since civic education is not a separate academic subject. Secondly, against the backdrop of a formal course which is fairly tight, it is very difficult to give consideration to this aspect of the development of civic education. In addition, a lot of difficulties are involved in monitoring the progress of teaching and assessing teaching programmes. It is even unknown whether the schools have promoted civic education. The ADPL holds that if the Administration is really sincere in promoting civic education, it should, as soon as possible, come up with a timetable to establish civic education as a separate academic subject step by step. The outline of the syllabus should also be drawn up in a progressive manner. Furthermore, the Education Department should also create in primary and secondary schools the post of panel co-ordinator who should be specifically tasked with the co-ordination of civic education.

Teacher training is very important to the promotion of civic education. Right now, civic education forms only a minor part in the courses offered by the colleges of education. The exhibitions, seminars and workshops on civic education held by the Inspectorate Division of the Education Department seldom attracted high attendance rate, and they fail to disseminate the relevant concepts in schools. Colleges of education should collate anew their teacher training courses and add in more elements of civic education. Furthermore, the Inspectorate Division may also consider sending staff to schools to organize school-oriented training courses and assist schools in promoting civic education.

With these remarks, I support the original motion and the amendment on behalf of the ADPL.

THE PRESIDENT resumed the Chair.

**MR CHEUNG MAN-KWONG** (in Cantonese): Mr President, June 4th is approaching. The activities commemorating the June 4th incident held every year embody the patriotism of the Hong Kong people towards China. The lines written by Ai Qing, a Chinese poet who has recently passed away, come to my mind:

"Why are there always tears in my eyes?  
This is because deep is my love for this land".

Tears are in the eyes only because love for this land is so deep. Every year when we commemorated those who died in the June 4th incident, I have noticed tears in the eyes of those who participated in the demonstrations and sit-ins. While we blame the stupefying education system of the colony for depriving our young people of a sense of belonging and identification with China, I could find flesh-and-blood love in the persistence and sincerity of this group of patriotic citizens. The question is, has our country and our education value this spontaneous patriotism? Have they regarded it as heresy and repressed it?

In the face of the celebration for the reversion of sovereignty next year and the new government after 1997, will demonstrations, assemblies and sit-ins be banned? Will the association which took the lead in demonstrations be disbanded? It will be the greatest irony to the promotion of civic education if demonstrations, assemblies, freedom of speech and associations are suppressed. The greatest test in the future is, how many citizens will still be brave enough to come forward, remain patriotic without evasion, face up to the difficulties and have the courage to protect civic rights and really live up to the spirit of civic education.

Nurtured by colonial education for more than a century, most young people have been conditioned to the extent of subservience in an undemocratic society. In the face of the reversion of sovereignty, we are worried that the whole community will have to accept the reality of a hard-sell sense of country and nation and severe suppression of democracy so that after the sovereignty has been

reverted, young people will be deprived of their freedom and human rights, and civic education will then become empty talk.

"Patriotism" is the love for this country, this piece of land and the people on the land. However, to be patriotic does not necessarily mean that one has to blindly support and identify with the ruling power of the country. This is going to be the greatest challenge faced by civic education in respect of education on patriotism, nationalism and politics in the future. The worries of Hong Kong people in the face of the reversion of sovereignty, nationalism and civic rights will make the controversy over the contents of civic education more complicated in the future.

In today's debate on "strengthening civic education for the youth", I support the Honourable LO Suk-ching's original motion. However, I also agree to the Honourable LAU Chin-shek's amendment which places the cultivation of the awareness to uphold human rights in young people in a more important position and specifies the "respect for the spirit of democracy and the rule of law" in the original motion as "the courage to strive for full-scale popular election for the realization of democracy, maintaining judicial independence and sustaining the rule of law". The amendment will better address the most immediate and actual concerns of civic education after the reversion of sovereignty.

This raises a question of patriotism and human rights. Identification with the nation and patriotism should very naturally be the common sentiments of the people of the nation. In order to enable the young people who were born and brought up in Hong Kong to throw themselves into the arms of China without resistance, avoidance and fear, and without thinking that they have no choice, that is, nationalism should not be imposed by the superior authorities in a hard-sell manner.

If support for the current ruling power of the country presides over civic rights, this will lead to hegemony and autocracy. If a country uses its ruling power to persecute dissidents, it is actually trampling on human rights. This is the greatest hazard faced by the citizens of a totalitarian country. This hazard exists despite protections stipulated by a beautiful constitution because the rude and unreasonable ruling power can twist up the original meaning of the laws or even act contrary to them in order to suppress the citizens' awareness of their human rights. This is the greatest tragedy for a totalitarian society.



Therefore, in order to prevent education on nationalism and patriotism from moving towards narrow-mindedness and blindness, the implementation of civic education in Hong Kong should be coupled with the promotion of education on human rights and democracy. In this way, the community as a whole will be brave enough to break through the circumstantial restraints of little awareness of human rights and inadequacy of the democratic mechanism and to nurture in our young people an independent thinking, with which they can differentiate the right from the wrong and put their knowledge into action.

Civic education which puts knowledge into action is the most important. According to a recent survey carried out by Oxfam Hong Kong and Amnesty International, almost 90% of the secondary school students agree in principle that human rights should not be deprived of, but more than 30% of the students agree that the police could use force against suspects to elicit an admission, and they also object to the setting up of a rehabilitation centre for patients with mental illness in their neighbourhood. This contradiction is the best example of people who are not able to put their knowledge into action. Furthermore, those who have attached themselves to the bigwigs may speak strongly in support of democracy, but at the same time they are working with the ruling power to prepare for the establishment of a provisional legislature in realization of totalitarian rule. The greatest ridicule to the promotion of civic education is that those who pay verbal tribute to the laws also support the reversion of the undesirable ordinances to their original forms and tolerate the non-compliance with the Basic Law.

Civic education at school plays a very important role in the effective promotion of civic education. However, if civic education were to take an inculcating form instead of being taught as a separate subject, the result will not be desirable. Therefore, it will be best if a new, comprehensive course of civic education can be offered so that human rights, patriotism, nationalism, democracy, the rule of law and independent thinking, which are indispensable elements of civic education, can be included in a single subject which helps students to develop their moral integrity. It is only in this way that students can be nurtured to become modern citizens with awareness to uphold human rights and democracy and awareness of the country and the nation and who are responsible to the community.

Mr President, today I suddenly realize that Mr Michael SUEN has taken a seat opposite to me. I thought he has become the Secretary for Education and Manpower. In any case, I find it a great pity that the Secretary for Education and Manpower is not here listening to our debate today, I do not know why he is

absent. Anyway, with these remarks, I support Mr LAU Chin-shek's amendment.

**MR IP KWOK-HIM** (in Cantonese): Mr President, on 4 May, 77 years ago, a mass of university students rallied in Beijing in protest of the representatives of the then Chinese Government who compromised the sovereignty of the country at the international peace conference. These university students' patriotic movement of "asserting their motherland's rights in the international arena and eradicating traitors to the country" fully exhibited their intense nationalism and unambiguous stand of defending the sovereignty of their country. In Hong Kong today, it perplexes one when one thinks about how many young people have the same sense of mission toward their country and people as those university students did at that time. The findings of a survey reveal that the young people of Hong Kong do not think they are very patriotic. If a score of zero represents a complete absence of patriotism and a score of 100 means intense patriotism, the average score the young people of Hong Kong give themselves is only 57. The survey report expresses the view that the lack of education on nationalism is one of the major reasons for that. Whenever the Hong Kong people are asked what people they are, the answer is often that they are the people of Hong Kong or Hong Kong Chinese. It is rare among young people that they would say right away that they are Chinese.

In most countries all over the world, civic education is an important part of basic education. However, because of historical reasons — the Opium War, and the gunboat policy adopted by Britain which led to its occupation and colonization of Hong Kong — colonial style education has remained a dominant feature of the universities, secondary schools and primary schools in Hong Kong. All along, the schools in Hong Kong has not offered any formal courses on civic education. It was only in 1984 when the Sino-British Joint Declaration was signed then civic education started to be included in the agenda on education. In 1985 the Government published the *Guidelines on Civic Education in Schools*. Unfortunately, however, the Government has failed to take concrete steps to implement the recommendations contained in the *Guidelines*.

In January this year, the Education Department (ED) published the new *Guidelines on Civic Education in Schools*. The new Guidelines is comparatively more progressive as it introduces the concept of "the motherland" and topics like "national pride", "patriotism" and nationalism". But, there is still a long way to go before our young people can really get to know our country and our people.

The concerted efforts of our educators, the mass media as well as the whole community are required before results can be seen.

Mr President, in order to implement civic education effectively and in order to enable our young people to develop a sense of identification with our country and our people, many pre-requisites must be met. The determination to effect a full-scale implementation of civic education is one. Besides, as far as curriculum design is concerned, the current sensibilities of society have to be captured, and the prevalent political climate has to be taken into direct account so that curricula in line with the contemporary context can be drawn up. In order to fully implement the *Guidelines on Civic Education in Schools*, civic education should be taught as an independent subject. A territory-wide committee on the promotion of civic education in schools should also be set up to follow up on the development of civic education on a long-term basis, so that continuous improvements and assessments can be made.

For the funds allocated to the Committee on the Promotion of Civic Education in the year 1994-95, which amounted to some \$900,000, only 30% was used on youth activities. The long-standing neglect of promotion civic education is one of the factors which has led to a lack of civic consciousness and flimsy nationalism among young people in Hong Kong nowadays. The report of another survey on young people's consciousness of their country and people shows that 30% of the youth say that being Chinese does not make them feel proud. Under the concept of "one country, two systems" in the future, the Hong Kong people will have to deal with another system the ideology and values of which are completely different from theirs. For that reason, our future generations must possess the quality of critical thinking. Therefore, civic education should focus on the concept of the state, nationalism, the modern history of China, the geography of China, the Basic Law and the interpretation of "one country, two systems." Moreover, a fund on nationalism education should be set up to subsidize bodies and schools for the organization of various kinds of activities. Through these activities, the youth's understanding of the current state of their country and her history can be enhanced, thus improving the civic consciousness of the people of Hong Kong in preparation for the historic return of the sovereignty of Hong Kong in 1997.

Mr President, these are my remarks.

**DR HUANG CHEN-YA** (in Cantonese): Mr President, I believe everyone will agree to support civic education with a view to nurturing young people to be better citizens. However, we must learn a lesson from history and avoid creating problems as a result of ambiguous terms. The Honourable LO Suk-ching mentioned the two terms — "national pride" and "racial awareness", and so did a number of other Members. It seems that the two terms refer to different things. But then Mr LO again mentioned the Chinese race, thereby apparently combining the nation and people into one. Indeed, which one is correct?

There are scores of ethnic groups in China. If they meant racial awareness, will it be possible that they are referring to the Great Han chauvinism only? Many minority groups in China will have this query. "Racism" is but an archaic term to describe a nation. We had better not use this term. If racial awareness refers to nationalism in a narrow sense, is it not Japanese nationalism that induced the invasion on China? Is it not Germanic nationalism that induced the slaughtering of the Jews? Is it not white-race nationalism that induced the persecution of the coloured people? These are not just painful lessons from history, but also painful historical lessons we have learned personally. No nation should cultivate racial awareness of this kind. Therefore, I think Mr LO should clearly explain what kind of racial awareness he actually means when he refers to national awareness.

