

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 20 November 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 NGAI SHIU-KIT, O.B.E., 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, O.B.E., J.P.

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

THE HONOURABLE JAMES TO KUN-SUN

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 FRED LI WAH-MING

THE HONOURABLE PAUL CHENG MING-FUN

PUBLIC OFFICERS ATTENDING:

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

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

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

MR CHAU TAK-HAY, C.B.E., J.P.
SECRETARY FOR BROADCASTING, CULTURE AND SPORT

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

MR NICHOLAS NG WING-FUI, J.P.

SECRETARY FOR CONSTITUTIONAL AFFAIRS

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

MRS KATHERINE FOK LO SHIU-CHING, O.B.E., J.P.
SECRETARY FOR HEALTH AND WELFARE

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

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

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

MR STEPHEN IP SHU-KWAN, J.P.
SECRETARY FOR ECONOMIC SERVICES

MR TAM WING-PONG, J.P.
SECRETARY FOR TRADE AND INDUSTRY

CLERKS IN ATTENDANCE:

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL

MR LAW KAM-SANG, DEPUTY 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>
Sex Discrimination (Formal Investigations) Rules	472/96
Sex Discrimination (Investigation and Conciliation) Rules.....	473/96
Disability Discrimination (Formal Investigations) Rules	474/96
Disability Discrimination (Investigation and Conciliation) Rules.....	475/96
Pay Classification (Royal Hong Kong Auxiliary Air Force) Assignment (Repeal) Notice 1996	476/96
Pay Classification (Auxiliary Section of Government Flying Service) Assignment Notice	477/96
Statutes of the Chinese University of Hong Kong (Amendment) (No. 3) Statutes 1996	478/96
Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built Before 1 September 1984) (Amendment) Regulation 1996	479/96
Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built on or after 1 September 1984) (Amendment) Regulation 1996	480/96

Official Languages (Alteration of Text under Section 4D) (No. 2) Order 1996.....	481/96
Copyright (Border Measures) Rules.....	482/96
Trade Mark (Border Measures) Rules.....	483/96
Official Languages (Authentic Chinese Text) (Surviving Spouses' and Children's Pensions Ordinance) Order.....	(C) 116/96
Official Languages (Authentic Chinese Text) (Land Acquisition (Possessory Title) Ordinance) Order.....	(C) 117/96
Official Languages (Authentic Chinese Text) (Widows and Orphans Pension (Increase) Ordinance) Order.....	(C) 118/96
Official Languages (Authentic Chinese Text) (Widows and Orphans Pension (Exemption) (Consolidation) Ordinance) Order	(C) 119/96
Official Languages (Authentic Chinese Text) (Land Transactions (Enemy Occupation) Ordinance) Order.....	(C) 120/96
Official Languages (Authentic Chinese Text) (Widows and Orphans Pension Ordinance) Order.....	(C) 121/96

Sessional Papers 1996-97

- No. 35 — Hong Kong Productivity Council
Annual Report 1995/96
- No. 36 — The Hong Kong Industrial Estates Corporation
Annual Report 1995-1996
- No. 37 — Hong Kong Industrial Technology Centre Corporation
Annual Report 1995/96

Miscellaneous

Code of Practice on Employment under the Sex Discrimination Ordinance

Code of Practice on Employment under the Disability Discrimination Ordinance

ANNOUNCEMENT

PRESIDENT (in Cantonese): The Council now begins.

Honourable Members, after Mr Allen LEE had delivered his speech on Mr LEE Cheuk-yan's motion on "Election platforms of the Hong Kong Special Administrative Region (SAR) Chief Executive candidates" at the last sitting, I said I needed to consider in detail the term "pinning labels" used by Mr Allen LEE to see whether or not the use of the term was proper. I said that I would give a ruling at this sitting.

Mr Allen LEE said, and I quote, "Mr LEE Cheuk-yan vigorously criticized and launched personal attacks on four contenders for the SAR Chief Executive post by "pinning labels" on them," and "Today, I would say it here, that nobody qualifies better than Mr LEE Cheuk-yan as the champion in "pinning labels" on others."

The term "pinning labels" seems of late to have become of rather common usage. According to the revised edition of *Xiandai Hanyu Cidian* published by the Commercial Press, the term is used to refer to a person indiscreetly putting a bad label on another person or matter without careful research or analysis.

I have looked into the Hansard of past sittings of this Council since the beginning of this Legislative Council term in October 1995. The term was used at at least eight sittings of this Council including the last sitting. On five of these occasions, the term was used to refer directly Members of this Council.

In considering whether or not the use of the term "pinning labels" in this Council is in order, I have to be guided by Standing Orders and the rulings that have been handed down from the Chair. Members should be quite familiar with Standing Orders 31(4) and 31(5), which prohibit Members from using offensive and insulting language about Members of the Council or imputing improper motives to another Member while in debate. On 27 March 1996, this Chair ruled that language that reflects derogatorily on the character of other Members, or language that is straightforward profane, abusive and indecent used in this Council on any person, is objectionable and unparliamentary and would be ruled out of order. On 3 April 1996, this Chair also ruled that derogatory reflections and abusive and indecent language include not only direct accusations and expletives, but may also include allusions and quotes.

I am of the opinion that the use of the term by Mr Allen LEE at the last sitting was not offensive or insulting and was therefore in order. I also heard Mr LEE Cheuk-yan himself agreeing to this view.

ORAL ANSWERS TO QUESTIONS

Latest Number of Vietnamese Migrant New Arrivals

1. **MRS SELINA CHOW** asked (in Cantonese): *It is reported that there has been a significant increase in the number of Vietnamese migrants (VMs) arriving in the territory in recent months. Will the Government inform this Council:*

- (a) *of the up-to-date figure of VMs who have arrived in the territory since January this year and how this figure compares to those in the previous two years; and*
- (b) *what measures have been put in place to prevent VMs from arriving in the territory?*

SECRETARY FOR SECURITY (in Cantonese): Mr President, as at 15 November 1996, 967 VMs have arrived in Hong Kong this year. The four months of July to October have seen the highest number of arrivals, averaging 178 VMs per month. Since then, the arrival rate has slackened: in the first half of this month, the number of arrivals went down to 24. The number of VMs arriving in Hong Kong in 1994 and 1995 were 363 and 460 respectively.

