

OFFICIAL RECORD OF PROCEEDINGS

立法局會議過程正式紀錄

Thursday, 24 April 1997

一九九七年四月二十四日星期四

The Council met at half-past Two o'clock

下午 2 時 30 分會議開始

MEMBERS PRESENT

出席議員：

THE PRESIDENT

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

主席黃宏發議員，O.B.E., J.P.

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

李鵬飛議員，C.B.E., J.P.

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

李柱銘議員，Q.C., J.P.

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

李國寶議員，O.B.E., LL.D. (CANTAB), J.P.

THE HONOURABLE SZETO WAH

司徒華議員

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

何承天議員，O.B.E., J.P.

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

夏佳理議員，O.B.E., J.P.

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

劉健儀議員，O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

陳偉業議員

THE HONOURABLE CHEUNG MAN-KWONG

張文光議員

THE HONOURABLE CHIM PUI-CHUNG

詹培忠議員

THE HONOURABLE FREDERICK FUNG KIN-KEE

馮檢基議員

THE HONOURABLE MICHAEL HO MUN-KA

何敏嘉議員

THE HONOURABLE EMILY LAU WAI-HING

劉慧卿議員

THE HONOURABLE LEE WING-TAT

李永達議員

THE HONOURABLE ERIC LI KA-CHEUNG, O.B.E., J.P.

李家祥議員，O.B.E., J.P.

THE HONOURABLE FRED LI WAH-MING

李華明議員

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

唐英年議員，J.P.

THE HONOURABLE JAMES TO KUN-SUN

涂謹申議員

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

黃秉槐議員，O.B.E., F.Eng., J.P.

THE HONOURABLE HOWARD YOUNG, J.P.

楊孝華議員，J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

黃偉賢議員

THE HONOURABLE CHRISTINE LOH KUNG-WAI

陸恭蕙議員

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

田北俊議員，O.B.E., J.P.

THE HONOURABLE CHAN KAM-LAM

陳鑑林議員

THE HONOURABLE CHAN WING-CHAN

陳榮燦議員

THE HONOURABLE CHAN YUEN-HAN

陳婉嫻議員

THE HONOURABLE ANDREW CHENG KAR-FOO

鄭家富議員

THE HONOURABLE CHENG YIU-TONG

鄭耀棠議員

THE HONOURABLE CHOY KAN-PUI, J.P.

蔡根培議員，J.P.

THE HONOURABLE DAVID CHU YU-LIN

朱幼麟議員

THE HONOURABLE ALBERT HO CHUN-YAN

何俊仁議員

THE HONOURABLE IP KWOK-HIM

葉國謙議員

THE HONOURABLE LAU CHIN-SHEK

劉千石議員

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

劉漢銓議員，J.P.

DR THE HONOURABLE LAW CHEUNG-KWOK

羅祥國議員

THE HONOURABLE LAW CHI-KWONG

羅致光議員

THE HONOURABLE LEE KAI-MING

李啟明議員

THE HONOURABLE LEUNG YIU-CHUNG

梁耀忠議員

THE HONOURABLE BRUCE LIU SING-LEE

廖成利議員

THE HONOURABLE MARGARET NG

吳靄儀議員

THE HONOURABLE SIN CHUNG-KAI

單仲偕議員

THE HONOURABLE TSANG KIN-SHING

曾健成議員

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

黃錢其濂議員，C.B.E., I.S.O., J.P.

MEMBERS ABSENT

缺席議員：

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

周梁淑怡議員，O.B.E., J.P.

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

倪少傑議員，O.B.E., J.P.

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

劉皇發議員，O.B.E., J.P.

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

梁智鴻議員，O.B.E., J.P.

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

黃震遐議員，M.B.E.

DR THE HONOURABLE PHILIP WONG YU-HONG

黃宜弘議員

DR THE HONOURABLE YEUNG SUM

楊森議員

THE HONOURABLE LEE CHEUK-YAN

李卓人議員

THE HONOURABLE PAUL CHENG MING-FUN

鄭明訓議員

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

張炳良議員

THE HONOURABLE CHEUNG HON-CHUNG

張漢忠議員

THE HONOURABLE LO SUK-CHING

羅叔清議員

THE HONOURABLE MOK YING-FAN

莫應帆議員

THE HONOURABLE NGAN KAM-CHUEN

顏錦全議員

DR THE HONOURABLE JOHN TSE WING-LING

謝永齡議員

THE HONOURABLE LAWRENCE YUM SIN-LING

任善寧議員

PUBLIC OFFICERS ATTENDING

出席公職人員：

THE HONOURABLE MRS ANSON CHAN, C.B.E., J.P.

CHIEF SECRETARY

行政局議員布政司陳方安生女士，C.B.E., J.P.

THE HONOURABLE DONALD TSANG YAM-KUEN, O.B.E., J.P.

FINANCIAL SECRETARY

行政局議員財政司曾蔭權先生，O.B.E., J.P.

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

ATTORNEY GENERAL

行政局議員律政司馬富善先生，C.M.G., J.P.

MR GORDON SIU KWING-CHUE, J.P.

SECRETARY FOR TRANSPORT

運輸司蕭炯柱先生，J.P.

MR NICHOLAS NG WING-FUI, J.P.

SECRETARY FOR CONSTITUTIONAL AFFAIRS

憲制事務司吳榮奎先生，J.P.

MR DOMINIC WONG SHING-WAH, O.B.E., J.P.

SECRETARY FOR HOUSING

房屋司黃星華先生，O.B.E., J.P.