Similarly, the meaning of national pride should not evolve into loving the State is tantamount to loving the Party. What is more, national pride must not be taken as a reason for supporting the state machinery in trampling on the human rights of the people. It must base itself on the notion that a state belongs to its people. A state should be an entity in which the people enjoy autonomy and the right to choose their own government to formulate policies that serve them. Such kind of national pride, whereby the people is the master of their country, is what we want to inculcate. National pride built up on hegemony that violates the rights of the people is definitely not permitted. In this respect, I hope Mr LO can clearly explain what he means by national pride.

Mr President, to make a success in civic education, we know what matters most is not text-book education. What is most important is that, in the course of

nurturing young people, the notions and ideals implanted in them should match the real world they visualize. If a young person who has a sense of responsibility towards the society, who has independent thinking and a passion for democracy and the rule of law is essentially barred from enjoying the freedom of assembly and from electing the chief executive and the legislature through a one-person-one-vote election, and is forced instead to accept a provisional legislature which contravenes the Basic Law, how could he believe that the civic education he receives is trustworthy and acceptable?

If a youngster witnesses that hypocrites, by means of their unscrupulous behaviours, make rapid advances in their career while people pursuing social justice and real democracy are being jailed or sent into exile, how could he have faith in civic education that he receives?

If a youngster witnesses widespread prerogatives and monopolies in the society, but ordinary people are being executed by shooting for minor offences while Party members get away with serious crimes, how could they believe in civic education?

In recent years, many people in mainland China say social ethics in China over the past decade has been deteriorating. The reason is simple: people's ideals are shattered. The morals they heard and the spirit of LEI Feng they learned have, nevertheless, brought them painful experiences and failures. On the contrary, those who go against their ideals enjoy success. How would these young people continue in the pursuit of their ideals? For these reasons, I hope that, during this motion debate and in actually pursuing civic education, we will not only aim at instilling into our young people some ideals, but also establish a system worthy of upholding by the young people and, at the same time, make them feel that their ideals can be materialized in the real world.

**MR CHIM PUI-CHUNG** (in Cantonese): Mr President, I have not spoken in this Council for so long that some may wonder why CHIM Pui-chung has become so quiet. The point is that financial matters are what I am strong at. So, I am not really good at speaking on the subjects for many recent debates.

Today, civic education is under discussion, and I would like to take this

chance to say a few words on it. We all understand that a colony is different from a state. For instance, nowadays what the youth have in mind are just the singers and film stars they admire. On many occasions, they scramble around at the risk of their life. Why? Just for seeing their idols. They even save the money given to them by their families, and then buy admission tickets so as to show off in front of their classmates. When they grow up, where will they frequent? It is, of course, the racecourse, the favourite place of the Hong Kong people. Such is indeed the reality of a colony because the Government does not want the people to think about other things. As a result, many people will have the idea that if you do not gamble you will remain poor, but if you do you will surely lose. For the sake of horse betting, people would often forget many of the things that they ought to do.

Just now, many colleagues made use of this debate on civic education to criticize the Chinese Government, showing what they thought civic education was all about. We know that many policy secretaries in Hong Kong are in their forties, and the oldest are in their fifties. Since most of them received colonial education, how can we expect them to be Chinese in heart, in root and in sentiments? In fact, this is not their fault. It is the fault of colonial education. Even in the case of the recent election of Taiwan, the reason why President LEE Tenghui had to make use of the pro-independence mentality of Taiwanese is that many Taiwanese have lost their Chinese heart, Chinese root and Chinese sentiments during the past 100 years or so. At a time when there are only 400-odd days to go before Hong Kong returns to Chinese sovereignty, we are not advocating that our civic education should encourage inclination towards any political beliefs. Many ethnic Chinese, all with yellow complexion, are found overseas in places which may as well be collectively called Greater China. These are early Chinese migrants who settled down in other countries and obtained the passports of their host countries. They are no longer Chinese in sentiments or in heart. That is the reason why I have such a big query. But, after Hong Kong's return to China, regardless of whether or not our education can meet with full acceptance, it should at least move towards this direction.

Of course, a lot of controversies will arise when politics is involved. Since nothing is changeless in politics, what seems to be true now may as well be looked at differently in the future because of the influence of some objective factors such as the handover of Hong Kong or changes in political power. So,

the first and foremost objective of civic education is to make young people understand the truth in life that there is not just one single road leading to Rome. It is most important to understand the truth in life. For instance, in a school examination, there is always the first position and the last position. But the student who is ranked last is not necessarily at fault. Maybe he or she has simply been unable to perform well in the examination. Even for Members of this Council, they may not be strong at each and every subject, and so they cannot claim themselves to be the most knowledgeable ones in every subject.

The community should make the youths understand that universal education should aim at striking a balance between moral conduct and sports as well as other areas. Let us look at South Korea. Although it is only a small country, it offers universal education, and in sports especially, it has achieved considerable success. This is the result of civic and state education. Undeniably, over the past 10 to 20 years, Hong Kong people have achieved remarkable economic success with the aid of advanced technology, and many people are proud of being the residents of Hong Kong. Nevertheless, we should not be too proud of ourselves. Instead, we should let the younger generation who are now under protection realize the risks in the outside world. The Government, therefore, should conduct a comprehensive review on our future education policies so that there is a clear guideline in the development of sports, training of the intellect and the concept of state.

Regarding politics, only high school students or even university students can understand it and make analysis. For primary school students, it is difficult for them to judge what is the correct political direction. The teaching profession should not over-criticize other political systems. We recognize the importance of human rights, democracy and the concept of state. And, education in these areas should be developed on a full-scale basis so that students, in their correct course of growth, can receive more enlightenment. We should not instill biased political ideologies into the younger generation.

Mr President, I support the original motion but have doubts about the Honourable LAU Chin-shek's over-critical proposal. I so submit.

**PRESIDENT:** I now invite Mr LO Suk-ching to speak on the amendment to his motion. You have five minutes to speak on the amendment, Mr LO.

**MR LO SUK-CHING** (in Cantonese): Mr President, subsequent to my tabling of the motion, some political parties took the initiative to offer me their advice on the motion. These political parties include the Democratic Party (DP) and the Hong Kong Association for Democracy and People's Livelihood (ADPL). Basically, I share their views and I very much appreciate the communication and discussions conducted among us before the sitting. Therefore, I accepted their opinions and made some corresponding amendments to my motion. Basically, I agree with the amendment moved by the Honourable LAU Chin-shek. But if Mr LAU could have proposed the amendment to me in advance, I would have taken his opinions into account and made some changes accordingly.

In fact, regarding how to strengthen civic education for the youth, we can think of eight or 10 more proposals that all of us would agree with. The problem is there is no need to put all these proposals in the motion. The Honourable Bruce LIU of the ADPL did suggest to me that two more items should be included in the motion, that is to say, the listing of civic education as a separate academic subject and the setting up of a Committee on the Promotion of Civic Education for Schools. I agree with these two proposals and I have mentioned that in the speech I have just delivered. Nevertheless, is it really necessary to include these two proposals in the motion?

Since this motion only touches on some major policy principles and no specific recommendation is involved, the mere inclusion of these two specific proposals in the motion will give others a misleading impression that these two proposals are the most important. For this reason, I have accepted only some of ADPL's proposals and I am most thankful to Mr LIU for his understanding of this point.

Mr President, the amendment moved by Mr LAU seeks to delete the words "to adopt corresponding measures" and "in an orderly and progressive manner". I hold that this Council should urge the Government to formulate a policy expeditiously, but it is more appropriate for policy to be specifically implemented in an orderly and progressive manner. This is a more pragmatic and responsible



attitude. The mere chanting of empty slogans or the staging of political shows is easy but we should allow time for the Government to implement the policy in concrete terms because it is impossible for many tasks to be completed in one day. It is most unacceptable to me that Mr LAU seeks to delete the words "respect for the spirit of democracy and the rule of law" and to substitute them with the words "the courage to strive for full-scale popular election for the realization of democracy .....". I am not against universal suffrage but Mr LAU's belief that universal suffrage will definitely realize democracy or universal suffrage represents that the full spirit of democracy is tantamount to stripping democracy of its essence. The understanding of these so-called democrats' on democracy is really saddening. Let us look at some of the developing countries which have implemented universal suffrage long ago. Although universal suffrage has been implemented, some of these countries are still unable to realize the spirit of democracy. So should we regard universal suffrage as the only goal in promoting democracy? For this reason, I find it difficult to agree with Mr LAU's amendment. I would also like to urge my colleagues, regardless of the party or faction to which they belong, to support my original motion in the light of the contents of my motion only. Thank you, Mr President.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Mr President, the Government has a clear, comprehensive and long-standing policy on civic education. Our objective is to promote the public's awareness, concern and involvement in public affairs, to foster understanding and respect for human rights and to cultivate a sense of belonging in Hong Kong so as to encourage everyone to participate and contribute in our society.

To pursue this policy, we place great importance on ensuring that people understand and uphold their civil and human rights and realize the responsibilities that these bring out in a free and democratic society. This means we have to make sure that the ideas of freedom, democracy, the rule of law and social justice and the role they fulfil in our social, political, economic and legal systems both now and in the future can penetrate into the community.

The Government has never viewed civic education as a matter to be left solely in the hands of civil servants. Over the years we have been fortunate to have been able to work with many committed and knowledgeable people drawn from across the community. This year, in fact, marks the 10th anniversary of the setting up of the Committee on the Promotion of Civic Education. The Committee with its cross-section of academics, teachers, lawyers, other

professionals, community representatives and civil servants has proven to be an effective forum in which to debate and determine the objectives and scope of civic education. In spreading its message of civic awareness, the Committee has worked closely with district civic education committees and a wide range of community groups. Other government departments concerned also participate fully in its activities.

Three themes dominate in our civic awareness programmes: the importance of the rule of law, participation in public affairs and respect for human rights. In fact, each would merit a speech in its own right but to give a brief sketch:

- first, we explain the concepts of equality before the law, the binding nature of the law, the importance of an independent judiciary free from executive interference, trial by jury and all the other attributes of the common law system as well as the Basic Law;
- secondly, we emphasize that people have the right and opportunity, without discrimination and without unreasonable restrictions, to take part in the conduct of public affairs and to vote and be elected in democratically conducted elections;
- lastly, we explain that human rights are to be enjoyed by all people; that the right to life, the right to liberty, the right to equality before the courts, the right to participate in public affairs and the right to freedom of expression are all rights included in the Basic Law, not only of the strong, but also the weak and the vulnerable.

The Honourable LO Suk-ching has focused our minds today, through his motion, on the particular importance of promoting civic awareness among young people. It is one of the most important topics and one which has been on the Government's agenda for many years. In schools and through the work of the Committee on the Promotion of Civic Education and the Commission on Youth, we have strived to equip our young people with the attitudes, values, beliefs and commitment to shoulder the responsibilities of adulthood and citizenship in our society.