We have raised the problem of new arrivals with the Vietnamese Government. We have requested them to take steps to prevent departures from Vietnam, and asked them to accelerate the clearance of new arrivals for repatriation, as we believe that speedy repatriation would deter more Vietnamese from coming. During the Secretary of State's visit to Hanoi from 31 October to 2 November, the Vietnamese Government gave him a clear and helpful response to the question of new arrivals. Since then, the Vietnamese Government have cleared 131 VMs for return.

We have also sought the assistance of the Chinese Government in stopping the coast-hopping activities of VMs along the coast of southern China before arriving in Hong Kong.

Most of the new arrivals have come to Hong Kong for economic reasons, for example to seek illegal employment. The quashing of a syndicate producing forged Vietnamese refugee cards in August, and the stepped up identity card checks by the police at certain locations should help discourage this.

MRS SELINA CHOW (in Cantonese): *Could the Secretary for Security confirm whether the new arrivals are illegal immigrants who seek to make money in Hong Kong, and should therefore be detained in camps and not treated like migrants several years ago who sought to be taken up by foreign countries; or whether the Government should adopt the policy of immediate repatriation? If the Government agrees to adopt the above policy, what measures will it take to achieve its goal?*

SECRETARY OF SECURITY (in Cantonese): As far as we know, most of the VMs have come to Hong Kong recently for economic reasons, including the intention of seeking illegal employment. To cite an example, of the VMs who arrived in Hong Kong this year, only 10 have asked to verify their refugee status.

As to the question of how they are treated after their arrival in Hong Kong, we naturally put them in custody first, until we can make arrangements for their repatriation. Since they are, legally speaking, VMs, there is no need to separate them and put them in detention centres instead of VM detention centres. We all know that there are hundreds of them, and there is room in VM detention centres to accommodate them. If we send them to other institutions of the Correctional Services Department instead of VM detention centres, it will not help the Correctional Services Department which faces problems of overcrowdedness in prisons and shortage of manpower. We all know that there are already problems of overcrowdedness in the prisons of the Correctional Services Department.

MR ALLEN LEE (in Cantonese): *Mr President, when the British Foreign Secretary, Mr Malcolm RIFKIND, visited Vietnam recently, he mentioned the problem of new VMs to Hong Kong and asked the Vietnamese Government to give them clearance for return. However, he did not get a satisfactory answer to the question of VMs who have been stranded in Hong Kong for years. The British Government has promised to solve the problem of VMs still detained in Hong Kong before 1 July 1997. I would like to know if the Hong Kong Government has strongly urged the British Government to solve this problem.*

PRESIDENT (in Cantonese): This supplementary question has no relevance to the original question and the original reply.

MR HOWARD YOUNG (in Cantonese): *Mr President, last week, I visited Britain together with members of the House Committee and we had a discussion with the Foreign Secretary. He gave us, the five visiting Legislative Council Members, the impression that there was a breakthrough in the question of migrants who had been refused repatriation for reason of being non-Vietnamese or of Chinese descent. In the second paragraph of the Secretary for Security's main reply, he mentioned that the Vietnamese Government recently cleared 131 new arrivals for return. My question is: How many of them might have the dubious identity of non-Vietnamese and of Chinese descent? In the third paragraph, the Secretary for Security mentioned that he will discuss with the Chinese Government the coast-hopping activities of VMs along the South China coast before coming to Hong Kong. Is it because the Secretary for Security is concerned that as the migrants have stopped in China or because they are of Chinese descent, this would complicate the matter?*

PRESIDENT (in Cantonese): Mr Howard YOUNG, are you asking two supplementary questions? The first one about the second paragraph, and the other about the third paragraph?

MR HOWARD YOUNG (in Cantonese): *What I mainly want to know is: Of the 131 people, are there any who belonged to the group which aroused controversy because they are non-Vietnamese citizens or because they are of Chinese descent.*

SECRETARY FOR SECURITY (in Cantonese): Mr President, as far as I know, the 131 people mentioned in the second paragraph of the main reply are not non-Vietnamese nationals as defined by the Vietnamese Government. Those 131 people are recent illegal Vietnamese immigrants in Hong Kong.

MR CHEUNG HON-CHUNG (in Cantonese): *Mr President, of the 967 VMs who have arrived in Hong Kong, how many have come not once, but several times? How will the Government deal with them? Earlier, some VMs were intercepted in Tuen Mun who had come to Hong Kong to commit crimes. There were rumours that among this group, some were VMs who had come to Hong Kong before. Is that true?*

PRESIDENT (in Cantonese): There are two supplementary questions.

SECRETARY FOR SECURITY (in Cantonese): *Mr President, of the VMs who arrived in Hong Kong in 1996, 356 have come to Hong Kong more than once and have been repatriated by the Hong Kong Government to Vietnam. The way we deal with them is, as I said just now in the main reply, to repatriate them to Vietnam once arrangements with the Vietnamese Government have been made. At present, we are discussing with the Vietnamese Government in detail the method of speeding up the procedures for the repatriation of VMs who have come to Hong Kong more than once, so that the verification procedures need not be so long as for those migrants who come to Hong Kong for the first time.*

MR EDWARD HO (in Cantonese): *Mr President, according to the information provided in the Secretary for Security's main reply, there are still almost 1 000 new VMs arriving in Hong Kong this year. I found his reply to the second part of the Honourable Mrs Selina CHOW's question, that is, what measures have been taken to prevent VMs from arriving in the territory, a bit vague. The Secretary for Security said the Vietnamese Government has been asked to take measures to prevent their nationals from departing and the Chinese Government has been asked to render assistance. What concrete answers can the Administration give us as to how to prevent the migrants from coming to Hong Kong?*

SECRETARY FOR SECURITY (in Cantonese): The Chinese Government is aware of this problem and is prepared to find ways to prevent such incidents. The Vietnamese Government is also extremely concerned about the recent illegal departures from Vietnam of larger numbers of Vietnamese. According to my information, the Vietnamese Government has already issued directives to the County Governments of Hai Phong, Quang Ninh and other counties with a higher percentage of migrants to Hong Kong, and ordered them to take steps to curb such departures.

MRS SELINA CHOW (in Cantonese): *Mr President, I would like to ask the Secretary for Security whether the 967 VMs were intercepted on arrival or whether they were arrested while in illegal employment. Will the Government step up the measures for interception?*

SECRETARY FOR SECURITY (in Cantonese): In fact, both have been the case: I believe a larger number of migrants were intercepted, while some were arrested as illegal workers during raids conducted by the police in conjunction with the Immigration Department. Naturally we will continue to enforce the law at locations with a higher percentage of illegal workers. I would like to add that if the VMs are arrested after their arrival as illegal workers or after they have broken any other Hong Kong laws, such as using forged Vietnamese refugee cards, we will press charges against them. If they are sentenced by the courts, they will be repatriated to Vietnam once they have served their sentence.