MR RAFAEL HUI SI-YAN, J.P.

SECRETARY FOR FINANCIAL SERVICES

財經事務司許仕仁先生，J.P.

MR JOSEPH WONG WING-PING, J.P.

SECRETARY FOR EDUCATION AND MANPOWER

教育統籌司王永平先生，J.P.

MR BOWEN LEUNG PO-WING, J.P.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

規劃環境地政司梁寶榮先生，J.P.

MISS DENISE YUE CHUNG-YEE, J.P.

SECRETARY FOR TRADE AND INDUSTRY

工商司俞宗怡女士，J.P.

THE HONOURABLE LAM WOON-KWONG, J.P.

SECRETARY FOR THE CIVIL SERVICE

公務員事務司林煥光先生，J.P.

MRS YAU TSANG KA-LAI, CARRIE, J.P.

SECRETARY FOR SECURITY

保安司尤曾家麗女士，J.P.

CLERK IN ATTENDANCE

列席秘書：

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL

秘書長馮載祥先生

PURSUANT TO STANDING ORDER 4AA, HIS EXCELLENCY THE GOVERNOR, THE RIGHT HONOURABLE CHRISTOPHER FRANCIS PATTEN, ATTENDED TO ADDRESS THE COUNCIL AND TO RECEIVE QUESTIONS.

總督彭定康先生依據《會議常規》第 4AA 條的規定出席會議，向本局致辭，並接受質詢。

主席：請各位議員繼續站立，等候總督進入會議廳。

秘書：香港總督。

主席：總督會就各位已獲通知之 4 項題目回答議員質詢。各位議員提出質詢並獲得答覆之後，可提出一項簡短之跟進質詢，但只限於要求闡明該答覆不明之處。請各位議員舉手示意。葉國謙議員。

葉國謙議員問：總督先生，我想就近期香港人很關心的香港永久居民和永久居留權的問題提問。其實立法局同事每隔一個月都會在有關的事務委員會內跟進這問題。據我們所得的資料，大家知道中英雙方在專家小組內就這方面進行研究，並會盡快向我們作出交代。不過，在過程中，大家都覺得香港市民需要清楚知道在九七年後，可否繼續保留香港永久居民的權利。很不幸，我們現時知道中英雙方在這問題上未能取得共識，因此，中方表示會由臨立會立法，而據悉香港政府最初考慮透過白紙條例草案徵詢港人的意見。為何港府現時不按照港府的立場，以白紙條例草案徵詢香港市民的意見，使香港市民更明瞭目前的發展，以消除他們對未來的憂慮？

GOVERNOR: I am glad the Honourable Member has asked that question because it gives us the opportunity to get one or two facts on the record. I listened to an Honourable Member, who is, I think, a member of the Special Administrative Region (SAR) Executive Council (Designate), on the radio this morning, opining on this issue and I welcome this opportunity of informing him what the facts are, as well as answering the question.

First of all, I would like to make it plain that there is no White Bill or Blue Bill in draft. No White Bill or Blue Bill because there is not, alas as yet, a consensus on all the issues which we would need to cover in legislation. We have got a consensus on about 95% of those issues, but there still is not agreement on a number of issues, such as the position of adopted children, such as the way in which the children of ethnic minorities would claim right of abode after 1997, such as the position of the children of recent immigrants from China and how they would claim right of abode, whether it would come automatically on birth.

I think it is a pity that we have not got a consensus and I think it is a pity that we did not get a consensus way back last Autumn when I think that it was well within our grasp. Why no consensus? Not, I think, because of any fundamental differences over right of abode, but because I think some Chinese officials saw the right of abode issue as a way of trying to provide legitimization for the provisional legislature. I do not think these arguments have had anything to do, or nothing substantial to do, with the right of abode.

Despite that, we have covered about 95% of the ground. Is it the case that the position we have taken up results in people in Hong Kong, by and large, not knowing what their rights are or where they stand? No, it is not. We have set out, for example, in this pamphlet very clearly what there is a consensus on so far — the 95% of issues on which there is a consensus, and our Immigration Department has a hotline answering people's questions on all the issues covered in here every day. So, the fact that we have declined to do what we have been pressed to do does not mean that people are not aware of what has been agreed so far.

Secondly, is it the case that legislation is essential before 1 July? No, it is not the case. It would have been desirable if we could have got legislation by now. I would have liked us to have been able to legislate on this issue as we did on the Court of Final Appeal through this constitutional body. But even though that would have been desirable, it is not essential. It is not essential because Article 24 of the Basic Law provides the Director of Immigration with the legal framework within which she can take decisions after 1 July, and in our judgment, it will not be necessary to have legislation on right of abode on the statute book for some weeks after 1 July.

Let me just remind the Legislative Council what the Attorney General has said on this issue. "On 1 July 1997 the Basic Law of the Hong Kong SAR will enter into force. The right of abode of permanent residents of the region will be provided for under Article 24 of the Basic Law." And he goes on. "Before domestic legislation is enacted the Director of Immigration can make her decisions in right of abode matters on the basis of the provisions of Article 24 of the Basic Law."

Next, what are the consequences of the provisional legislature trying to legislate on these matters? The consequences have been spelt out very clearly. They were spelt out, for example, once again by the Attorney General. "If legislation to amend the Immigration Ordinance is enacted in a manner which raises a doubt as to the validity of the amending legislation, then it is inevitable that that point will be taken in any proceedings before a tribunal or court in which a person's status as a permanent resident is in issue. Whatever the outcome of such proceedings until the proceedings and any appeal are finally disposed of, the state of the law in the vital area of immigration will be uncertain. From past experience, we know that a significant proportion of judicial review cases each year relate to immigration matters."