I do not subscribe to the one of the common views of Mr LO and Mr LAU that there is a colonial shadow to be cast off in order to properly prepare Hong Kong's young people for the challenges of the 21st century and Hong

Kong's future as a Special Administrative Region of China. The values I have outlined - the significance of the rule of law, respect for human rights and the importance of participating in public affairs — these are not colonial anachronisms with no place in a modern society. Hong Kong is uniquely placed as a cosmopolitan and pluralist society to educate our children through a blend of Chinese and Western values offering both an international outlook and a deep respect for Chinese traditions and culture.

Several Members of this Council were involved in establishing these values through the Charter on Youth promulgated by the Commission on Youth in 1993. The Charter enunciates the principles and ideals on youth development and provides a reference point for all parties involved. Much emphasis is placed on the importance of fostering in our young people social responsibility, high moral values and a positive attitude towards life, to develop in them the ability to think independently, and to understand the role they play in a free and democratic society in which they grow. These values were reaffirmed in the first biennial review of the Charter last year and will provide the direction for all involved in promoting civic awareness among young people.

A substantial part of the resources and efforts of the Committee on the Promotion of Civic Education are devoted to this task. As mentioned by some Members just now, the Government has injected an additional \$20m to be spent over the three years, 1995-97, and the setting up, last year, of a dedicated education unit, have enabled the Committee to embark on a number of far-reaching and ambitious projects aimed at young people. Building on the experience gained in 1993 with its first teaching kits for young people on human rights and the rule of law, the Committee launched its Human Rights Education teaching kit for Children last year. The response from schools and community groups has been very encouraging with over 400 teachers and community leaders participating in the introductory seminars. In the coming months, the Committee will release further instalments of the teaching kit together with new packages for pre-school children and youths. It will co-operate with the ICAC on a new campaign entitled "Towards Good Citizenship".

A major theme in these activities is to promote the Basic Law to young people. We shall be producing a video based on the 65-episode TV programme "Know more about the Basic Law" aired on television last year for distribution to schools. Basic Law teaching materials will also be launched, including a story

book for children, a pictorial booklet for young people and the production of a CD Rom on the Basic Law.

The Committee also actively encourages community groups, through its Community Participation Scheme, to promote civic awareness among young people. Last year, 28 projects involving or aimed at young people shared over \$1million in sponsorship from the Committee. I am pleased to note that these efforts and Hong Kong's approach to civic education have won warm praise from the United Nations committees monitoring Hong Kong's adherence to the various international human rights treaties.

Last year, the Government initiated a major review on the way in which civic education is taught in schools and new *Guidelines on Civic Education in Schools* were endorsed, after public consultation, by the Curriculum Development Council in April this year. Our plan is to implement them in schools from September 1996. As a reflection of Government's policy on civic education, the *Guidelines* set out clearly the aims, objectives, the conceptual and curriculum frameworks, and the modes of implementation of civic education in schools as well as an evaluation on our strategies. A significant feature is that they have been written from the perspective of our students. They provide a direction for schools to develop their own civic education programmes, through classroom teaching and extra-curricular activities.

The *Guidelines* embrace the concepts enunciated by the Honourable LO Suk-ching in his motion today and illustrate the Government's clear desire to groom our young people to be responsible and committed citizens, independently minded and socially aware. They aim:

- first of all, to enable students to understand how the individual, as a citizen, relates to the family, the neighbouring community, the regional community, the national community and the world; and to develop in them positive attitudes and values conducive to the development of a sense of belonging to Hong Kong and China;
- secondly, to help students understand the characteristics of Hong Kong society and the importance of democracy, liberty, equality, human rights and the rule of law, and to employ these concepts in daily life; and

- lastly, to develop students' critical thinking and problem-solving skills to enable them to analyze social and political issues objectively and to arrive at rational appraisal of these issues.

Three different modes of implementation of civic education in schools are recommended. Apart from the permeation approach now most commonly adopted by schools, the specific-subject approach and integrated-subject approach as mentioned by some Members just now are included. Schools are advised to devote a definite amount of time and resources to the implementation of civic education and select one or more modes to achieve the goals of civic education.

To assist schools in implementing the new *Guidelines*, the Education Department will provide those adopting the specific- or integrated-subject approach with a recurrent class grant. School inspectors will continue to visit and inspect schools to advise them regularly on their civic education programmes.

Although a curriculum framework is recommended in the *Guidelines* to assist schools in drawing up their curriculum, some community groups and schools have asked for a separate syllabus on civic education, be it for a specific or an integrated subject. The Curriculum Development Council will continue to examine this matter.

Teaching resources on various themes such as human rights, the rule of law, elections, thinking skills, the Joint Declaration and the Basic Law have been prepared and issued to schools. More will be developed. Three teaching packages in the pipeline are on the understanding of China. In-service teacher education programmes will also be provided to prepare teachers for teaching civic education under the new set of *Guidelines*.

In setting our priorities for the future, we are very conscious of the substantial demand in the community and amongst young people in particular, to know more about the Basic Law, the "one country, two systems" concept and the guarantees provided for the future of Hong Kong. As I stated earlier, promotion of the Basic Law and the provision it makes for the protection of individual rights and freedoms in Hong Kong after 1997 is a major theme of our civic education programmes as we enter the transition year. This is vital if we are to bring our young people into the next century knowing, understanding and having confidence in their identity as citizens of the Hong Kong Special Administrative Region of China, and ready to play a positive part in their community.

*Question on the amendment put.*

*Voice vote taken.*

THE PRESIDENT said he thought the "Ayes" had it.

Mr IP Kwok-him claimed a division.

**PRESIDENT:** Council shall now proceed to a division.

**PRESIDENT:** May I remind Members that they are now called upon to vote on the question that the amendment moved by Mr LAU Chin-shek be made to Mr LO Suk-ching's motion. Will Members please register their presence by pressing the top button, and then proceed to vote by choosing one of the three buttons below?

**PRESIDENT:** Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr SZETO Wah, Dr LEONG Che-hung, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Fred LI, Dr YEUNG Sum, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Miss Margaret NG, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the amendment.

Mr LAU Wong-fat, Mr Edward HO, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Henry TANG, Mr Howard YOUNG, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHEUNG Hon-chung, Mr CHOY

Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the amendment.

Mr Eric LI abstained.

THE PRESIDENT announced that there were 23 votes in favour of the amendment and 16 against it. He therefore declared that the amendment was carried.

**PRESIDENT:** Mr LO Suk-ching, you are entitled to your final reply and you have five minutes and 32 seconds out of your original 15 minutes.

**MR LO SUK-CHING** (in Cantonese): Mr President, in the debate on my motion, I felt I have obtained general support. Although Members still have some worries in respect of what I advocate, we agree on the whole that it is necessary to strengthen civic education for our young people at this time in history. As a result of the colonial style education offered by the colonial administration in the past, there has been a lack of nationalistic identification and awareness among local young people. Most Members can recognize this fact, agreeing that it is necessary to make improvements in this particular respect.

Nevertheless, I think Members' worries are unwarranted. The kind of civic education for young people which I advocate is basically directed at the present circumstances in Hong Kong now, which include a lack of nationalistic identification and awareness among young people as a result of the education they receive, their understanding of "one country, two systems" with the approach of 1997, and of their obligations as Chinese nationals following the change of their nationality status. In this connection, I think the Government has introduced a number of good changes in the *Guidelines* recently issued because steps for the further implementation of civic education and various channels to enhance young people's civic awareness are put forward.

Many Members have stressed the need for independent thinking. I agree very much. To enhance our young people's ability of independent thinking, we must give them a kind of education that covers a comprehensive range of

knowledge and let them know how to conduct analysis. This is because without an accurate grasp of the knowledge required, young people would easily be affected by misconceptions which would render them unable to think independently. Many young people know nothing about the history of our country and our people, and our education made very little mention of this particular respect in the past. The Honourable Mr LAU Chin-shek referred to the Cultural Revolution. Very few young people understand the historical background and causes of the Cultural Revolution, nor do they know how the Chinese Government looks at the Cultural Revolution, and how the current policy of reform and opening has come about as a result of China's efforts to correct the errors which led to the Cultural Revolution. History is an ever-developing process. We cannot negate the value of civic education because of some mistakes which occurred in the course of development of our country. Every country, every people, do inevitably make many mistakes in course of historical development, be they German or Japanese Fascism, the massacre of Red Indians and slave trade in the United States, or the seizure of colonies by Britain all over the world. These historical events are not supposed to affect the provision of civic education in the countries concerned. Quite on the contrary, civic education should be regarded as a means to prompt the people of these countries to draw lessons and experience from history, with a view to furthering their fine heritage and establishing their self-respect and sense of national pride in the course of building up a country or society of their own. We should not lose sight of our social obligations while stressing on human rights. We should not emphasize freedom and the rule of law separately and raise some problems in isolation without taking account of the relationship between the two issues. Instead, we should impart to our young people a comprehensive range of knowledge to enable them to think independently. I think this is also an integral component of civic education.

*The digital timer showed 0532*

**PRESIDENT:** Mr LO Suk-ching, your time is up. Could you try to complete your speech by adding two more sentences.

**MR LO SUK-CHING** (in Cantonese): With these remarks, I end my speech.

*Question on Mr LO Suk-ching's motion as amended by Mr LAU Chin-shek put*



*and agreed to.*

**PROVISION OF GENERAL PUBLIC MEDICAL SERVICES AT HALF THE NORMAL FEES AND CHARGES TO PERSONS WITH DISABILITY AND THE ELDERLY**

***MR FRED LI to move the following motion:***

"That this Council urges the Government to provide half-fee concession to persons with disability and the elderly aged 60 and above when charging them for general public medical services."

**MR FRED LI** (in Cantonese): Mr President, I move the motion standing in my name in the Order paper. On behalf of the Democratic Party, I have moved this motion to urge the Government to provide general public medical services at half the normal fees and charges to elderly people aged 60 or above and persons with disability. I will speak on the rationale behind this proposal and the details of its implementation. Other Members of the Democratic Party will also speak on this issue. The Honourable LAW Chi-kwong will analyze the relationship between fee remission at 50% and the overall policy on medical fees and charges. Dr the Honourable John TSE will give an account of the concessions and assistance currently provided by the society to persons with disability. Dr the Honourable YEUNG Sum will discuss the importance of fee remission at 50% in the light of the current inadequacy of our medical assistance system. The Honourable WONG Wai-yin will comment on and criticize the Government for setting the age of 65 as the planning standard of services for the elderly.

This debate is based on the concept of "equal participation". At present, the various kinds of assistance offered by the Government to the vulnerable members of our society are mostly provided in the form of a "safety net". For example, Comprehensive Social Security Assistance (CSSA), fee exemption for in-patient and outpatient services and so on are provided only to recipients who are in abject poverty. Certainly, the "safety net" can be of some use, but in a civilized and advanced society, we should not wait until the vulnerable members of our society are faced with tremendous hardships before we offer them help and care. In fact, in the case of some of these people, we should offer them more pro-active and positive assistance in order to bring forth equal participation.

The Senior Citizen Card Scheme was introduced precisely on the basis of the aforesaid spirit. By holding their Senior Citizen Cards, elderly people are entitled to a variety of concessions. While there is still plenty of room for improvement in the implementation of the scheme, the spirit is commendable. Last year, the Urban Council launched a concessionary scheme for persons with disability under which persons with disability are offered fee remission at 50% for admission to cultural and entertainment performances, and for renting various facilities and ball game venues. We are of the view that such a concessionary scheme, which is based on equal participation, is worth encouraging in a civilized and advanced society.