PRESIDENT (in Cantonese): Two more Members would like to ask supplementary questions, and I shall draw the line there. Just now Mr CHEUNG Hon-chung raised a question about the interception of migrants in Tuen Mun. Could you briefly repeat that?

MR CHEUNG HON-CHUNG (in Cantonese): *Mr President, the second part of my question was that earlier some VMs were intercepted in Tuen Mun who had come to Hong Kong to commit crimes. There were rumours that some of these people had previously been in Hong Kong and had been repatriated to Vietnam before. Is that true?*

SECRETARY FOR SECURITY (in Cantonese): In an answer to a follow-up question, I already mentioned that of the VMs who arrived in the territory this year, about 350 had come to Hong Kong before and some of them had committed crimes in Hong Kong. As to whether they were the VMs intercepted in Tuen Mun recently, I have at present no information at hand. Maybe I should look it up and provide a written reply. (Annex I)

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, we wonder why the Government has not adopted the policy of immediate repatriation. The question is, if Chinese nationals go to live in Vietnam for several months and then come to Hong Kong, this will be a very serious matter. How would the Hong Kong Government deal with that?*

PRESIDENT (in Cantonese): This is a hypothetical question.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, what if they come to Hong Kong via Vietnam?*

PRESIDENT (in Cantonese): Please refer to an actual case and avoid using any hypothesis.

SECRETARY FOR SECURITY (in Cantonese): Mr President, which part of it should I answer? Since part of the question is hypothetical, Mr President, could Mr CHIM Pui-chung please

PRESIDENT (in Cantonese): Mr CHIM, can you cite a case?

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, for example, at present there are many*

PRESIDENT (in Cantonese): "For example" means it is hypothetical.

MR CHIM PUI-CHUNG (in Cantonese): *No, it is actually a fact. It has been confirmed that over 4 000 of these people are holding a Republic of China passport. They have lived in Vietnam for several months, but they came from China and are in possession of a Republic of China passport. This is a fact. Are they Taiwan residents, or Mainland residents who have gone to Vietnam and then come to Hong Kong with a Republic of China passport? Such problems might continue to crop up.*

PRESIDENT (in Cantonese): Secretary for Security, please answer whether there are any such persons among the 967 VMs you mentioned in your reply.

SECRETARY FOR SECURITY (in Cantonese): Mr President, of the 967 people, none belongs to this category. Nor have I heard that there are people from China who have gone to live in Vietnam for several months and then come to Hong Kong.

Prevention of Spouse Battering

2. **MR LEE CHEUK-YAN** asked (in Cantonese): *It is reported that there are more than 200 spouse battering cases each year in the territory. Will the Government inform this Council whether:*

- (a) *it has the details of the education and publicity work on the prevention of spouse battering over the past two years; and whether it has allocated funds to the Working Group on Battered Spouses to carry out such work; if so, what the amount of allocation and the breakdown of the allocation by expenditure items are;*
- (b) *it will consider setting up half-way houses for battered wives who are unable to return to their former dwelling places and unable to find suitable accommodation, having regard to the fact that such women can only stay in temporary shelters for women for up to a period of three months;*
- (c) *it will consider increasing the penalties on spouse battering offences so as to enhance the deterrent effect; and*
- (d) *it will, in the longer term, consider the inclusion of the concept of sex equality in the textbooks of primary and secondary schools, so as to foster a harmonious relationship between the sexes in the community, thereby preventing spouse battering cases occurring?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President,

- (a) The Working Group on Battered Spouses convened by the Social Welfare Department (SWD) in April 1995 comprises representatives from seven government departments — Health, Education, Housing, Information Services, Legal Aid, Legal and the Police. Representatives from the Hospital Authority, the Hong Kong Council of Social Services and non-governmental organizations (NGOs) running two of the refuges — Harmony House and Serene Court — are also members. A representative from the Health and Welfare Branch is in regular attendance. The Working Group assumes essentially a steering and co-ordinating role and does not therefore require specific funding for the activities concerned.

Public education work aimed at reducing the incidence of spouse battering is a focal point of the Working Group. Such public education work had in fact started well before April 1995. In particular, an extensive publicity campaign was launched in 1994 to mark the International Year of the Family which emphasized the importance of harmonious matrimonial relationships.

The Working Group has further developed this preventive education approach by adopting a theme of "marriage enrichment" for all its family life education programmes between 1995 and 1997. \$124 million had been allocated for family life education programmes during 1994-95 and 1996-97, the bulk of which will be used by government departments and NGOs to conduct programmes to promote the awareness of the problem, encourage victims to seek assistance and publicize services available for them.

During the period from October 1995 to September 1996, many public education programmes, attended by 6 400 participants, were organized by the SWD. In the meantime, a wide range of activities, totalling over 300, are being organized by the SWD and the NGOs to educate married couples on how to manage marital stress and handle conflicts in support of the theme of "marriage enrichment". More of such programmes will be run before April next year.

Apart from ensuring that the activities organized by the SWD and various NGOs complement one another in terms of timing, content and target participation, the Working Group takes the lead in instigating training programmes for professionals, such as social workers, police officers, clinical psychologists, doctors, lawyers and so on and publicity through the mass media. A seminar was held in March this year with the view to fostering a better understanding of the problem amongst the professionals in various disciplines and their greater co-operation in handling such cases. It was well attended by over 350 professionals.

Publicity efforts will be stepped up. In this connection, the Working Group intends to introduce television and radio announcements, posters and leaflets early next year to give yet wider coverage to the problems associated with battered spouses. The SWD has set aside \$500,000 for this purpose.

- (b) At present, three refuge centres are operated by the SWD and subvented NGOs; one of these was newly opened this year. Together they provide temporary accommodation of up to three months for up to 120 battered women and their children. Experience indicates that the victims of domestic violence normally stay in these refuge centres for about three weeks. When circumstances so require, they can always stay in the refuge centres for a longer period.

Social workers try as far as possible to reconcile victims with their spouses. In the case of irreconcilable relationships, the SWD will assist those victims with longer term housing needs through the compassionate rehousing programme. The victims can apply for a conditional tenancy in a public housing estate under this programme if they need, for example, to live apart from their abusers while going through divorce proceedings. Between 1993-94 and 1995-96, victims involved in 635 cases were rehoused under this conditional tenancy arrangement. This system is working well and there seems to be no need, therefore, to set up half-way houses for this purpose.