In the last two years, there have been 200, or just over 200, legal challenges to the Director of Immigration and the Secretary for Security. In the same period, I think I am right in saying, over 450 statutory petitions to the Governor in Council. This is a litigious area, and if there is any doubt about the basis of legislation that will lead to more action in the courts.

If there are some Honourable Members or others who doubt the legal advice of the Attorney General, they might listen to what the Chairman of the Bar Association has said on exactly the same subject. "The difficulty about the provisional legislature passing a law relating to right of abode is that this is a sort of issue that you often attract litigation, and to have it passed by the provisional legislature will add to the controversy and to the uncertainty."

So, legislation is not required before 1 July and if legislation is put through by the provisional legislature, then it is a pound to a penny that that will attract legal challenges after 1 July.

In those circumstances, we made what I note one newspaper called "a generous compromise offer" that we would provide a Blue Bill that would attempt to give the community even greater certainty than exists already, and that the legislature of the day would legislate on that from 1 July. That was the "generous compromise" that we put. It is still on the table. I very much hope it will be taken up.

I would just want to underline one point. We do not want unnecessary arguments at this stage in the transition, but for us there is one fundamental principle which we are not going to move away from and, that is, that the spine of this society, that what distinguishes this society more than anything else, is the rule of law and we are not doing to do anything now or in the future which, in our judgment, undermines or calls into question the rule of law.

葉國謙議員問：聽完總督先生的說話後，我再次表示震驚。（眾笑）原來不以白紙條例草案形式進行諮詢工作，又或不能給香港市民盡快解決這問題，是因為總督先生認為中方是為了鞏固臨時立法會的地位，使其得到合法性而這樣做。總督先生猜測中方是為了這個目的，所以結果沒有解決這個香港市民及立法局同事都非常希望盡快解決的問題。再聽下去，總督先生說現時沒有白紙條例草案，但又說最後可以用藍紙條例草案，那究竟是有還是沒有？我聽完總督先生的說話後，認為沒有理由沒有。在這樣的情況下，他只是想推辭。他又說在九七年七月一日前未必需要有條例草案，因為可以利用行政措施來解決。如果是這樣的話，政府就無須在立法局保安事務委員會上與我們討論，而直接用這方法解決便可。請問總督先生，可否考慮按照政府的程序，按照政府原來的設想，提交白紙條例草案，諮詢香港市民的意見，使香港市民清楚知道情況？總督先生可能覺得這不是甚麼大問題，但那些僑居外地或擁有外國居留權和外國護照的市民是很想知道的。我曾舉行過很多諮詢會，會上很多市民都提出這問題，希望能了解清楚，希望能盡快制定法例，讓他們有法可依。

GOVERNOR: I answered the Honourable gentleman's question extremely fully. I do not think that he has raised any additional points that I did not cover in my first answer in what he has just said. But I am sure that if he reads my answer afterwards, he will find it contains all the information to answer his second group of questions, which appeared to me to be identical to the first lot.

主席：李家祥議員。

MR ERIC LI: *Mr Governor, my question touches on both human rights and the right of abode and the star person in question is none other than the Commissioner of Police himself. I am of course referring to the right of the Commissioner to reside in the government quarter in breach of the double housing benefit rule.*

This is a subject matter of the Public Accounts Committee (PAC) Report No. 27 in which the PAC is unanimous in supporting the Director of Audit's finding that the double benefit rules prescribed by the Executive Council have been breached. We were also seeking for a ruling or a more authoritative statement from the Executive Council. Now, the Committee is surprised to hear the reply of the Chief Secretary yesterday when she introduced a Government Minute in response to the PAC Report concerned. The Chief Secretary is, of course, saying that she will do exactly nothing.

Now, the question is the PAC Report and all the arguments are now in the public forum. Can you still let the Chief Secretary get away with a no-action answer, and with the Executive Council not even taking a decision in the matter, and be accountable to the public openly and directly?

GOVERNOR: I do not think that the expression "get away with" is entirely appropriate when talking about the Chief Secretary. It is certainly not an expression I would dare to use in the company of the Chief Secretary and I am surprised at the Honourable gentleman's audacity.

I do not have anything to add to what the Chief Secretary has said but I will, in view of the fact that the Honourable gentleman has raised it again, of course write to him subsequently about it after having had a word with the Chief Secretary. But at present I do not have anything to add.

Can I just add one point as a footnote? It is entirely proper for the PAC of a legislature like this to concern itself with the minutiae of public spending and the work that is done in this area is one of the things that keeps the Government of Hong Kong clean and, I hope, competent. So, I in no way criticize what the PAC have concerned themselves with. The only point I wanted to add was that I hope that this controversy will not in any way be

thought by some to tarnish the reputation or image of the Commissioner of Police who is a very distinguished public servant, one of the finest heads of our Police Force that this community has had, and I think that the community has every reason to be proud of him and proud of his record.

MR ERIC LI: *Mr President, I certainly concur with the last remark of the Governor, and if the Governor would care to look at the Report there is no direct criticism directed at the Commissioner of Police or his integrity in that sort of manner. But I think the PAC should be fearless and forthright*

GOVERNOR: Absolutely.