First of all, I would like to define and clarify the wording of the motion. "General public medical services" in the motion refers to general outpatient service, specialist outpatient service, community nursing service and in-patient service in general wards. Many organizations have given me their views on this motion. They think that the policy of itemized charges adopted by the Hospital Authority would still remain to be a heavy burden for the chronically ill even if they are offered the services at half the normal fees. Here, I want to reiterate the position of the Democratic Party: that we have always remained opposed to itemized charges. Since the Democratic Party holds that the policy of itemized charges is unjustified, we do not want to include itemized charges in our request for half-fee concession. Rather, we want a total abolition of this policy. Since this Council has debated on this issue earlier, I will not repeat the arguments here.

Since elderly people and persons with disability use medical services more often than other people, a responsible government should seek to serve them well by offering them medical services at half the normal fees and charges. For the past eight to nine months since last September when I was elected, I have visited many centres and hostels for the elderly in Kwun Tong. From my conversations with the elderly people there I have discovered that their prime concern is the fees and charges at public clinics. At present, general outpatient clinics charges \$34 per consultation and specialist outpatient clinics charge \$40. The charge for in-patient service in general wards is \$60 per day. These charges constitute quite a burden for many elderly people. If they suffer from more serious illnesses and have to stay in hospital for several months or have to seek specialist outpatient consultation for a number of times, the expenses incurred will also be considerable. Elderly people who are CSSA recipients surely do not have to worry about this. The elderly people I refer to are those who are not CSSA recipients but who are also living on the verge of poverty. According to the

statistics that the Government provided me with, in the case of the 60 clinics under the Department of Health which provide general outpatient services, 40% of their patients every year are basically elderly people aged over 60. In respect of in-patient service, 39% of in-patient beds in hospitals under the Hospital Authority are occupied by elderly people aged 65 or above (sorry, no statistics on those aged 60 is available). As for community nursing service, over 51% of the cases or users every year are also elderly people aged 65 or above. Hence, it can be seen that elderly people account for a significant and substantial proportion in the demand for public medical services.

The Government may say that a host of measures are already in place to assist the elderly and persons with disability, and for cash assistance alone, there are the Social Security Allowance Scheme and the CSSA. Under the Social Security Allowance Scheme, the Government provides direct assistance to persons with disability and elderly people, but the disability allowance is granted only to persons who have sustained a total loss of their earning capacity. As for the higher disability allowance, it is granted only to those who require long-term care. While I agree that the intention behind the disability allowance is good, I do not think that this allowance can be of any great help to those people whose degree of disability has not led to a total loss of their earning capacity but has affected their normal daily lives. As at the end of March 1996, recipients of the disability allowance numbered more than 68 100. Since the Government estimates that the registered number of people with disability for Hong Kong Island and Kowloon is 260 000, it can be seen that the disability allowance has, in fact failed to benefit the majority of persons with disability.

Elderly people and persons with disability are also separately categorized under the CSSA. As at February 1996, there were more than 80 000 old age recipients and over 24 000 disabled recipients under the CSSA. Yet, we must note that these recipients are poverty-stricken and are either very old or disabled. Under the existing system, CSSA recipients can apply for a Certificate for Comprehensive Social Security Assistance Recipients (for Medical Waivers), which exempts them from paying fees and charges for public medical services. However, as I said before, CSSA is provided as a safety net and a means test is required. It is thus not in line with the concept of equal participation that we mentioned earlier.

As a matter of fact, I am not the first one who advocate the provision of medical services to the elderly and persons with disability at half fee. The Government has made such a proposal in the Report of the Working Party on Primary Health Care published in 1990. It is a report compiled by the

Government in 1990, which is six years ago. I would like to quote the contents on page 270 of the Report relating to elderly people and here, elderly people, are of course, those aged 65 or above. It is stated in the Report that elderly people should be eligible for general outpatient service at half fee and that recipients of disability allowance should also be eligible for half fee. The Report was published by the Government in 1990, so I am not the one who invented the idea of half fee. Quite on the contrary, the Government made this proposal as early as six years ago. I think we should support this proposal. But, why has the Government shelved this proposal, much to our regret? The Government has the duty to take care of the old and the vulnerable. Therefore, elderly people should be provided with outpatient service at half fee. The spirit of our proposal is consistent with that of the recommendation made in the Report.

The Democratic Party suggests that elderly people seeking medical treatment should be given half fee concession upon the production of their Senior Citizen Cards. The Democratic Party has consistently maintained that the definition of "elderly people" should be lowered from those aged 65 to those at the age of 60. We will continue to strive to attain this goal. In order to provide elderly people aged above 60 with fee remission for medical services, we suggest that as a short term measure, elderly people who are not yet eligible for Senior Citizen Cards, such as those aged 61 or 62, can prove their eligibility for the concession on production of their identity cards.

Regarding persons with disability, we suggest that the Social Welfare Department should issue to them a certificate which entitles them to concessionary medical services in the public sector. Persons with disability may decide at their own discretion whether they need such a certificate. If they think they need it, they can obtain it, but if they think otherwise or if they do not like it, they can choose not to obtain it. With this certificate, persons with disability can receive public medical services at concessionary fees and charges.

The definition of "persons with disability" has always remained a knotty problem. It is easier to define and categorize general forms of disabilities such as physical disability, blindness, deafness and so on. But, for many other forms of disabilities and chronic illnesses, it is difficult to define the degree of disability concerned. The Government has always refused to implement the policy required on the ground that it is difficult to define the term. We would suggest that the proposed certificate be granted to the following groups of persons with disability: first, recipients of the disability allowance and high disability

allowance; second, persons who are assessed by doctors as 50% physically disabled, and chronically ill patients should also be included. This groups of people should also be eligible for the certificate.

Certainly, some people may still be unable to pay the medical expenses required even when they are provided with services at half fee. For instance, elderly people who have been hospitalized for a long time may still find the expenses a very heavy burden even if the services are provided at half fee. In such cases, medical social workers can help these elderly people apply for public medical fee exemption and have their problems solved. I believe that some colleagues may again touch on the general problem of the elderly as a whole in this debate, as Dr the Honourable LEONG Che-hung did several weeks ago. I hope we can narrow down the scope of this debate. Let us not talk about such broad issues as our medical policy and health centres for the elderly, and instead limit our attention to a number of services. We hope the Government can see clearly what the needs are and what Members demand. It is my hope that colleagues in this Council can support this motion unanimously, and call on the Government to provide medical services at concessionary fees as soon as possible. Many elderly people who met with me on this motion expressed opinion that they had waited long enough for this motion debate. They hope the Government can really listen to the views of the elderly people. I hope that friends from various political parties as well as independent Members who do not have any political affiliation can all support this motion. In order to prevent members of the public from having the wrong impression that Members of this Council can never be united, let us join hands to exert pressure on the Government.

With these remarks, I move the motion.

*Question on the motion proposed.*

**DR LEONG CHE-HUNG** (in Cantonese): I rise to speak in support of the motion moved by the Honourable Fred LI. This is mainly because I support the principle and spirit behind this motion in that the old and the disabled need our special care and that the old and disabled who utilize public health care facilities are in general also those who are in need.

In agreeing to this motion, I do hope Honourable Members and the Government will give careful consideration to three areas:

- (1) Is a fee concession the best way to provide a healthy living of this

group?

- (2) Is concessionary medical fees alone enough to provide a dignified life for these people?
- (3) Is reduced or waived fees the panacea for a proper operation of the system of public medical services for Hong Kong?

*Neglecting Health Promotion and Injury Prevention*

For years, the Government has been promoting proper health care and up-to-date medical treatment. Likewise, the community and social leaders have been requesting for cheaper services. Yet the motto "prevention is better than treatment" appears to be conveniently forgotten by the Government and the community alike. Quite a number of diseases, especially those connected with old age, and a number of disabilities, can in fact be prevented.

For example, if we keep eating less fatty or high-cholesterol food since childhood, the chances of contracting heart diseases and vascular diseases in our old age would naturally be minimized. Take for another example, if we, including our Honourable President, could get rid of the bad habit of smoking as soon as possible, the risk of having chronic bronchitis and lung cancer would naturally be diminished. Hong Kong should indeed follow the practice of some countries and set a series of "health targets" aiming at reducing over a period of time the morbidity of and the death rate related to certain common diseases to an appropriate level. Only with specific health targets can we systematically lay down suitable policies and plans. Regrettably, despite the vigorous efforts of the medical profession, the Government is determined to ignore the request for action.

Furthermore, a number of "disabilities" are in fact avoidable. Many of our disabled are victims of industrial accidents or traffic accidents. Chronic asthma and bronchitis are the products of our increasingly polluted environment. Violence also inflicts disability on innocent victims. The unfortunate experience of Mr YEUNG Hoi-keung and recently that of Mr LEUNG Tin-wai are two examples, both of which tell us there are still defects in our efforts to maintain law and order. All these are in fact preventable while the sufferings of the victims could never be atoned for by any medical means.

*Money alone cannot secure dignity*

For the aged and the disabled to live with dignities, mere fee concessions for medical services will never suffice. They also need somebody to bring them to and from the medical or rehabilitation institutions; they need outreaching medical care and the care of outreaching social workers; they need home helpers to assist them in their daily lives, and they need psychologists and occupational therapists to bring them back to social life. All these are more important than mere monetary assistance.

Let us not forget also, that many of them are still being discriminated against. The recent incident at the Richland Garden is one such typical example. Regrettably, some community leaders or public figures are directly or indirectly supporting and enhancing the residents' discriminatory attitude. I myself hope very much that the "Equal Opportunities Commission", after its establishment, will quickly rectify discriminatory attitude as such.

*"Limited resources" cannot cater for "unlimited demand"*

Mr President, recently there have been a number of debates on various motions in which this Council urged the Government to immediately abolish itemized charges, or to grant fee concession or free medical services to various categories of patients. Indeed, as an affluent society, Hong Kong has the responsibility to take good care of the needy. On the other hand, common sense tells us that fee concessions for medical services should only be given to the poor and those with genuine need, so as to ensure that they would not be deprived of proper and adequate medical care due to lack of means.

The existing public health care system can be briefly described as a system in which "the ever-increasing and unlimited demand for medical services is catered for by a limited amount of money from tax-payers". If allowed to continue this way, the public health care system will eventually be unable to cope with the demand. By then, those who have a genuine need for assistance would only be provided with substandard medical service. The worst scenario would be a complete collapse of our public health care system. I believe this is the last thing we would like to see!

My President, the last policy White Paper, "The Further Development of Medical and Health Services in Hong Kong", was released in 1974, which was 22 years ago. During such a long period of time, the Government kept procrastinating about taking actions and has been reluctant to lay down new

health care policies and long-term health care targets. The Government has not even given careful thoughts to draw up a set of reasonable policies in respect of medical funding and charging.

The young men of 22 years ago are probably old or disabled today. May I ask Mr President this question: Will they be able to wait yet another 22 years? Thank you, Mr President.