- (c) Cases of spouse battering are dealt with under the Offences Against the Person Ordinance. This Ordinance provides for offences of violence including murder and manslaughter, as well as wounding with intent to do grievous bodily harm, wounding or inflicting grievous bodily harm, assault occasioning actual bodily harm and common assault. Depending on the gravity of the offence, penalties may include a fine and various periods of imprisonment, and, in very serious cases, life imprisonment. These penalties are kept regularly under review and are considered adequate. It is a

matter, of course, for the Courts to decide on the penalty appropriate in individual cases.

- (d) Equality between the sexes and respect for each other's needs in the family are already covered in relevant textbooks since they constitute core elements of the existing syllabus under General Studies at primary school level and under Social Studies and Liberal Studies at secondary school level. Separately, the Education Department has also suggested, in its guidelines on sex and civic education to schools, the inclusion of the equality of the sexes as a topic for discussion in activities such as class-teacher periods, school assemblies and guidance and counselling sessions.

MR LEE CHEUK-YAN (in Cantonese): *Mr President, in part (a) of the main reply, the Secretary for Health and Welfare has mixed up the question of education with family life education. For instance, she noted that the theme "marriage enrichment" has been adopted for all family life education programmes. However, I do not believe that battered wives would take part in promotional programmes with such theme as "marriage enrichment". What promotion has the Working Group done? The only activities carried out, as mentioned in the main reply, were the seminar and the promotional plans on television and radio. Other than that, is the Working Group not going to do anything else?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, spouse battering is a complicated matter. There are many possible causes for it. In addition to conducting family life education as a preventive measure, we have to understand the situation of the victims in general. In this respect, we still need to strengthen our promotion to enable the general public, in particular, victims, to recognize the importance of the matter, and to make them willing to produce evidence or seek help. We understand not many women are willing to seek help. This is the first thing we need to do. In this regard, we must conduct comprehensive promotions so that those in need know where to obtain counselling, service and what particular service. Past experience tells us that even women in temporary shelters are less than willing to produce evidence to testify against their spouses. We need to do more work on this to increase these women's understanding about the matter and to change their attitude towards the

matter, which is otherwise conservative and misconceived.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, are you claiming that the reply has not fully answered your supplementary question?

MR LEE CHEUK-YAN (in Cantonese): *Yes, Mr President. I am asking what else the Working Group would do other than the promotional work. The Secretary just now only said there would be more publicity and promotion. However, there are cases in which front-line police officers advised women not to bring charges against their spouses*

PRESIDENT (in Cantonese): Mr LEE, I believe the Secretary has heard your question.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, an important work of the Working Group is to co-ordinate the efforts of professionals and provide training to them. As the Honourable LEE Cheuk-yan has said, professionals such as police officers, doctors, social workers and teachers will encounter these cases. We request co-ordination and exchange of ideas among these professionals about dealing with the cases. The Working Group will conduct training on such aspects. Every department has done a lot, for example, in drafting work guidelines. Such work is extremely helpful in the handling of cases.

PRESIDENT (in Cantonese): There are four more Members who want to raise supplementary questions, and I shall draw the line there.

MR YUM SIN-LING (in Cantonese): *Mr President, there was a case in which the police officer on duty in the reporting room advised the complainant not to make a formal complaint on the ground that the matter was not serious. This could be due to the fact that the police officer was lazy. Will the Government tell us whether measures have been taken to ensure all police officers on duty at the reporting room will get trained under the training scheme?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, I want to thank the Honourable YUM Sin-ling for the question. The training programmes were conducted by the departments themselves, though the Working Group will conduct some unified training programmes periodically. I think it is more appropriate to conduct detailed training programmes according to the area of work of each department. However, we must play the role of a co-ordinator. For example, we hope the police, doctors in the Hospital Authority, social workers and other workers on such cases will all have suitable training.

MRS SELINA CHOW (in Cantonese): *Mr President, in part (b) of the main reply, the Secretary mentioned about the Social Welfare Department using the compassionate rehousing programme to help victims with longer term housing needs. I wonder if the Secretary is aware that the criteria are different for different districts, and the application procedures are extremely complicated. In some areas, the bureaucratic red tape is alarming. Complaints that have reached me show that the situation in Tsz Wan Shan District is the worst. As everyone knows, almost no application was successful in that district*

PRESIDENT (in Cantonese): Mrs CHOW, please state your question.

MRS SELINA CHOW (in Cantonese): *Is the Government determined to completely improve its service so that the unfortunate spouses are given real care and assistance? Will the Government inform this Council of the number of successful cases?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, generally when a victim encounters such situation, accommodation is a very big problem. As I have mentioned in my main reply, where needed, we would help the victims to apply for temporary housing. We have successful cases in this regard. However, we will be pleased to follow up on those districts with problems in this regard. We are also concerned about how to further improve the procedures of application for accommodation.

MR LEUNG YIU-CHUNG (in Cantonese): *Mr President, just now the Secretary stressed that work on publicity and education would be conducted among the front-line workers. Nevertheless, many cases have still arisen between March last year and now. Will the Secretary inform this Council whether she has tried to review the procedures and methods employed by front-line workers in dealing with the victims' complaints or requests for assistance so as to minimize the obstacles encountered by the victims; if not, why not?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, the very aim of this inter-departmental Working Group is to achieve what was mentioned by the Honourable Member. The Working Group is there to find out which aspect, in terms of procedures, can be improved when a department deals with such complaints. Since the establishment of the Working Group, each of the departments has paid special attention to the problem. However, what matters more is not whether the procedures to handle complaints are adequate, but that a lot of women, we feel, are not willing to lodge complaints.

PRESIDENT (in Cantonese): Mr LEUNG, are you claiming that the reply has not fully answered your question? Which part?

MR LEUNG YIU-CHUNG (in Cantonese): *Yes, Mr President. I asked the Secretary whether there had been any detailed review, but she did not respond to that. Nor did she tell us the reason why there had not been any review.*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, perhaps I should repeat once more. Our Working Group is an inter-departmental team. We will request each of the departments concerned to look into their departmental procedures to see what improvement can be made. So, each department is doing the review, but the review is not a one-off job. Rather, it is an on-going process.