MR ERIC LI: *Just as we would expect the Chief Secretary and civil servants in putting a point through when a matter of public policy is being placed under controversy. We are concurring with your own official, Mr Governor, the Director of Audit in that case, so it is not entirely a matter between the Legislative Council and the Government. I think there is an independent auditor who has expressed that view too.*

I am directed by the full Committee this afternoon to write directly to the Executive Council and the Standing Committee on Directorate Salaries and Conditions of Service on the matter, and Mr Governor, can I expect that you would direct both these bodies to give the public, and of course the PAC, a full reply stating the reason and the position of the matter?

GOVERNOR: First of all, I would not wish the PAC to be anything other than fearless and forthright, and I hope that those will be the watchwords that govern its behaviour for the foreseeable future.

Secondly, we shall look forward on the Executive Council to receiving the communication from the Honourable gentleman and responding to it suitably.

主席：梁耀忠議員。

梁耀忠議員問：主席，相信總督先生都知道，最近特區首長辦公室（“特首辦”）推出了一份有關公民自由和社會秩序的“人權大倒退”諮詢文件，而現在推銷這份文件的官員正是總督先生同意借調的官員。這位官員在借調前，也曾替總督先生推銷過一條較為進步一些的《香港人權法案條例》。大家都知道，主權移交在即，有很多外國記者都來了香港，所以不單止香港人，甚至其他外國人也清楚見到這位官員是一位“兩面人”，在很短的時間內說着兩種不同的說話。請問總督先生對於這位借調往特首辦的官員的工作表現是否滿意呢？總督先生是否接受他的態度呢？最近，更有傳聞指這位官員日後大有可能到臨時立法會介紹這份諮詢文件。若真的成事，客觀上是確定了臨時立法會的法定地位，這與總督先生一直堅持的政策相反，請問總督先生如何處理這問題？總督先生是否會容忍這種現象繼續下去呢？

GOVERNOR: When the Secretary concerned worked as a key member of my Administration, he worked extremely hard and competently and professionally in the interests of Hong Kong. He has a considerable reputation in our public service and I think that I can say without any reservation that I received from him great support which also displayed at every time considerable integrity.

I would never seek to put a public official like him in a position which could be awkward or embarrassing for him as a civil servant, and I hope that those with whom he is now working will behave in the same way. I think it is important that we avoid putting our excellent Civil Service in positions which can cause difficulties for them as public servants. The Civil Service in Hong Kong, independent, meritocratic, politically neutral, is one of the main reasons for Hong Kong's success and I think we should all be very careful not to do anything which affects the Civil Service adversely.

It is in the nature of, I suppose, our attempts to help an incoming Administration at this stage in the transition that there may from time to time be difficulties that individuals will find themselves in difficult positions. We should try to minimize those difficulties and those difficult positions. I hope that that will be borne in mind by some of those who have, in my view, wrong-headedly pressed us to help with the work of the provisional legislature — something for the reasons which I mentioned earlier, our concern about the rule of law, we would not of course do. But were we to do so, it would create far more of the sort of problems which the Honourable gentleman has alluded to.

梁耀忠議員問：主席，我們當然不想見到這種現象出現，但很可惜，在今時今日，這種現象實實在在存在。我也不希望公務員給人的印象是“兩面人”，這對於未來整個公務員制度的運作會帶來很大的打擊。很可惜，這個不幸的現象和不幸的事實正擺在我們的眼前。請問總督先生，如果這位公務員日後真的到臨時立法會解釋這份諮詢文件，總督先生會怎樣處理呢？會否中止這項借調決定呢？

GOVERNOR: I very much hope that some of the concerns expressed by the Honourable gentleman and elsewhere will be borne in mind by the SAR Government Designate and those who lead it. It is important that the integrity and professionalism of Hong Kong's Civil Service remain unquestioned after 1 July as they are unquestioned today.

主席：羅致光議員。

羅致光議員問：主席，總督先生在二月二十七日的質詢總督時間上，曾回答我提出的有關偷渡潮的問題。當時政府向我們提供了一些資料，估計有多少兒童在七月一日後會符合《基本法》第二十四條的規定，擁有香港居留權。他當天也很清楚告訴我們，沒有任何跡象顯示會出現偷渡潮。但是在三月後，我們得悉原來一月的實際數字已經較十二月時增加五至六倍，二月的數字也繼續增加。這令人十分懷疑政府的誠信，以及政府是否有能力處理這問題，因為在二月二十七日的質詢總督時間內，總督先生似乎仍不知道這件事的發生。我很想知道現時政府在這問題上的計劃如何？政府是否真的很認真地處理這問題呢？最近有些人建議香港政府為那些符合《基本法》第二十四條而屬於香港永久居民在內地所生的子女進行登記，審定他們的資格。不知總督先生對這些建議有何回應呢？

GOVERNOR: I think I am right in saying that a paper was presented to the relevant Legislative Council Panel this morning on this issue, and that paper, of course, gave some indications of the sort of steps that we are considering to take, and I do not think I could usefully add to that, save perhaps to make these two obvious points.

First of all, it is extremely important that people do not seek to jump the queue; do not seek to enter Hong Kong illegally. When they do so, difficult and unattractive as it is, there is only one thing which a responsible Government can do after the law has run its course. That we have done, and that we will continue to do, because not to take that action would send all the wrong signals across the border and would encourage more illegal immigration rather than the reverse.

Secondly, knowing the entitlements that exist under the Basic Law, we have been trying for some time to minimize the problems which the SAR Government will face after 1 July by increasing the one-way permit quotas and, in particular, by trying to balance those quotas so that we absorb as many children as possible before 1 July as we can. We increased the quota, as you know, to 150 a day and took that increase into account in our planning of resources for the future, such as the provision of primary school and secondary school classes.