**DR YEUNG SUM** (in Cantonese): Under the current waiver mechanism for medical charges, the waiving of charges is mainly examined and approved by the medical social workers of the Hospital Authority and the Social Welfare Department. The recipients of Comprehensive Social Security Assistance (CSSA) payments can obtain a Certificate of CSSA Recipients (for Medical Waivers) with which the outpatient charges and the maintenance fees payable by them will automatically be waived. In 1995-96, over 482 000 waivers of charges payable for services provided by the Department of Health were approved upon the presentation of this Certificate. Non-recipients of CSSA payments who are in financial hardship and who cannot afford the payment of maintenance fees and outpatient charges can also make an application to the medical social workers for full or partial waiver of maintenance fees.

The current waiver mechanism basically requires a person to be means-tested but there is no clear income and assets ceiling, neither is there any explicit method of calculation. A lot of discretionary power therefore rests with the medical social workers and the medical practitioners while the criteria adopted by each and every hospital/clinic vary greatly from one to another. Some hospitals make reference to the eligibility criteria for CSSA payments while some others use the eligibility criteria for the Samaritan Fund as their reference point.

I find all these very odd, Mr President. Why is there no clear guideline for this mechanism and there is no ceiling for income and assets? I hold that a waiver mechanism to which so many patients are subject should have a set of open and explicit vetting principles. If every hospital and clinic maintains its own set of pre-requisites, that will cause a lot of confusion among the applicants.

I learn from many elderly that although the waiver of outpatient charges is available, few people know about this mechanism and few will declare their income and assets to medical social workers just for the purpose of waiving \$34



outpatient charges. In 1995-96, the number of waivers was over 22 500 and it is of minuscule proportion against the total attendance rate of 9.6 million at the outpatient clinics under the Department of Health. Under such an implicit system, we can hardly tell whether the low figure is a result of the small number of applicants, the harsh application criteria or a result of the fact that the services are totally unheard of. Attention should be drawn to the fact that the elderly aged 65 or above account for 34% of all the attendees at the general outpatient clinics, and they account for 32% of the attendees at the specialist outpatient clinics. If we take into account the disabled persons, this figure will be even greater. Although the main spirit for us to propose half-fee concessions is to offer positive assistance to the vulnerable groups instead of the poor. We can imagine that although the Government can offer medical services that are not of low quality, those who have a few more dollars in their pockets will not join the queue at government outpatient clinics. Therefore, those who would benefit most from half-fee concessions in respect of medical services are those whose income levels have just exceeded the eligibility limit for CSSA but who still have difficulties in affording to seek treatment from private medical practitioners, in particular those elderly and disabled persons who have to queue up for medical consultation at government clinics because they cannot afford to seek treatment from private medical practitioners over a prolonged period.

Some groups reflect to us that on every occasion when they fight for welfare benefits for the elderly and persons with disability, for example, when they fight for the granting of travelling allowance to the disabled, the Government always defends itself by saying that since their needs in these aspects have been taken into account in the granting of old age allowance and disability allowance, there is therefore no need to have other subsidies. I believe that when the Administration replies in a moment, it will trot out this viewpoint again.

Mr President, I wish to point out that although the application for disability allowance are not subject to any means test, all the successful applicants are persons with serious disability. This policy can only offer assistance to those who are a hundred-percent disabled or who are seriously disabled. For those who are not a hundred-percent disabled but whose disability is sufficient to affect their daily lives, the scheme does not really offer much help to them. The old age allowance, the net of which is more widely cast, is more helpful to those elderly who are in need. The drawback of this Scheme lies in the meager amount of assistance paid out against the backdrop of the above-average medical needs of the elderly. Therefore, we hold that it is still important for medical

concessions to be granted to the elderly.

Last but not least, I would like to touch upon the issue of itemized charges for medical services. Many groups which have come into contact with us asked us whether our proposal for half-fee concessions for medical charges included itemized charges. The Honourable Fred LI has made it clear that we would not request for a 50% cut for the 10 charging items because, in so doing, it will be tantamount to acknowledging the reasonableness of the itemized charges. The Democratic Party moved a motion debate in this Council on 31 May 1995 in opposition to itemized medical charges and the motion was subsequently carried. The Democratic Party also supported the amendment calling for the abolition of itemized charges during the motion debate on the chronically ill which was moved on 24 April this year. Community groups have reacted strongly to this policy. We feel gravely discontented with the Government's insistence on enforcing the policy despite the prevailing strong opposing views in the community. We will continue to strive for the abolition of the itemized charging scheme.

With these remarks, Mr President, I support the motion.

**MR HOWARD YOUNG** (in Cantonese): Mr President, the purpose of today's motion debate is to request the Government to provide half-fee concessions in respect of medical services to disabled persons and the elderly aged 60 and above. I believe that the community equally feels that there is a need to help the disabled and the elderly. So I do not think there will be any grounds for objection to be raised by the community or this Council. But the Liberal Party queries whether the qualifying age should be rigidly set at 60. Is it an objective method? Are there any more objective methods? With the advances in medical treatment, the average life span of people has been extended and a person's state of health may not necessarily be linked to his age. We can see that very often people who are 60 years old or over 65 are healthier than those who are under 60 or only 50 years old and without disability. Therefore, I suspect whether taking age as a rigid standard for planning is better than taking real need as a standard. We hope the Member moving the motion and the Government can explain this point when responding to the same. From what we can gather, there are at present almost 10% of the population who are old people aged 65 or above. If we make a projection, the figure will quickly attain 20% by the beginning of the next century. The present position is that almost 32% of the medical services are provided to

the elderly. This figure may rise to 50%, 60% or even 70% in the future, so that resources for providing medical service to the elderly will continue to increase. In addition, we also need to take into account the medical needs of the disabled. So, we all hope to know the effect that would be brought about is seeing how social resources are being allocated or how much resources are being used. As far as setting 60 as a standard age is concerned, besides its medical implications, we also need to take into account the fact that many other social services in Hong Kong and even the retirement age are linked to the age of 65.

Are we suggesting that 60 should be individually picked out as a standard for a certain service or are we going to lower the qualifying age from 65 to 60 for all social services? If the latter applies, how much resources would be used by our society as a whole? I believe the figure will be quite huge. It will be the most responsible decision if we can calculate the figure after careful thoughts and let the figure be made known publicly. As far as I know, for many doctors in the medical profession, even doctors in private practice, when they see old patients or patients who have severe disability and cannot afford the medical expenses, they would adjust their charges as they see fit, rather than rigidly charging uniform fees. I wonder if the Government can adopt the same principle. That is to say, it would only be reasonable for the Government to charge the patients half fees or even offer them services free of charge, regardless of whether they are 60 years old or not, or if they are below 60 years of age but in need, for instance, they have severe disability. Lastly, I would like to know what is the rationale behind charging half fees. Why not 70% or 30% of the normal fee but 50%? I hope the Member moving the motion can explain this in his reply. I so submit.

**MR NGAN KAM-CHUEN** (in Cantonese): Mr President, it has been the consistent view of the Democratic Alliance for the Betterment of Hong Kong (DAB) that the Government is obliged to offer more assistance to the vulnerable groups who required special assistance.

However, on the medical front, the primary health care services currently provided by the Government are grossly inadequate. For instance, hospital beds and geriatric beds are under-provided and the average waiting time for out-patient services can be as long as four hours. This is not conducive to promoting the health of the elderly and the disabled, and to the prevention of diseases. Furthermore, the Hospital Authority (HA) announced in December last year 10

medical charging items. Such measure of itemized charging has further aggravated the predicaments of the disabled and the elderly who suffer from financial hardship. And because of the lack of means, they are denied the necessary medical services.

A unified concessionary standard for medical services will not only ensure that medical treatment will be given to the disabled and the elderly on time, but also prevent the worsening of their ailing conditions. Furthermore, this is conducive to establishing a general and fair social welfare subvention principle. At present, if disabled persons and elderly patients have financial difficulty, they may apply for financial assistance from the Samaritan Fund. However, the application and vetting requirements of the Fund are extremely stringent. Apart from meeting the income requirements, applicants are also required to meet with social workers and lodge applications each time they need medical services. Such subvention method of the Government is undoubtedly over-complicating the matter. The establishment of a multitude of vetting frameworks will not only result in a waste of administrative resources, but also prevent the offer of assistance to the patients in need effectively. And because of such reasons like inadequate information, the elderly find it difficult to enjoy these welfare benefits they are entitled to. The setting of a unified concessionary standard will then realize a fair treatment of the vulnerable by society, serving as a kind of repayment for the enormous contributions the elderly have made to Hong Kong in the past. This may also enable the welfare measures to benefit the public, thereby genuinely helping those who are in need.

In fact, the issue of medical services is not confined to the aspect of fees and charges only. Hong Kong is still lacking in a centrally co-ordinated health care services for the elderly; the number of convalescent beds for the disabled is grossly inadequate; specialist medical services for the elderly are under-provided and there is a lacking in nursing services for the elderly who are chronically ill. All these problems are evident to everyone. Even if concession can be given to the elderly and the disabled when charging them for medical services, it is still far from adequate. Under the principle of offering assistance to the vulnerable, the Government should formulate a long-term policy for the disabled and the elderly so as to raise the level of medical services across the board.

In addition, the Government should issue Disabled Citizen Cards, taking the "Senior Citizen Cards" as a reference standard, so as to give disabled persons

priority in obtaining public services. The Government should also encourage more private organizations, especially private medical services, to provide a wider range of concessions for the card-holders with a view to building up a community in which members of the community help one another and live in harmony.

Mr President, I so submit.

**MR MICHAEL HO** (in Cantonese): Mr President, the subject of medical charges is a very complicated one. What we have to discuss is the funding for the whole medical system. We have to conduct a comprehensive review to find out where the money is to come from, who are the ones to pay and how as well as what services are to be provided and how. If we only talk about how much should be charged for certain services or which part of the system should be slightly modified without solving all these problems, we would not be able to solve the problem of how charges for all medical services are to be imposed from an overall perspective. Therefore, in principle, I do not think that we should isolate the various problems and deal with them or hold discussions in a piecemeal manner. However, since the schedule for the Government's review on the funding for the medical system as received by the Health Panel will be extended to 1997, under such circumstances, if we will have to wait till 1997 before we can fundamentally review some very basic issues and still longer before any new policy can be introduced, I would think that we should first handle the matters that are within our present reach and matters that are simple and easy to tackle without having to wait till 1997 before a decision can be made. I will choose to take action now instead of waiting till 1997. Therefore, I very much hope that if we plan to make certain changes first, the issue concerning the elderly and the disabled as raised by the Honourable Fred LI this evening seems to be a very suitable part to be singled out for changes.

Lastly, I also hope that the Government will, other than reviewing the present charges for outpatient and hospital services, also review health care services because all the charges aforesaid are treatment charges. If the present health care centres for the elderly continue to charge such high annual fees, it will be very difficult for the elderly to gain access to these services to improve their physical health and avoid falling ill. I therefore eagerly hope that the Government can conduct a review and formulate a new charging policy as soon as possible. As for health care centres for the elderly, I hope the services can be

offered free of charge instead of at half the fees so as to encourage the elderly to maintain good physical health.

Mr President, I so submit.

**MR LEUNG YIU-CHUNG** (in Cantonese): Mr President, we all know that persons with disability, including those chronically ill, and the elderly aged 60 or above, are more likely to need medical consultation and hospitalization. Most of them are jobless or earn only a meagre income. Therefore, I have absolutely no objection to the proposal put forth in this Council today to provide half-fee concession to them for public medical services. However, I would like to make a few points on the overall deployment of medical resources.