DR JOHN TSE (in Cantonese): *Mr President, my question relates to parts (b) and (c) of the main reply. In part (c), it was mentioned that spouse-battering is an act of violence. Will the Government inform this Council whether it will consider penalizing injurious behaviour such as mental torture? In addition, part (b) of the reply mentioned accommodation service. If the victim is male, will he, like his female counterpart, be given accommodation service?*

PRESIDENT (in Cantonese): I would like to remind Members that they can put just one supplementary question. Secretary, please answer the first supplementary.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, mental torture is a kind of battering, and may lead to prosecution if there is evidence. But, unfortunately, most of the time there is insufficient evidence.

PRESIDENT (in Cantonese): I will allow the second supplementary, Secretary.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): With regard to Dr the Honourable John TSE's second question, in cases where the battered victim is a man, we would under normal circumstances arrange for him to be given urgent accommodation, but such cases are rare.

PRESIDENT (in Cantonese): That means I will be under protection too.
(Laughter)

MR LEE CHEUK-YAN (in Cantonese): *Mr President, I do not think you will need that kind of protection. Part (c) of the main reply also mentioned penalties. As far as I am aware of, in some cases, the court only imposed a fine of \$200. On hearing the judgement, the man said he could "beat his wife" on paying \$200, and he could repeat the act. The Government said the highest*

penalty is life imprisonment. But what is the lightest penalty? Will there be a review on how to handle cases where judgements are found to be too lenient?

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, I do not have such information on hand. However, if we think a sentence is too lenient, we will usually make an appeal.

MR LEE CHEUK-YAN (in Cantonese): *Will the Secretary reply in writing what was the lightest penalty meted out, and why there was no appeal on that particular occasion? I know of a case in which only a fine of \$200 was imposed.*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): I will be pleased to provide an answer in writing. (Annex II)

Development of Arts and Culture

3. **MR MOK YING-FAN** asked (in Cantonese): *In the Policy Commitments of the policy address this year, the Government pledged that it will promote the development of arts and culture through providing co-ordination, financial support, education and publicity, as well as support the proposals of the Five-Year Strategic Plan of the Arts Development Council. In this connection, will the Government inform this Council whether:*

- (a) *it has formulated any guidelines for purchasing works of art of local artists, or according such works of art priority for display in government buildings; if so, what the details are; if not, why not;*
- (b) *it has reserved places at the terminal building of the new airport at Chep Lap Kok, which will be completed soon, for displaying works of art of local artists; if not, why not;*
- (c) *it has any plan to commission local arts or academic bodies to study the policy in other countries regarding the promotion of their native*

culture and arts; and

- (d) *it will conduct a review on the existing policy on the promotion of local culture and arts; if so, when such a review will be conducted; if not, why not?*

SECRETARY FOR BROADCASTING, CULTURE AND SPORT (in Cantonese): Mr President, my replies to Mr MOK Ying-fan's four questions are:

- (a) The Government is willing to facilitate displays of works by local artists in general office accommodation where space can be made available without impacting on the operational use of, and public access to, the premises. Existing policy does not provide for the purchase of such works specifically for display in government buildings; and therefore works by local artists can be displayed in government buildings only if the artists themselves, or other sources, are willing to lend them to the Government.
- (b) The Airport Authority, which is developing the new airport, and the Government, both recognise that the passenger terminal building will be one of Hong Kong's most prominent buildings and a major gateway to Hong Kong. The Airport Authority is currently focusing its efforts and energies on speedy completion of the terminal building, to ensure that the airport can open on time and within budget, for the benefit of Hong Kong as a whole, in April 1998. As part of this process, however, the Airport Authority as part of the corporate community of Hong Kong is considering carefully how the building could be enhanced over time by the display of carefully selected local works of art, as well as by exhibitions on appropriate local cultural, historical and other themes. This will be a continuing process on the part of the Airport Authority, in close contact with the Government, in the period up to

and beyond opening in April 1998.

- (c) The Hong Kong Arts Development Council has been given the statutory function to plan, promote and support the broad development of the arts and to formulate and implement strategy for this purpose. The Council has no plans at present to commission a study on the policy in other countries regarding the promotion of their native culture and arts. I will, however, refer Mr MOK's question to the Council for its consideration.
- (d) The Government conducted an arts policy review in 1993, only three years ago. Legislation to set up the Arts Development Council, which resulted from this review, was passed only last year. The Government, therefore, sees no need and has no plans in the foreseeable future to conduct a review on policies for the promotion of local culture and arts.

Mr President, I fully understand the motive behind Mr MOK's question. He is in effect suggesting that public funds be used by the Government to support and promote Hong Kong's own artists by purchasing their works and displaying them in public places in government buildings. I would like to remind Mr MOK who is also Chairman of the Urban Council Museums Select Committee, however, that the Urban Council, of which Mr MOK is the elected representative in the Legislative Council, is already spending many millions of dollars in public funds each year to purchase works of art, including works by Hong Kong artists; and that, at any one time, only about 10% of such works of art can be displayed in the Urban Council's Museum of Art because of the lack of space. In these circumstances, I can see no justification in additional public expenditure being incurred by the Government for the purpose suggested by Mr MOK.

Instead, I would suggest that the public interest would be better served if the Urban Council would agree to make available to the Government, on loan, works of art by local artists, so that, instead of having to languish in a storeroom most of the time, they may be seen and appreciated by the numerous members of the public who visit government premises each day.

MR MOK YING-FAN (in Cantonese): *Mr President, the Urban Council has its own policy of purchase and collection, but*

PRESIDENT (in Cantonese): Please raise your supplementary question.

MR MOK YING-FAN (in Cantonese): *Yes, because I thought you were asking a question for the Secretary for Broadcasting, Culture and Sport. (Laughter)*

PRESIDENT (in Cantonese): This Council is not the Urban Council. *(Laughter)*

MR MOK YING-FAN (in Cantonese): *As far as I know, the Government has never officially requested the Urban Council for the loan of works of art for display, except for some individuals, of course. If the Secretary for Broadcasting, Culture and Sport is really serious about this, I think I will definitely bring the issue back to the Urban Council for discussion.*

PRESIDENT (in Cantonese): Mr MOK, this Council is not the Urban Council. There is no point for an Urban Council Member to answer in this Council on behalf of the Urban Council any query raised by a government official.