Now, for that quota to work effectively, it does require the assistance of the authorities in China. We have been discussing ideas for trying to make the system work better, for example, by making it more transparent so that parents could know how long they were likely to have to wait before their children could come into Hong Kong. There are things like that which I think we will perhaps need to implement. But what is essential is that we should have the assistance, the full assistance of the authorities in China, in making the system work.

羅致光議員問：主席，剛才總督先生沒有回答我的質詢的首部分，可能他不想再提在二月二十七日會議上，他向我們提供的資料是否完全低估了整件事。如果有出席當天會議的議員可能還記得，我曾說我絕對懷疑香港政府就這問題的宣傳，會否較“蛇頭”的說話更為有效。現時政府說會繼續進行宣傳，但我依然繼續相信那些“蛇頭”的謠言會較香港政府的宣傳更為有效。究竟政府現時是否有更好的方法來進行宣傳呢？在二月二十七日的會議後，接着三月裏的增幅更為厲害，達六百多個。很明顯，現時自首的人數減少，並不代表偷渡的人數減少。究竟政府有否一些更果斷的方法呢？

GOVERNOR: Well, I am prepared to concede that my predictive capacities

were not as extensive as the Honourable gentleman's. But the one message it seems to me important to send out clearly in order to reduce the attractiveness, or so-called attractiveness, of whatever offers snakeheads offer, is that Hong Kong is going to continue to police its immigration regulations vigorously.

If we take actions which make it look as though the rumours of amnesties or of slackening in the rigour of our procedures may have some basis in fact, if we act in that sort of way, then it will play into the hands of the snakeheads. Every indication that the Government may change its mind inevitably would condemn more children to the dangers of the snakehead operations and that is why we have to be absolutely firm as well as fair in trying to make this difficult policy stick.

主席：吳靄儀議員。

MISS MARGARET NG: *Mr President, may I refer to the Governor's plan or proposal to publish a Blue Bill on 30 June on the right of abode? Mr President, would the Governor agree with me that the position of the Hong Kong Government about the provisional legislature's legitimacy before 1 July and after 1 July is exactly the same?*

Now, the Governor said that no legislation is necessary before 1 July. I think he said that it is alright to have legislation a few weeks after 1 July. But a few weeks after 1 July, the legislature of the day is still the provisional legislature and so, according to the Bar's view, the legitimacy of that legislature is still open to litigation. So, any legislation passed by it is still not completely safe.

In view of that, is there any reason why this Administration should not put the Blue Bill before this Council so that this Council, the legitimacy of which is not in doubt, can pass that law before 1 July to give certainty to the people of Hong Kong? Thank you, Mr President.

GOVERNOR: As I said in my earlier reply, I would very much have liked to have legislated on the right of abode as we legislated on the Court of Final

Appeal with the approval of this Council and with the agreement of Chinese officials. I think that would have been incomparably the best way forward.

And to suggest somehow that this legislature or this Government has no role in determining these matters is an absurdity. We are not talking about definitions of Chinese nationality. Definitions of Chinese nationality are matters, quite properly, for the National People's Congress. What we are talking about is the right of abode here in Hong Kong, and it is perfectly within the powers of this Council to deal with that issue. The fact that it was a legitimate issue in the Joint Liaison Group (JLG) is perhaps best recognized by the fact that it has been discussed in every JLG meeting since JLG XX, and I think has been mentioned in every communique of the JLG since JLG XX.

However, our proposals that we should legislate, even our proposals that we should legislate partly, for foreign nationals for example, were rejected by China. So, the position we find ourselves in today is one in which we could only go ahead with legislation at the risk of a, I imagine, major argument. And at this stage within a few weeks of the transition, I am anxious to have fewer arguments rather than more.

The situation would, I concede to the Honourable lady, be totally different if we were obliged to have legislation on the statute book before the transition as we are obliged to have legislation on the statute book before the public holidays on 1 and 2 July. But we are not obliged, for the reasons which I mentioned earlier — as regards Article 24 of the Basic Law. In those circumstances, the proposal, I think, that we have put which I still hope will be taken up, is to publish a White Bill but to delay legislation until the legislature of the day takes office on 1 July.

Now the Honourable lady raises the questions of legality of that operation. There are, I suppose, two sorts of legal challenge that people might make to the provisional legislature. The first one, which is of direct concern to me because I am at present head of the Hong Kong Administration, is a challenge against any legislation which appears on the statute book after 1 July at the end of a process which began on Saturday mornings in Shenzhen before 30 June, before 1 July. Now, every or most of the lawyers whom I have seen commenting on this seem to think that it is very likely that there will be legal challenges to legislation produced in that way.

The second area in which there may be legal challenges is, I imagine, in the relationship between the provisional legislature and the commitments to a Legislative Council made in the Joint Declaration and the Basic Law. Those will continue, I would judge, to be questions of international argument, whatever happens here in Hong Kong. But those questions of legal validity, are not ones that I can, as it were, take up at this time. What I have to deal with are those matters which, as it were, affect Hong Kong while I am directly responsible for it. But I do not doubt, as the Honourable lady says, that there will be some who raise legal challenges to the provisional legislature, not because of what it has done before 30 June but for what it has done after 1 July.