The charges of public hospitals is now \$60 daily, \$34 for each visit to the outpatient service, and \$44 for specialist consultation. To the middle-to-high-income group in general, the charges are inexpensive, but to the chronically ill, these are after all heavy burdens. Hence I hope that the Government can work out some long-term solutions to address the problems brought upon the patients by the medical charges, especially the underprivileged like the lower stratum. The Government should put more efforts into this area.

The following are a few points that I hope the Government can consider carefully and make improvements as soon as possible.

- (1) The Government has to revamp its concept of medical welfare and take medical welfare as its responsibility. Therefore, it requires the central government to make substantial funding for the improvement of the overall quality of medical services. Whilst the Government emphasizes that no one would die of his illness through lack of means, the reality is that many people who have not contracted acute fatal diseases, especially the elderly people, restrain from seeking medical consultation over a long time in order to scrimp on medical expenses. As a result, their conditions worsen and they rot away and die. This is one serious question which we should be most concerned about, but is often neglected by the Government.
- (2) Very often, the Government refuses to make substantial funding for welfare services and stresses on the "user pays" principle. But the point is, how can the users pay when they cannot afford to?

Therefore, in addition to increasing the resources for medical services, the Government should also monitor the expenditure on medical services in order to make more savings to subsidize the medical expenses of patients. Browsing through the Hospital Authority (HA)'s proposal for 1995-96, one can easily find that the ratio of expenditure on staff remuneration to medical equipment and medicine is a disparate 5:1. This shows that the conditions of service for HA staff are highly enviable. For example, on top of his basic salary, an Assistant Social Work Officer of the HA will also get a cash allowance equivalent to 16.5% of his basic salary; a middle-level social work officer can get a cash allowance of 37%; and 60% for a Senior Medical Officer. Conditions as such not available in other organizations. As to the question of double benefits, it has already been criticized by the Director of Audit for quite some time. If the Government can be fair and reasonable in monitoring the expenditure of the HA, I believe we would have more resources to help patients who have not the means.

- (3) Also, the Government may consider a system of "medical savings". The medical savings system practised in Singapore can really help patients to pay for some medical expenses when necessary. It differs from insurance in that a certain proportion of a citizen's salary is put aside in his own account, standing by for rainy days. Moreover, under this system, the money appears to be accorded better protection as it is under government management rather than management or utilization by insurance companies.

Of course, the situation in Hong Kong differs from that in Singapore, and the practice cannot be copied straightaway. However, I feel that the Government should consider these methods and see if Hong Kong can follow these examples. Also, it should further consider how new resources can be opened up (in terms of the Government making substantial funding on medical expenditure) and to reduce expenditure (in terms of monitoring and rationalizing the expenditure of the HA). I hope that more citizens can get better service in medical welfare.

Just now I have presented my views on the deployment of resources in the hope that the Government will think over how more funds can be obtained to help users of public medical services who are unable to pay. Therefore, I support

today's proposal to provide half-fee concession to the elderly and persons with disability. However, it is my expectation that in addition to this, they will be provided with free medical services in future.

Here, I wish to point out in particular that some chronically ill persons, in spite of the fact that the proposal would be accepted by the Government, may not be able to enjoy the half-fee concession. This is because some of the chronically ill persons have not lost their earning capacity completely. They can still take up some jobs, though very poorly paid, and are therefore ineligible for the Government's normal disability allowance or the higher disability allowance. In these circumstances, they are not categorized as the disabled and will not get in future the half-free concession for public medical services which we propose today. Therefore, I propose that the chronically ill persons should be assessed and certified by the Samaritan Fund, so that in future they can benefit from half-fee concession for medical services in the same way as do recipients of higher disability allowance and normal disability allowance.

Mr President, medical charges have all along been a serious threat to the chronically ill persons. We hereby sincerely hope that the Government can thoroughly consider these real circumstances and provide these people with half-fee concession, so that more patients can be better taken care of. These are my remarks.

**MR WONG WAI-YIN** (in Cantonese): Mr President, this time it has been specified in the motion to provide general public medical services at half the normal fees and charges to "the elderly aged 60 or above". At present, the Government is using the age of 65 as the basis of planning elderly service. I would first point out the disadvantages of this basis, and then I would discuss the medical needs of people aged 60 to 64.

*The Book of Music and Rites*, a piece of classical Chinese literary work, says, "60 years of age is regarded as old".

*The Book of General Studies: On Household Records* also says, "In the Sui Dynasty, 60 years of age was regarded as old; in the Tang Dynasty, 55 years of age was regarded as old and in the Song Dynasty, 60 of age was regarded as old".



This shows that the elderly is generally defined as people aged 60 or above in the Chinese society.

Besides, when the United Nations held an international conference on the elderly in Vienna in 1982, it has also used 60 years old as the guideline for defining elderly people.

Looking back at Hong Kong, in the Report of the Working Group on Elderly Service published in August 1994, the guideline for planning elderly service was proposed to be amended so that the targeted persons under the plan were to be changed from persons aged 60 or above to persons aged 65 or above and the elderly was redefined as people aged 65 or above. Therefore, the elderly have to wait until they are 65 years old before they can enjoy elderly service. Viewing the past and the present, Hong Kong's definition of the elderly is a serious regression.

In fact, it was proposed in the report that the service recipients would be changed from persons aged 60 or above to persons aged 65 or above because the rate of utilization of residential service and community assistance service is the highest among persons aged 65 or above. In order to utilize resources in a more sensible way and to attain the goals of the plan, only those aged 65 or above are included as service recipients and the needs of those who are aged 60 to 64 are neglected in the plan. Therefore, the report lacks comprehensiveness and vision and has not taken into account the needs of the potential users of the services in the community.

Besides, the report states that if needs are proven, people who are aged 60 to 64 may continue to use the elderly service. However, the Government has not clearly defined the meaning of "if needs are proven". According to the figures provided by the Census and Statistics Department in the middle of 1995, there were 247 200 old people who were aged 60 to 64. However, the people of this age group have been deprived of services by the ambiguous idea of "if needs are proven". This is really unfair!

Mr President, the ridiculous aspect of this plan can be demonstrated by the age requirement set by the elderly health centres. In order to improve the

quality of health of the elderly, the Government has proposed to set up seven health centres for the elderly in its report with a view to achieving prevention and early treatment of the diseases of the elderly through medical check-ups and health education. However, if the elderly can only receive service after they have reached the age of 65, many diseases may have already reached a serious stage and that will really defeat the initial purpose of setting up the health centres for the elderly. Suppose that the average life expectancy of an old person is 80. If an old person starts to take measures to prevent diseases earlier at the age of 60, he may only catch such diseases at the age of 70 and the Government has to shoulder the burden of his medical costs for 10 years only. If he has not taken measures to prevent diseases, he may have already contracted many diseases in his sixties and the Government will then have to shoulder the burden of his medical costs for 10 to 20 years. Therefore, the Government should reinstate the definition of the elderly from people aged 65 or above to people aged 60 or above so that the elderly can enjoy elderly service earlier. In the long term, this can reduce the hospitalization rate of the elderly and hence reduce the burden on the resources of our society.

Undoubtedly, people who are aged 65 or above have greater medical needs. As the Honourable Fred LI has pointed out earlier on, the Government has promised to provide medical services to the elderly at half the normal fees and charges in its Report on Primary Medical Services published in 1990. Very unfortunately, however, this proposal has still not been implemented so far. I cannot help asking whether the medical needs of people aged 60 to 64 are insignificant. This is certainly untrue. According to the figures provided by the Department of Health, 7% of the 4.16 million man-times of the services provided by the general outpatient clinics of the Department of Health, that is, about 290 000 man-times of the services are received by elderly patients aged 60 to 64. Since there are 247 000 people aged 60 to 64 in Hong Kong, that means, on average, every old person aged between 60 and 64 has utilized the medical services for around 1.2 times. Among this group of people, many have retired and their incomes are dwindling but they are not yet qualified for applying for old age allowance because they have to reach the age of 65 before they can apply for old age allowance. Besides, symptoms of many chronic illnesses usually start to reveal themselves at the age of 60 and since then, their needs for specialist outpatient clinic services will gradually increase. To those whose physical capacities and financial conditions are gradually getting worse, the provision of

medical services at half the normal fees and charges is very crucial.

Mr President, with these remarks, I support Mr Fred LI's motion.

**MISS CHAN YUEN-HAN** (in Cantonese): Mr President, the subject of the motion today is the provision of general public medical services at half the normal fees and charges to the elderly over 60 and persons with disability. Both the Hong Kong Federation of Trade Unions and the Democratic Alliance for the Betterment of Hong Kong (DAB) will support this motion. Earlier on, the DAB conducted a survey on existing social services and their findings reveal that on top of Comprehensive Social Security Assistance (CSSA) recipients, there is another group of people comprising the elderly, the disabled, low-income earners and the unemployed, who can be referred to as the vulnerable members of our community. Obviously, the existing social welfare policy has not taken account of these people, as they are given no special attention either with respect to medical services or other aspects. In fact, they all belong to the very-low-income class. Though they may have some savings, their savings are very scanty. Under the present CSSA policy, they are not eligible for assistance, but we can see that they do need help from the whole society. These people include the elderly, who really wish that the Government could formulate policies to extend a helping hand to them. Because of the above reasons, we support the motion today.

At present, many old people who want to seek medical treatment at public hospitals frequently have to line up outside the hospitals for hours. We are all aware of this situation. Many a time, although the wind is strong and the rain is heavy, groups of old people are still seen waiting outside the hospitals. Actually, under such conditions, if these people are to take after the normal fashion of the average Hong Kong people, they would have long switched to other places with better medical facilities for treatment. Why do these people still insist on lining up for public medical services under such conditions? This illustrates nothing but their lack of means and the absence of a retirement scheme in Hong Kong to protect the elderly. We can also see from this that some low-income families are faced with great difficulties in caring for the elderly. Owing to these factors, many old people are forced to line up and wait for public medical services. These old people have made tremendous contributions to our society when they were young. Facing them, we cannot help asking: now that they are old, why has the Government failed to formulate any policies to help them? We think

that the Government should assist them with respect to medical services, not just by offering them fee concession at half the normal rate, but also by abolishing the policy of itemized charging which tremendously affects the old people. In the course of my involvement in community work, I have actually come across many old people who have to delay the treatment of their chronic illnesses such as heart diseases owing to the policy of itemized charging. Therefore, I feel that besides giving old people assistance with respect to medical charges, the Government should also abolish the system of itemized charging in order to offer them genuine assistance. These old people are not CSSA recipients; they are a group of old people not given any assistance under the existing medical service policy, or a group of vulnerable old people.