MR MOK YING-FAN (in Cantonese): *Mr President, in the first paragraph of his answer, the Secretary for Broadcasting, Culture and Sport said that there is no existing government policy that provides for the purchase of works by local artists. He has not answered substantively, but just said that there is no such policy. Will the central government, just like other countries, take into serious consideration that a substantive policy in support of the local artists be*

formulated to purchase their works for the decoration of government buildings?

SECRETARY FOR BROADCASTING, CULTURE AND SPORT (in Cantonese): Mr President, the last two paragraphs of my answer have actually answered the question of the Honourable MOK Ying-fan. But since he wants me to answer once again, I can say it one more time. The Government does not have such policy, and does not intend to have one. The reason is that I believe the Government should use public funds sensibly and appropriately, and that the construction cost of Government premises should all be used on the facilities of the buildings themselves. Another reason is that the Urban Council is using public funds, that is to say, not the money of the Urban Council itself, but the money of the people and the taxpayers. The Urban Council is already spending millions of dollars each year to purchase so much works by local artists, and there is not enough space to display them all at one time for appreciation by the public. In the circumstances, why should the Government incur additional public expenditure to purchase more works of local artists for display in the lobbies of government buildings? What should be done is that the Urban Council should make available to us those works of art, and we would be very happy to discuss with the Government Property Agency as to which government building lobbies to display them, so that the public can see and appreciate them.

PRESIDENT (in Cantonese): That is a summary of the original answer.

MR SZETO WAH (in Cantonese): *Mr President, since this Council is not the Urban Council, will you rule that the question just raised by the Secretary for Broadcasting, Culture and Sport should be withdrawn?*

PRESIDENT (in Cantonese): The Secretary for Broadcasting, Culture and Sport did not raise a question. I take it as a speech.

MR HOWARD YOUNG (in Cantonese): *Mr President, since the Secretary for Broadcasting, Culture and Sport has put forward a proposal the other way round in his answer just now, may I ask if the Secretary is willing to extend his*

proposal a bit by, for example, requesting the Urban Council to loan out those languished works of art not only to government offices, but also to private organizations with appropriate sites available?

SECRETARY FOR BROADCASTING, CULTURE AND SPORT (in Cantonese): Mr President, in my answer just now I have only mentioned the collections of the Urban Council. In fact, as far as I know, the Regional Council also has its collections. As regards the question of Mr YOUNG, I feel that the Government should not, on behalf of private organizations, ask the Urban Council to lend its collections to them for display in their premises. What I would do in the future is that I shall represent the Government to contact the Urban Council and put forward such requests, that is, ask for the loan of its collection and have them displayed in the lobbies of government buildings.

MR MARTIN LEE (in Cantonese): *Mr President, actually I would like to raise a point of order. Just now the Secretary for Broadcasting, Culture and Sport humorously asked our Members a question in reply. I believe it was also out of humour that you asked Mr MOK Ying-fan to raise a question. But I am worried that this may set a precedent such that when Policy Secretaries answer questions in the future, they will ask questions the other way round and Members will get into real trouble. Therefore, I hope that you would clarify that this is not a precedent.*

PRESIDENT (in Cantonese): I would like to make a clarification concerning the answer given by the Secretary for Broadcasting, Culture and Sport just now. A public officer does not have the right to raise questions in his answers, and furthermore he cannot question a member of the Urban Council at this time, even though that member is also a Member of this Council, since the meeting now is not a meeting of the Urban Council.

DR JOHN TSE (in Cantonese): *Mr President, there was a slogan in the 1960s: "Hong Kong people should use Hong Kong products." The current policy of the Hong Kong Government concerning the works of local artists is that it is fine to have them on display, but there is no plan to purchase them. That is unfair to the Hong Kong artists. My question is: How much did the Government, including the two municipal councils, spend on purchasing works of local and*

foreign artists in the past few years, and what are the proportions?

PRESIDENT (in Cantonese): These matters are not the responsibility of the Secretary for Broadcasting, Culture and Sport and the Hong Kong Government. The municipal councils should be responsible.

DR JOHN TSE (in Cantonese): *Mr President, I would like to ask whether government departments include the two municipal councils.*

PRESIDENT (in Cantonese): The two departments only execute orders from the two municipal councils. They do not represent the Government.

MR CHEUNG HON-CHUNG (in Cantonese): *Mr President, in the first paragraph of the answer, it is stated that the Government would not purchase those works, but if someone is willing to loan them the Government would be happy to make arrangements. I would like to ask if there have been such arrangements before and also if this is a new policy. If this is a new arrangement, what criteria are employed to select the artists and the works of art for display in the government buildings. Is it that the Government would accept any offer?*

SECRETARY FOR BROADCASTING, CULTURE AND SPORT (in Cantonese): Mr President, I shall answer the last question first. Of course the Government will not indiscriminately accept any offer. This is because there are not that many places for display in the government building lobbies. We did not have such a policy in the past. In the past, only the official residences of the Governor and the Chief Secretary could have the works of art on loan to them. At present they still have these works of art on loan from the Urban Council on display in their official residences.

As for the proposal I put forward just now, it is a new proposal. We feel that since the community has such a request, that is, to promote the works of local artists, one of the ways to do so is to have them displayed in the lobbies of government premises. As public funds should be used in an appropriate manner, we feel that it might not be apt to do so. However, since there are other organizations which use public funds to purchase works of art for collections, and there are quite a number of what we can say extra works, then why can they not be loaned to us? If we implement this policy, we shall discuss with the Arts Development Council about which types of works and which artists' works will be loaned, and where these works should be displayed.

PRESIDENT (in Cantonese): Mr LEE Wing-tat, is it a point of order?

MR LEE WING-TAT (in Cantonese): *Mr President, I would like to raise a point of order. It is about something you said in reply to Dr John TSE's question. Let me briefly repeat what you meant: Since the Urban Services Department and the Regional Services Department execute the policies of the two municipal councils, these two departments are not government departments themselves. I would like you, Mr President, to say it once more, because I feel that your conclusion seems to have a bearing on what the Legislative Council Members can do in the future, that is, whether we can question the Urban Services Department and the Regional Services Department through the Secretary for Broadcasting, Culture and Sport.*

PRESIDENT (in Cantonese): If the two municipal councils and the two municipal services departments decide upon matters within their own jurisdictions, then it is not the responsibility of the Government. Since it is not the responsibility of the Government, the Secretary for Broadcasting, Culture and Sport does not have to answer. As for other statutory bodies, once they are established, they are also no longer the responsibility of the Government. That is why I have changed the wording in many questions to "whether the

Government is aware that", which means whether the Government knows or not. In this case, the Secretary for Broadcasting, Culture and Sport has the responsibility to comprehensively monitor the activities of these two municipal councils. So for a lot of information, if Members wish to raise questions, they should be raised in the form of asking "whether the Government is aware that".