MISS MARGARET NG: *Mr President, I hear the Governor say that he has no doubt in his mind that it is entirely proper and beneficial for this Council to enact on the right of abode before 1 July. In that case, can the Governor agree with me that we should go ahead with doing what we consider to be right in the hope that other people would agree with us, rather than avoid doing what is right and in fact do what might be a wrong in response to the thought that other people might also do a wrong?*

GOVERNOR: I am very keen on trying to do what is right. I am also keen on trying to minimize, rather than maximize, argument and controversy in an area where it is important that there is the maximum certainty and where it is important that there is the minimum legal challenge. I do not doubt that if we were to bring forward legislation before 30 June that itself would be a subject of very considerable controversy with Chinese officials, and I am not sure that would provide the sort of certainty that we require in this area.

What I am determined to do, even if I am not prepared to do as much as I would have liked to have done, what I am certainly not prepared to do is what I think is actually wrong, which is a slightly different way of putting it. I repeat, if it was remotely the case that we needed the legal certainty of something on the statute book before 30 June, I would have no doubt that we should go ahead. But that is not the legal advice that we have been given.

Now, let me make just one other point which I hope the Honourable lady will take in good part. One thing which I do not think would be helpful at this stage in the transition — it is not very helpful any time — is the politics of gesture. And let me put that in context. We were pressed by this Legislative Council, by a majority in this Legislative Council, many of whom I see here today, to legislate on Basic Law Article 23, across the board. I have got, I sometimes come as Honourable Members know, armed with quotations and voting records. I have done it today, but there is a very nice lady who often waits for my arrival and departure at the Legislative Council Building who said to me as I came in today, "don't embarrass anyone". So, I am going to keep all those quotations and all those voting figures closed in the file.

On that issue of Basic Law Article 23, we were pressed very hard to legislate and when we could not get an agreement with Chinese officials we brought forward the legislation. And I now read what some people say about it, and some people's doubts about whether we will get it through or not. So, I am not madly keen on putting forward legislation which I cannot in all honesty recommend to the Executive Council or to others and which is likely to get through the Legislative Council.

主席：黃錢其濂議員。

MRS ELIZABETH WONG: *I would like to ask the Governor a question, not on the possibility of civil servants being schizophrenic or having split personalities in future, neither on the question which is a heavy-duty question on the legal challenge. But I would like to ask a question which touches on the rights of the child, human rights, civil liberties, all rolled into one. I am referring to the sad case of the illegal child, CHUNG Yeuk-lam, who was evicted from Hong Kong with her parents. Her mother was bound and hurt and wounded. And I do not know whether the Governor would agree with me that this eviction, which touches upon human compassion, is also something which is incompatible with Hong Kong, with our stand on civil liberties, our stand on human rights and our stand on the rights of the child, even though she is an illegal immigrant. Now, I would like to have the Governor's answer to that, please.*

GOVERNOR: The photographs which go around the world when one has to deal with a case like this, and it is the same in any society, give the worst sort of public relations, give the worst sort of impression of a society. We, of course, recognize that. But who is to blame? Many of us here are parents, and I think we have views about how as parents we would be prepared to act towards our children and how we would not be prepared to act. I am not sure, whatever the bonds of affection and love, I would want to fill the corridor outside my flat or home with 30 journalists and television cameras. There for what reason? Of course reporting an important news matter, but there also to try to serve the interests of a parent who had presided, not for the first time, over something that was illegal.

I have to say my heart goes out to those people who have to make the policy work, who have to implement it. My heart goes out to the immigration officials, to the Social Welfare Department people, for whom the Honourable lady was once responsible with considerable distinction, having to make a policy like this effective. And why do they have to do it? For the reasons which we were discussing earlier. Because the moment that we back off, the moment that we are not prepared to see a policy through, is the moment when the snakeheads are able — the skinheads too! (*Laughter*) — is the moment when the snakeheads, with their skinhead views, let me put it that way, are able to increase the credibility across the border that there may be some changes in policy.

I have been through one or two of these cases before and the moment that you are not prepared to see a policy through which is right just because of the photographs, the moment you are not prepared to back up your own officials when they are doing a very difficult, unpleasant job, the moment you get to that situation, is the moment you are ceasing to provide any leadership in a community.

So, I take full responsibility for what has happened as the head of the Administration. I hope that we have learnt from our experiences this time and can avoid some of the problems which were created, but it is very difficult to carry off something like this in a way which cannot be used and manipulated. And I regret that that happened once again.

主席：曾健成議員。

曾健成議員問：主席，距離回歸還有 68 天，我相信在總督先生離開香港那天，我沒有空送他，因為我要迎接新的壓力、新的挑戰。我可能沒有辦法送他最後一程，返回英國那一程。（眾笑）

今天，我不想提及他如何不守承諾，以及他仍未有辦法清拆那 13 個臨屋區；也不想提及你們英國政府還未起訴臨時立法會的法律地位，我今天只想救一救那些“小人蛇”。事實上，今天很多人都提及“小人蛇”的問題。總督先生說要加強宣傳，是“蛇頭”的問題，但我覺得並不是“蛇頭”的問題，而是“人蛇”問題。哪些人是“小人蛇”呢？是香港家長的小孩。因此，在大陸宣傳是沒有用的，是香港的家長要他們來港。怎樣才可以令他們來港呢？每天有 150 個名額，其中 66 個是小孩名額，但那 66 個小孩名額是如何分配呢？不是由香港分配的。有錢的家長就可以買位。那些在內地的小孩逐漸長大，但來港的可能都是那些兩、三歲的小孩，因為他們的家長有錢。沒有錢的就一直繼續等，也不知要等候至何時。如果總督先生在離港前還不趕快採取一些措施，有錢的家長就可以替子女買單程證來港，而沒有錢的家長的子女就可能要餵鯊魚，或在給反偷渡組追查時被拋下大海。我們可以怎樣根治這問題呢？總督先生，雖然我很蠢，但我有一個建議。我們現時可以把香港家長在大陸所生的子女全部登記，好像黃星華先生和他屬下的房屋委員會的做法，編製登記表和輪候冊，交給大陸政府。如果我們有了這份名單，那即使是買位，也要按照輪候冊的次序來港。否則，那些窮家長的小孩逐漸長大，也輪不到他們來港，因為他們沒有錢買位。大陸跟香港不同，香港是一個法治社會，但在大陸，花錢就可以買到任何東西——可以買到單程證，可以買到官位。在總督先生離港前還有 68 天的時間內，我希望他為香港那些在內地有妻兒的家庭做一件好事，替他們登記，然後透過中英聯合聯絡小組或任何渠道，將這些資料交給內地，表示港方會按照這份名單每天接收，最後的審批權在香港。這就可以救助那些“小人蛇”，而不是只說宣傳。在香港，不是有錢就行得通，但在大陸，有錢就行得通。“一國兩制，你制我唔制”。我在此順祝總督先生好運，我不能送他了。