Since the elderly are more susceptible to diseases, the Government has to put the above suggestions into effect as soon as possible. As some colleagues in this Council have just said, we should really conduct a comprehensive assessment of the whole system of medical charges and the financing of our medical services. But at the meetings of the Health Panel, the Government keeps saying that it will take a long time to complete the projection and planning connected with these issues. Therefore, on that account, I feel that although the motion today is limited in scope, we should still support it. Apart from the problem of the elderly just mentioned, I also wish to talk about the situation of the disabled. I think that the disabled should also enjoy medical services at half the normal charges and should also be exempted from paying itemized charges. The rationale behind is the same as that applied to the elderly. Because of their physical disabilities, some disabled people who may not be very old still have to lead a very hard life. For example, they may experience difficulty in getting jobs and they have to face many problems in society. They really need a little more care and attention from the whole society. Overall speaking, I feel that in this debate today, we should urge the Government to provide the disabled and the elderly over 60 with public medical services at half the normal charges within a short time. Mr President, with these remarks, I support the motion.

**DR JOHN TSE** (in Cantonese): Mr President, the provision of general public medical services at half the normal fees and charges should be treated as a part of medical rehabilitation. It is neither a charitable offer to the disabled, nor is it merely a gift from a well-off society to the less fortunate group. I have to emphasize that it is a right, a basic right to which one, as a citizen, is entitled.

To the disabled, the most important thing is integration into the society. Both "full participation" and "equal opportunities" have been stressed in the

*White Paper on Rehabilitation* published by the Government in May 1995. It has also been said in the White Paper that the disabled should, like other Hong Kong citizens, continue to enjoy equal opportunities in the participation of social activities as far as possible. To remove the obstacles of integrating the disabled into society, efforts have to be made not only in the realization of a suitable physical and social environment, but also in the restoration of every aspect of the physical ability of the disabled as far as possible. This is also the ultimate goal of medical rehabilitation.

Unfortunately, the Government has never put this conception into practice as far as its policy of charging general public medical services is concerned. On the one hand, the Government talks unrealistically about "full participation" and "equal opportunities"; but on the other hand, it adopts a totally different policy in charging medical services. This is disappointing indeed.

Mr President, it is undoubtedly the Government's responsibility to protect the right of every person to receive reasonable treatment and this is particularly important to the disabled, who are the vulnerable ones in society. This is definitely so because receiving reasonable treatment is part of our basic human rights which the Government is obliged to safeguard. But more importantly, it affects whether the disabled can continue to enjoy equal opportunities to participate in social activities.

According to a report published by the Working Group on Training and Employment of the Disabled in the middle of last year, more than 80% of the workers working in sheltered workshops earn a salary which is below HK\$500, and less than 3% of them earn more than \$1,000 a month. As a result, they have to rely on the assistance of their relatives and friends for their living. For those disabled who have to receive long-term medical treatment, medical charges exert a heavy financial pressure on them as well as on their families. The financial pressure will, at the same time, necessarily lead to the cut down of other expenses in their daily lives, thereby hindering their integration into society.

Both the Urban Council and the Hongkong and Yaumati Ferry Company have adopted a policy of granting half-fee concession to the disabled, hence

producing a leading effect in helping the disabled integrate into society. The Democratic Party hopes that the Government can also do the same with regard to its policy of charging for its medical services instead of "acting in contrary to what it says".

Mr President, with these remarks, I support the motion.

**MR CHAN WING-CHAN** (in Cantonese): Mr President, both the elderly and the disabled belong to the vulnerable class of the society. In Hong Kong, however, they do not enjoy the full social security which they should be entitled to. Especially in relation to medical care, their sufferings become more evident since the Hospital Authority started to implement the policy of itemized charges. The original motion urges the Government to provide medical services at half the normal fees and charges to the disabled and the elderly aged 60 or above. Although I believe that will alleviate the predicament of these two groups of people, a more thorough measure will be for the Government to adopt a "broad-brush" approach and abolish the above-mentioned policy of itemized charges.

Mr President, the elderly population in Hong Kong is constantly on the rise, but the livelihood of the elderly is still not protected and improved. The financial difficulties encountered by the elderly and the predicament they face in making a living are equally serious.

Financially speaking, only a minority of the elderly in Hong Kong have retirement protection. The majority will have to face the threat of financial hardships after they or their spouses retire. What they can only do is to depend on their children, or live on the meagre assistance from the Government, or continue to work at the age of 60. As far as the meagre assistance from the Government is concerned, the present rate of Comprehensive Social Security Assistance payment for the elderly who is single is only \$1,935, which is still a long way off one-third of the median wage, which the Hong Kong Federation of Trade Unions has long advocated.

At present, the elderly still have to work even they have reached the age of 60. In the "Summit on Poverty" held by the Hong Kong Council of Social Service in the beginning of the year, it was pointed out that 45% of these old people were engaged in unskilled work and drew a meagre income, with 50% of them earning less than \$4,000 a month.

The living standard of the elderly is extremely poor and they are subject to sufferings which are beyond description. As far as medical service is concerned, the scheme, of charging 10 items of medical services according to costs, implemented by the Hospital Authority at the end of last year, has dealt a direct blow to the lives of many old people, especially those who are chronically ill and are no longer able to work. It is imperative for the Government to establish a fund for the provision of medical services to the elderly and relax the current requirements for applying for the Samaritan Fund for the payment of the huge amount of medical expenses for the sick, old people. In the long term, the Government should exempt the elderly from the scheme of itemized medical charges.

On the other hand, the disabled are facing a similar situation. According to the information provided in the *White Paper on Rehabilitation (1995)*, there were 264 000 disabled persons in Hong Kong in June 1994. Most of them are mentally retarded or physically disabled and they represent 44.9% and 29% of the total number of disabled persons respectively. All of them fall into dire straits when they have to be confronted with employment problems and the lives they lead are extremely hard. According to a survey quoted by *the Green Paper: Equal Opportunities and Full Participation: A Better Tomorrow for All (1992)*, the unemployment rate of the disabled was as high as 50%.

In fact, even the Government is reluctant to employ the disabled, not to mention the private companies. Up to 1 April 1994, the Government has only employed 3 941 disabled persons, which represent a mere 2.3% of the entire establishment of the civil service.

Even if the disabled manage to get a job, the wages they receive are extremely low. Apart from this, a report on the disabled published by the Social Welfare Department in July 1995 showed that 80% of those working in sheltered workshops drew a monthly wages of less than \$500 (as was also pointed out by Dr the Honourable John TSE just now). Considering that Hong Kong is now undergoing an economic transformation, the workers' predicament can well be predicted.

Faced with heavy financial burdens, the disabled will naturally cut down on their daily expenses. But still they cannot avoid paying for the necessary expenses such as fees and charges for medical services. Since the implementation of the scheme of itemized medical charges by the Hospital

Authority, their burden has increased substantially. Therefore, some voluntary groups hold that the provision of medical services at half the normal fees and charges is not really that beneficial and it is most important that the scheme of itemized charges can be suspended for the disabled. In my opinion, this Council should urge the Government to adopt the measure of half-fee concession first, and then suspend the scheme of itemized charges to help the elderly and the disabled tide over their predicament.

These are my remarks. Thank you, Mr President.

**MR LAW CHI-KWONG** (in Cantonese): Mr President, in order to avoid repetitions and giving a lengthy speech, I will just state briefly why I support the motion.

All Comprehensive Social Security Assistance (CSSA) recipients are now exempted from medical fees. However, for those with an income slightly higher than the amount qualified for CSSA and who are frequent users of medical services, not only are they unable to receive CSSA, but they are also required to pay full medical costs. It can be said that the economic hardship faced by these people, with the majority being the elderly and the disabled, is greater than that faced by CSSA recipients. Since Hong Kong has not yet had a central or public medical insurance or medical saving scheme, the heavy medical costs in the long run will impose a great financial burden on the elderly and the disabled. If we provide half-fee concession to both the disabled and the elderly on general public medical services, not only will it alleviate their hardship but will also save a lot of administrative work involved in processing applications for exemption of medical charges.

In recent years, this Council has kept asking the Government to review the comprehensive medical policy, including both funding and charges. Just as what the Honourable Michael HO has just said, the progress of the Government in this aspect is very slow, and today's debate is also basically about funding and charges. I hope the Government will speed up its review on one hand and refrain from using this as an excuse for refusing to consider the proposal of providing half-fee concession on the other.

The Government certainly will also be concerned about how much it will actually draw on its revenue if this half-fee concession policy is to be



implemented. However, as we do not have detailed statistics in this aspect, it is impossible for us to have a precise estimate on the loss of Government revenue. Yet, since the rate of the present medical fees is very low in comparison with the actual cost, and many elderly and the disabled are already receiving CSSA, if the half-fee concession policy is to be implemented in this financial year in which government expenditure on public medical services stands at \$22.6 billion, the decrease in revenue should not be more than \$200 million.

However, from the information released by the Financial Secretary early this month, we learn that in the Budget for next year, only \$800 million can be spent in honouring the new pledges. Therefore, it is also not very easy for the Government to fulfill this policy which is the subject of today's motion. However, as long as the Government agrees that this should be the objective, it can then be considered as to how this objective can be gradually achieved. For example,

- (1) to provide half-fee concession for outpatient medical services first, to be gradually extended to hospital beds; or
- (2) to start with elderly aged over 70, extending gradually to elderly aged over 60 and the disabled.

The means or steps taken to achieve the objective of this policy are but secondary, the most important thing is to establish the objective of the policy, that is to provide half-fee concession on public medical services to the disabled and elderly aged 60 or above. I hope that colleagues of this Council can support this motion, and that the Government can be positive in its response.

These are my remarks.

**MR YUM SIN-LING** (in Cantonese): Mr President, in Hong Kong, there are now a total of 837 300 elderly people who are aged 60 or above, 77 000 people who are physically handicapped and 119 000 people with mental disability. Basically, these people do not have normal earning capacity and face a host of financial problems. They mainly rely on the Government's Comprehensive Social Security Assistance and other public assistance schemes to sustain their living.

It is reported in today's newspaper that the Hospital Authority has just completed the first survey on the problem of suicide among elderly people. It is found that the number of elderly suicide cases in Hong Kong is twice the number of those in foreign countries, the main reason being that Hong Kong is not a welfare state and elderly people here are not well-protected after retirement. Other reasons include the torments of illnesses, loneliness and the reluctance of the Chinese to reveal their feelings to others. The survey reflects the gravity of the problem of the elderly people in Hong Kong and the pressing need to strengthen the care for them. Among the various problems, medical service is naturally the most important.

For elderly people aged 60 or above, it is difficult for them to find a job due to the gradual deterioration of their health conditions and most of them need to consult a doctor regularly. Since they have no income but need money to cover their medical expenses, they are forced to live frugally. As a result, they will even suffer from malnutrition, with their resistance to diseases being further weakened. Even though they may only have contracted minor illnesses at the outset, serious illnesses may eventually be developed that makes it more difficult for medical treatment to be administered. According to a report, by the year 2000, about half of the elderly population will suffer from chronic illnesses, 20% will be disabled in one way or another, 30% will have visual impairment which is mainly cataract that requires operations, and 23% will have distinct hearing impairment.

Of the 877 000 plus elderly people, some 427 000 have applied for the old age allowance, accounting for 50% of the total elderly population. This shows that many elderly people in Hong Kong are in dire need of assistance. A survey has also found that it takes an average of four hours for the elderly to seek for medical services at the Government's general outpatient clinics while queuing up for a chip will have taken up half of their waiting time. Why do they spend so much time waiting patiently? They do so simply to save a little money.