DR JOHN TSE (in Cantonese): *Mr President, I would like to change my question to "whether the Government is aware that".*

SECRETARY FOR BROADCASTING, CULTURE AND SPORT (in Cantonese): Mr President, the Government's representative, that is I, who is standing here, is not aware. But I shall go back to ask the two municipal councils and pass on the information to Dr TSE. (Annex III) Just now Dr TSE raised a point, saying that the Government seems to be unfair to the local artists. I would like to clarify that as the Government does not purchase at all any works of art, either local or foreign, the issue of unfairness to local artists simply does not exist.

In addition, Mr President, I would like to raise a point. You said just now that the Secretary for Broadcasting, Culture and Sport is responsible for comprehensively overseeing the work of the two municipal councils, but it is in fact not so under the existing policy. The two municipal councils do not have a policy branch, and neither of them are monitored by me. I just answer questions on their behalf as and when necessary.

PRESIDENT (in Cantonese): Can I clarify this with the Chief Secretary after the meeting? Mr SZETO Wah, is it a point of order?

MR SZETO WAH (in Cantonese): *Yes, Mr President. At a recent meeting of the Panel on Constitutional Affairs, the issue of how the Government should answer questions raised by this Council concerning the two municipal councils and the two municipal services departments was discussed. The public officer at the meeting stated that the Secretary for Broadcasting, Culture and Sport should be responsible for answering such questions. Through you, Mr President, I would like to ask the public officer if the answer given then is still correct. Or should our questions be answered by their Directors?*

PRESIDENT (in Cantonese): I have just said that I shall discuss it with the Chief Secretary to clarify the actual situation and the practical arrangements. The last supplementary question.

MR HOWARD YOUNG (in Cantonese): *Mr President, bearing in mind that the Secretary for Broadcasting, Culture and Sport has said just now that there are so many so-called languished works of art, and that when he answered the follow-up questions he also mentioned that the official residences of the Governor and the Chief Secretary can have the works of art on loan, is it possible to consider extending the scope of loan to allow other official residences of the Administration, for example, that of the Financial Secretary or other Policy Secretaries, to also have the works on loan for display because they always have to entertain local and foreign guests?*

SECRETARY FOR BROADCASTING, CULTURE AND SPORT (in Cantonese): Mr President, I think that is an excellent suggestion. But I have to first clarify that I already have lots of my own paintings hanging in my house, so it is not out of my own interest that I say that this is a good suggestion. We can take this into consideration, but of course the final decision lies with the municipal councils.

PRESIDENT (in Cantonese): By the way, the Secretary for Broadcasting, Culture and Sport does not have an official residence. *(Laughter)*

Concrete Strength of Public Housing Blocks

4. **MR CHAN WING-CHAN** asked (in Cantonese): *Mr President, regarding the strength of concrete in existing public housing blocks, is the Government aware of:*

- (a) *the standard of concrete strength in public housing blocks, and whether such standard complies with the international safety standard;*
- (b) *the extent of the difference between the actual concrete strength of*

blocks built with sub-standard concrete and the standard concrete strength, the reasons for such a difference, and the remedial measures taken by the Government in respect of these blocks;

- (c) the number of housing blocks built with sub-standard concrete and the proportion of such blocks to the total number of public housing blocks; the names of those housing estates having this problem, and the dates of completion of these housing estates; and*
- (d) the number of contractors involved in building housing blocks which are found to be of sub-standard concrete strength, the number and names of these contractors who are still taking part in the public housing building programme, and the reasons why their continued participation is permitted by the authority concerned?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, before 1980, the standard of concrete for public housing blocks was 20 MPa (megapascal), which was then the common international standard. Since 1980, the standard has been progressively raised to 30-35 MPa, again in compliance with common international standards.

Normally, a building is designed to a much stronger strength than it actually needs to take the loading upon it. This strength reserve is added at the design stage to cater for uncertain situations, such as variations in workmanship and future usage. Non-compliance with the design specifications does not necessarily imply danger for the building. Causes of non-compliance of strength include mainly the varying standards of workmanship and material. In order to make a realistic assessment of the structural safety of an existing building, it is necessary to look at the actual load carrying capacity of various parts of the building. We cannot just make a general assessment.

During the period from 1981 to 1985, the Housing Department investigated the structural safety of all public housing blocks built before 1981.

Concrete samples were taken from 836 blocks for testing. All the blocks were found to be structurally safe, whilst 411 of them were found to have average concrete strength which did not fully comply with the originally designed specifications. Of these, 201 have already been demolished under the Housing Authority's Comprehensive Redevelopment Programme. The remaining 210 blocks (see information just tabled - Annex 1) represent 17% of the existing stock of public rental housing. Of these, 76 do not require strengthening work. Work on strengthening 125 was completed by mid 1996, and one more block will be completed in the near future. We are conducting a detailed appraisal of the remaining eight blocks to see whether strengthening work is required.

Twenty-five contractors were involved in the construction of the above-mentioned 411 blocks. Three (see list just tabled - Annex 2) are still on the Housing Authority's approved list of contractors for new works as they fulfill the criteria set by the Housing Authority. As a general practice, the Housing Authority closely monitors the performance of contractors, and will remove from the list any contractor who fails to perform satisfactorily.

Annex 1

List of the 210 sub-standard public housing blocks with average concrete strength
less than the designed strength (as at 31.10.96)

	<i>Estate</i>	<i>Block Name</i>	<i>Handover Date</i>
1	Chai Wan 1*	9	1965-66
2	Chai Wan 1*	13	1965-66
3	Chai Wan 1	14	1965-66
4	Chai Wan 1	15	1965-66
5	Cheung Sha Wan	1	1963-64
6	Cheung Sha Wan*	2	1963-64
7	Cheung Sha Wan*	3	1963-64
8	Cheung Sha Wan	4	1963-64
9	Cheung Sha Wan*	5	1963-64
10	Cheung Sha Wan	6	1963-64