GOVERNOR: I am grateful for that characteristically terse question. It will of course be a particular sadness for me not to see the Honourable gentleman in the future as regularly as I have over the last few years, beginning on the picket line and ending up in the Legislative Council, part of the process of democratization which one sees in Hong Kong and elsewhere. It is an even greater sadness to hear that I am not going to be able to say farewell to the Honourable gentleman,

but perhaps we will be able to say so, and to make it "*au revoir*" rather than "goodbye".

The Honourable gentleman, and I will not take him up on the allegation about broken promises. Actually, we have kept very precisely the promises that we made on temporary housing areas as I will be happy to point out to the Honourable gentleman. When I arrived in Hong Kong, there were 55. Now there will be 12 or 13 when I leave, and all the promises that we made on THAs will have been kept. There would, of course, have been far fewer, perhaps none at all, if it had not been for the continuing steady immigration into Hong Kong.

But the important point which the Honourable Member made is again about the way in which the quota is implemented, and the Honourable gentleman is right to underline the extent to which we are in the hands of those who run the system on the other side of the border. One of the reasons why we have been pressing for greater transparency, for example, for a points system, is to try to ensure that the sort of problems to which the Honourable gentleman alluded cannot actually distort the policy. The more transparency, the more openness, the more parents can see how long they are likely to have to wait, the more they can see that the policy is being implemented fairly so that people are not being allowed to jump the queue, the more that can be done the more effective will the policy be, and the less likely will it be that snakeheads will be able to operate in the disgraceful and dangerous way in which they have in the past.

So, I hope before 30 June, we will have made some progress in that area. I know that it is an area to which the Chief Executive (Designate) and his team also attach priority. And I hope, in the interests of Hong Kong and in the interests of a lot of families who will have rights to be here in Hong Kong, the policy can be made to work more effectively in the future. And I would like to wish the Honourable gentleman well in his future political career.

曾健成議員問：總督先生，當特區首長辦公室編製的一份諮詢文件發表後不出 36 小時，港府保安科就立即可以作出回應。這種效率令香港人感到鼓舞，因為政府部門的工作效率十分高。我希望港府以同樣效率處理這問題，而不用等到六月三十日。我在六月三十日以後就再見不到你了，總督先生，即我再不可以向你提出質詢。總督先生可否對我們說在四月三十日或五月三十日就可以在香港進行登記？總督先生提及透明度，但內地是沒有透明度的，香港才有透明度。香港可以做到甚麼，便要盡量在香港做，為香港的家

長提供保障，讓他們知道自已的子女要等 5 年、10 年或 11 年就可來港。有了這樣的一個等候期後，他們就不會買位了。如果沒有等候期的話，他們就會買一些“偷渡位”，結果遭害甚大。總督先生，希望港府會以回應諮詢文件的效率來處理每天來港 66 個配額的問題。

GOVERNOR: I agree with the Honourable gentleman that we reacted with our customary competence in reacting to that consultation document. I only say in passing, since the Honourable gentleman gives me the opportunity, that I wish we had not needed to do so because the one thing which the consultative document does not do is to demonstrate in any way how any of the laws referred to contravene the Basic Law or for that matter the Joint Declaration. This has been, in my judgment, a wholly unnecessary controversy which has, I think, done some damage to our reputation and I wish the argument had not been embarked on in the first place.

As for the suggestion from the Honourable gentleman that we should attempt to be as competent in the area he has touched on as we have been in others, we will certainly take that to heart. And I am sure if he wears those braces I will be able to go on seeing him, even in the dark! (*Laughter*)

主席：鄭家富議員。

鄭家富議員問：主席今天很慷慨，讓曾健成議員慷慨陳辭，提出了很長的質詢。現在只剩下很短時間，我還以為我沒有機會提問了，希望主席不要中斷我的質詢。

主席：鄭議員，可否精簡一點，因為我們開始時已過了 2 時 30 分少許，所以本席容許多一項質詢，請你精簡一些。

鄭家富議員問：主席，我想轉一轉話題，不談一些淒涼的事，轉而討論有關籌款的問題。最近民主黨在海外籌款後，就看到一份諮詢文件。對於政府就這份有關公民自由和社會秩序的諮詢文件，曾表示禁止本地政團接受外國人的經濟援助是無理的這種看法，我們覺得很認同；特別是即使在董建華先生

曾經在九二年向英國保守黨捐獻了 5 萬鎊這情況下，我們仍然贊同政府這個理由。不過，董先生不肯直接作出解釋，不肯說為何他的捐獻是很敏感的，所以我相信只有總督先生才可解答這問題，因為他當時是保守黨海外籌款的負責人之一。既然你們政府說禁止接受海外籌款是無理的，這點我也認同，但是有人持不同意見，請問總督先生的看法和意見為何，以支持政府的意見和看法？

主席：可否提醒總督先生，今天是以總督先生身分作答，不是前保守黨主席身分作答。（眾笑）

GOVERNOR: A short tour of the constitution of the Conservative Party. As the Chairman of that body when I was young, (*Laughter*) before I had all these grey hair, I was responsible for spending the money, not raising it. (*Laughter*) There is a constitutional distinction between being Treasurer of the Conservative Party and being Chairman, and happily I was in the position as Chairman rather than Treasurer. Nevertheless I read what the newspapers say with interest.