Therefore, I feel that the Government should expeditiously provide assistance to these elderly people as they have made tremendous contributions to Hong Kong. What the Government needs to do now is only to repay them on behalf of the society by providing half-fee concession to them when charging them for medical services to lessen the difficulties they face in their twilight years.

On the other hand, there are over 196 000 people with disability in Hong Kong. Some of them are physically handicapped and some are mentally disabled. Because of the loss of earning capacity, they have been eligible for the disability allowance. Up to February 1995, some 67 000 people have applied for the allowance, showing that people with disability are also in dire need of our assistance.

In fact, some of the people with disability are able to earn their own living. However, many employers are reluctant to employ them because they think that people with disability have limited abilities. Whilst the overall unemployment rate stands at a comparatively high level at present, the people with disability will lose their jobs more easily and it will be more difficult for them to find another job again. Besides, even if some employers are willing to employ the people with disability, they will invariably cut down the wages. For the people with disability who fall sick, they require medical treatment on the one hand and on the other, they need to support their living or be cautious to keep their jobs. Compared with normal people, persons with disability face even greater pressure both physically and psychologically.

For these reasons, I hope that the Government will similarly provide half-fee concession to persons with disability when charging them for the provision of general public medical services. I, therefore, support this motion. Thank you, Mr President.

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Mr President, Members put forward a number of suggestions today, which I very much welcome. It was only three weeks ago that Members debated "Elderly Policy" in this Chamber. On that occasion, I spoke at length about the medical services that are already being provided for our elderly residents. I do not propose to repeat what I have said previously, other than to remind Members that a wide range of services is currently available.

Today, I would like to talk more about people with a disability. They are provided with a range of facilities and services to meet their medical needs. These include in-patient, outpatient, day hospital, accident and emergency, and community outreaching services provided by the Hospital Authority. In addition, there are specialist services that are tailored to the needs of people with a disability to help them overcome their structural or functional impairments and

minimize the residual defects. The services include 4 873 psychiatric beds and 575 psychiatric day hospital places for the mentally ill, 825 hospital beds for the mentally handicapped, and over 200 ophthalmic beds for eye patients. As a new initiative, we will set up two rehabilitation teams for the chronically ill in 1996-97.

Members will, I think, agree that it is equally important to prevent impairments and to ensure that impairments do not escalate into more limiting disabilities. The Department of Health provides a comprehensive child assessment service for children from birth to the age of 11 years for those who are suspected or diagnosed to have a disability. Currently, four child assessment centres are in operation with a fifth scheduled for opening by the end of this year. Three others are being planned. The Department of Health also provides specialist oral and dental care to the mentally and physically handicapped at the dental units in Tuen Mun Hospital and Pamela Youde Nethersole Eastern Hospital. Such services will gradually be extended to four other dental units.

However, today's debate is not about the range or quality of medical services for elderly and handicapped people. It is about the fees payable by them. In fact, I would suggest that the issue is even broader than this. It involves consideration of fees for public health care services in general — two groups of patients cannot simply be considered in isolation.

As Members are aware, the cornerstone of our health care policy is that no one should be denied adequate medical treatment through lack of means. This policy applies to everybody, whether young or old, able-bodied or disabled alike.

In pursuance of this policy, and for historical reasons, public health care services are heavily subsidized. It costs a patient only \$60 per day to stay in a hospital or \$34 to see a doctor at a general out-patient clinic. About 97% of the actual cost of hospital treatment and 80% of the cost of a consultation is subsidized from general revenue — in other words, paid for by the community.

Nevertheless, we realise that there are people who cannot afford even these subsidized charges. A waiver system is in place at both the Department of Health and the Hospital Authority to help those with financial difficulties. They may apply for full/partial waiver of fees or for assistance from the Samaritan Fund, as the case may be. Comprehensive Social Security Assistance clients have a proven financial need and they simply pay nothing for their medical treatment.

The motion before this Council seems to be based on the assumption that all elderly and handicapped patients are in financial need. Is it really the case? In public hospitals, over 39% of bed-days are occupied by patients who are aged 60 or above, but waivers account for only 13% of the fees collectable from these elderly patients. Likewise, 34% of patients using general outpatient clinics are elderly people, but only 10% of patients have their fees waived. In other words, the great majority of elderly patients are able to pay the heavily subsidized fees charged for their treatment. Yet, if the direction implied in the motion were pursued, then every student and housewife could claim inability to pay because they have no personal income, even though other family members may be economically active. Mr President, the Government simply cannot support today's motion.

Some Members have on past occasions pointed to the need to prevent public health care expenditure from getting out of control. To prevent this runaway, we must always seek to maximize available resources and target expenditure where it is most needed. Subsidy for health care must be based on need. What the motion now proposes is that we should increase subsidies for elderly and handicapped patients, whether they need it or not.

Since reducing services in response to reduced income is unacceptable, more funds must be provided to make up the loss. If some patients pay less, then either other patients or general taxpayers will have to pay more. By charging only half the regular fees, the former approach would result in income foregone of over 20% of the Hospital Authority's and at least 16.5% of the Department of Health's annual fee income. The latter approach would cause public expenditure on health care to rise.

Some Members may recall that the Administration addressed this matter in its 1993 consultation document "*Towards Better Health*". The Target Group Approach contained two counterbalanced proposals designed to be revenue-neutral and not increase public health care expenditure. The first was that elderly persons and persons in receipt of disability allowance should automatically receive a partial waiver of fees and more fee subsidy; the second was that patients with the ability to pay should pay more and receive less fee subsidy.

While the community supported the first half of the package, they were not prepared to accept the second part. Without both, the proposal could not work.

When the consultation document was debated in this Chamber on 13 October 1993, Members did not address this issue. It has surfaced again. If Members now support the motion in favour of lower fees for elderly and handicapped patients, while maintaining that public spending on health care should be restrained, then to balance out the cost equation they must also support the idea of higher fees for others who have the ability to pay such fees.

Today's motion debate is a timely one. It brings into public focus the need to look at the important question of health care funding, not just for elderly and handicapped patients, but for all patients. At the same time, in the face of an aging population, increasing health care costs and expectations for better public services, we must also address the balance between patients' and the community's contribution to public health care costs.

Thank you, Mr President.

**PRESIDENT:** Mr Fred LI, you are entitled to reply and you have five minutes 19 seconds, out of your original 15 minutes.

**MR FRED LI** (in Cantonese): Mr President, first of all I would like to thank the 12 Members who have spoken, their speeches are centred around medical services, in particular, the elderly and the disabled. I sincerely thank them. But on the other hand, I am disappointed at the Administration's response because the Secretary for Health and Welfare has only repeated the existing services provided by the Administration. Undoubtedly, the Administration is providing a comprehensive range of medical services. But the problem lies in the statistics just quoted by the Secretary. She said that only 10% the patients visiting outpatient clinics have applied for exemption which proved that most people can afford to pay such a petty amount of \$34. Moreover, only 13% of these hospitalized have applied for exemption which proved that the patients can afford to pay \$60 a day for hospitalization. I think has confused the cause and the effect. Why is there such a number of applicants? Has the Government conducted a review? We have also received the opinions of many old people, the chronically ill groups complaining that the application formalities are too complicated and that different criteria are adopted. At the previous meeting of the Legislative Council Panel on Health, we have levelled a lot of criticisms on the eligibility criteria for fund application. An aged person who visits a general

outpatient clinic has to pay \$34 only. If he has to submit an application to the social worker for exempting the consultation fee of \$34 before every visit, it will be very tedious indeed. How can he know in advance when he will fall ill in order to submit an application in advance? I think the problem lies here. In order to simplify the formalities and reduce bureaucracy, 50% fee reduction should be granted to the elderly. Now that the number of applicants is so small, this is not because a lot of people can afford to pay but because the application formalities are complicated. Moreover, we have not given consideration to whether the relevant promotional work brings clear messages to the recipients about how they can apply. According to the survey conducted by the Society for Community Organizations Limited, many people do not know that they can apply for exemption or fee reduction. The elderly do not know this and in fact more than 70% of them do not know this. Does this show that they can afford to pay? No. I think the Government really has to conduct a review.

Students and housewives are also mentioned just now. However, today's debate is about the elderly aged 60 and above and people with disability and not about housewives and students. I do not understand why they are mentioned in the same breath. Undoubtedly, the Government has already provided a lot of subvention. But the issue we are now dealing with is that we hope that the Government can make one more step forward. At this juncture, I would like to respond to the questions raised by the Honourable Howard YOUNG today. He said he wanted to know how much Government resources will the proposal involve. We can hardly know this. Although I have tried to consult the Hospital Authority and the Health Department, they did not have statistics on the number of people with disability or people aged 60 and above. They only have statistics on those aged 65 instead of 60. They only have statistics on the number of people who have been exempted, that is, 10% as just mentioned. However, most recipients of exemption are recipients of the Comprehensive Social Security Assistance (CSSA). Only a minority of them are not CSSA recipients, but we do not know how many of them are old people and people with disability and how many of them are not old people. We only know that the expenses incurred by general outpatient clinics in 1995 are \$550 million. The total expenditure incurred by the 60 outpatient clinics which have been more than 4 million man-time of visits in a year is over \$500 million while the income received is more than \$128 million. If this motion is carried and implemented, it may probably only involve the additional appropriation of tens of millions of dollars to the outpatient clinics. In fact this represents only a small step forward as the existing subsidy is already as much as more than \$20 billion. So, what I propose now will only involve a small amount of money.

As regards the age of 60, and about why it has to be 60 years old instead of 65, the Honourable Howard YOUNG has also expressed his concern. He has also queried why 50% rather than 30% or 70% subsidy should be given. We can answer this question fairly easily. What kind of concessions is currently provided to the elderly in our community? 50% concession is given by the Urban Council and half price fares offered by the bus companies and the three railway companies. We think this is a standard to which reference can be made. But I do not agree to Mr Howard YOUNG's view that the stress should be put on the percentage of concession. In my opinion, we should not be punctilious about how large the percentage is as this is a question of principle. In the past, the age of 60 is the standard adopted for planning. But unfortunately, after the report on the elderly has been produced, the standard age for policy planning has been uniformly set at 65. In view of the practical need, we must set a standard for policy planning and the age of 60 is an index because this is the request made by the elderly. I hope the above points can be regarded as a response to Mr Howard YOUNG's questions. As time is running out, I can only say that I hope my colleagues in this Council will not cast abstention votes but given unanimous support to this motion in order to exert pressure on the Government. In fact the resources involved are not too great. According to preliminary calculation made by the Honourable LAW Chi-kwong, less than \$200 million will be involved, which represents only rather a percentage of the total medical expenditure incurred now which is more than \$20 billion. At the same time, this will also reduce the resources devoted to the administrative work on processing the applications for exemption. I hope all Members will give unanimous support and I thank those who have spoken on this motion. Thank you.

*Question on the motion put and agreed to.*

## **ADJOURNMENT AND NEXT SITTING**

**PRESIDENT:** In accordance with Standing Orders, I now adjourn the Council until 2.30 pm on Wednesday, 29 May 1996.

*Adjourned accordingly at six minutes past Ten o'clock.*

*Note:* The short title of the Telecommunication (Amendment) Bill 1996 listed in the Hansard has been translated into Chinese for information and guidance only; it does not have



---

authoritative effect in Chinese.