I think my views on this particular issue are much the same as my views on the other matters covered in the consultation document. I cannot understand what the purpose of all this is. It is conceded, I think, by some of the authors of the document that Hong Kong is an incredibly stable, moderate, balanced place. So, it is also, I think, conceded implicitly that none of our laws at present in this area contradict the Basic Law. Does anybody in this Legislative Council, can anybody in this Legislative Council this afternoon, tell me any way in which the Societies Ordinance or the Public Order Ordinance contradict the Basic Law? I am glad we have got agreement on that. There were some who I am sure would have spoken up if they could have thought of any reason.

So, I ask myself what is the point of all this? It causes a great deal of concern in the community. It causes a lot of bad publicity around the world, and it raises inevitably questions about the future commitment to civil liberties. It may be that when people start using expressions like "national security", they do not mean some of the things that people think they mean. But they should not be surprised if, when you start opening up a debate on issues like that, it causes a lot of worry and concern around the community.

The one good thing which seems to me to have come out of it, whether talking about donations to political parties or whatever, is that it has given the community the chance of speaking out and the community has spoken out extremely eloquently within a few weeks of the transition. Our legal profession has spoken out with considerable intellectual vigour. I get a transcript of the phone-in programmes on radio every morning. Ordinary people have spoken out. People have spoken out in the streets. A lot of people have spoken out in the newspapers. So, I think that is a good sign that it has shown for once and for all how much people in Hong Kong are concerned about their freedoms. It is not a question of fund-raising and contributions to political parties.

Of course, many societies have limits which they apply to the amount of money that can be donated for election campaigns, and of course it is true that many countries have laws about the transparency of political donations. But I think trying to prevent any contribution at all would cause very considerable difficulties, difficulties of definition and difficulties of implementation in practice.

And for what purpose? There is a sort of implication of threats in the shadows which none of us at present are aware of but may exist unless these rather illiberal measures are taken. I do not think that there are any threats in the shadows unless people find it threatening that the ordinary men and women of Hong Kong want to go on living in a free and democratic society. If that is a threat then heaven help all of us.

鄭家富議員問：我想提出一項很簡單的跟進質詢。在我們批評董建華先生“只許州官放火，不許百姓點燈”之前，總督先生，我們需要知道的是那一次捐款的背後有否政治交易。這點正是我們很多時會感到敏感，會加以揣測的原因。如果我們知道有政治交易，在決定日後立法禁止本港政治團體不能獲得海外和外國人捐獻時，我們在法理上可以從這方面入手，而不用全部加以禁止，即任何政治團體在任何條件下都不能夠接受海外捐款。我希望總督先生就這事說出他的意見，不要把話題扯得太遠。

GOVERNOR: Well, let me answer that question in the particular and in the

general. I think it would be a grotesque and wholly unwarranted attack on Mr TUNG's integrity to suggest that there was any political transaction as the result of a donation that he made to the Conservative Party. I saw a suggestion in one British newspaper the other day that had obviously been heavily crawled over by the libel lawyers in order to make sure that it did not quite transgress — the suggestion that because Mr TUNG had made a donation to the Conservative Party the Governor of Hong Kong had put him on the Executive Council. I mean, anybody who knows anything about Hong Kong, whose mind is not entirely distorted by conspiracy theories, would know precisely what nonsense that was. So, the particular point I would want to make is that I do not think that this controversy should be used by anybody to cast wholly unwarranted slurs on the, I think, unquestioned integrity of the Chief Executive (Designate).

Secondly, are there sometimes political consequences of people making political donations? I suppose there are. There is plainly a great deal of controversy about this in one or two countries right at the moment, but that is why there is an argument for transparency. There is not an argument for not, I think, allowing people to make a donation in the first place. One Honourable Member is keen that there should be transparency when discussing other political activities or political parties here in Hong Kong, and I am sure that is an issue which will continue to command interest in the future.

But I do not think that the wholly correct arguments that the Honourable gentleman put about political transparency should be taken as being on all fours with them prohibiting any donation at all. Where do you draw the line? Where do you draw the line between, for example, a political party and a group which is arguing for a particular political cause, maybe for the improvement of people's human rights? How do you draw the distinction between an alien in Hong Kong and somebody who is local? You could have people who had right of abode in Hong Kong, I suppose, but were still covered by these sort of restrictions. It is a very complicated area and I see no conceivable advantage for Hong Kong in getting involved in it.

ADJOURNMENT AND NEXT SITTING

休會及下次會議

主席：按照《會議常規》，本席現宣布本局休會，並宣布本局於一九九七年四月三十日星期三下午 2 時 30 分續會。

Adjourned accordingly at nineteen minutes to Four o'clock.

會議遂於下午 3 時 41 分休會。