	<i>Estate</i>	<i>Block Name</i>	<i>Handover Date</i>
11	Cheung Sha Wan*	8	1963-64
12	Cheung Sha Wan	9	1963-64
13	Cheung Sha Wan	10	1963-64
14	Cheung Sha Wan*	11	1963-64
15	Cheung Sha Wan*	12	1963-64
16	Cheung Sha Wan	14	1963-64
17	Choi Hung	Chi Mei	1962-64
18	Choi Hung	Kam Wan	1962-64
19	Fuk Loi	Wing Ning	1963
20	Hing Wah 2*	Fung Hing	1976
21	Ho Man Tin	1	1972-75
22	Ho Man Tin	2	1972-75
23	Ho Man Tin	3	1972-75
24	Ho Man Tin	4	1972-75
25	Ho Man Tin	6	1972-75
26	Ho Man Tin	8	1972-75
27	Hung Hom*	1	1956
28	Hung Hom*	2	1956
29	Kwai Chung 1*	21	1964
30	Kwai Chung 1	22	1964
31	Kwai Chung 1*	24	1964
32	Kwai Chung 1*	25	1964
33	Kwai Chung 1*	26	1964
34	Kwai Chung 1	27	1964
35	Kwai Chung 1*	35	1964
36	Kwai Chung 2	12	1964-65
37	Kwai Chung 2*	13	1964-65
38	Kwai Chung 2*	14	1964-65
39	Kwai Chung 2	15	1964-65
40	Kwai Chung 2*	18	1964-65
41	Kwai Fong	3	1972-73
42	Kwai Fong*	6	1972-73
43	Kwai Shing East	12	1972
44	Kwai Shing West	1	1976-77
45	Kwai Shing West	6	1976-77
46	Lai King	1 Fung King	1975-76
47	Lai King*	2 Wo King	1975-76

	<i>Estate</i>	<i>Block Name</i>	<i>Handover Date</i>
48	Lai King	4 Ming King	1975-76
49	Lam Tin 1*	2	1967
50	Lam Tin 1*	3	1967
51	Lam Tin 1*	4	1967
52	Lam Tin 3*	7	1967-70
53	Lam Tin 3*	8	1967-70
54	Lam Tin 3*	10	1967-70
55	Lam Tin 3	15	1967-70
56	Lei Muk Shue	9	1971-72
57	Lei Muk Shue*	10	1971-72
58	Lei Muk Shue	11	1971-72
59	Lei Muk Shue	12	1971-72
60	Lei Yue Mun Road	1	1962-63
61	Lei Yue Mun Road	2	1962-63
62	Lei Yue Mun Road	3	1962-63
63	Lei Yue Mun Road*	4	1962-63
64	Lei Yue Mun Road	5	1962-63
65	Lei Yue Mun Road	6	1962-63
66	Lek Yuen	Fook Hoi	1976
67	Lek Yuen	Fu Yu	1976
68	Lek Yuen	Wing Shui	1976
69	Lower Ngau Tau Kok 1*	3	1967-68
70	Lower Ngau Tau Kok 1	4	1967-68
71	Lower Ngau Tau Kok 1	5	1967-68
72	Lower Ngau Tau Kok 1*	6	1967-68
73	Lower Ngau Tau Kok 1*	7	1967-68
74	Lower Ngau Tau Kok 2*	9	1969
75	Lower Ngau Tau Kok 2*	10	1969
76	Lower Ngau Tau Kok 2*	11	1969
77	Lower Ngau Tau Kok 2*	12	1969
78	Ma Tau Wai	Hibiscus	1962
79	Ma Tau Wai	Magnolia	1962
80	Ma Tau Wai	Rose	1962
81	Mei Tung	Mei Tung	1974
82	North Point	West Court	1957
83	Pak Tin*	4	1969
84	Pak Tin	5	1969

	<i>Estate</i>	<i>Block Name</i>	<i>Handover Date</i>
85	Pak Tin*	6	1969
86	Sai Wan	Centre Terrace	1958-59
87	Sai Wan	East Terrace	1958-59
88	Sai Wan*	South Terrace	1958-59
89	San Fat	1	1971
90	San Fat	2	1971
91	San Fat	3	1971
92	San Fat	4	1971
93	Sau Mau Ping 1	19	1968-69
94	Sau Mau Ping 1	20	1968-69
95	Sau Mau Ping 1	28	1968-69
96	Sau Mau Ping 1	29	1968-69
97	Sau Mau Ping 1	31	1968-69
98	Sau Mau Ping 2	21	1971
99	Sau Mau Ping 2	22	1971
100	Sau Mau Ping 2	23	1971
101	Sau Mau Ping 2	24	1971
102	Sau Mau Ping 2	25	1971
103	Sau Mau Ping 3	35	1967-68
104	Sau Mau Ping 3	37	1967-68
105	Sau Mau Ping 3	38	1967-68
106	Sau Mau Ping 3	39	1967-68
107	Sau Mau Ping 3	40	1967-68
108	Sau Mau Ping 3	41	1967-68
109	Sha Tin Pass	1	1967-68
110	Sha Tin Pass	2	1967-68
111	Shek Kip Mei*	3	1954-79
112	Shek Kip Mei*	15	1954-79
113	Shek Kip Mei*	16	1954-79
114	Shek Kip Mei	17	1954-79
115	Shek Kip Mei	22	1954-79
116	Shek Kip Mei*	27	1954-79
117	Shek Kip Mei*	28	1954-79
118	Shek Kip Mei*	29	1954-79
119	Shek Kip Mei*	30	1954-79
120	Shek Kip Mei*	34	1954-79
121	Shek Kip Mei*	36	1954-79

	<i>Estate</i>	<i>Block Name</i>	<i>Handover Date</i>
122	Shek Kip Mei*	37	1954-79
123	Shek Kip Mei*	38	1954-79
124	Shek Lei 1	1	1968
125	Shek Lei 1	2	1968
126	Shek Lei 1	3	1968
127	Shek Lei 2*	8	1966-71
128	Shek Lei 2*	9	1966-71
129	Shek Lei 2*	10	1966-71
130	Shek Lei 2*	11	1966-71
131	Shek Lei 2	12	1966-71
132	Shek Lei 2	16	1966-71
133	Shek Pai Wan	1	1966-68
134	Shek Pai Wan	3	1966-68
135	Shek Pai Wan*	4	1966-68
136	Shek Pai Wan*	5	1966-68
137	Shek Pai Wan	6	1966-68
138	Shek Pai Wan*	7	1966-68
139	Shek Yam	4	1968
140	So Uk*	Azelea	1960-63
141	So Uk	Begonia	1960-63
142	So Uk	Camelia	1960-63
143	So Uk	Gladiolus	1960-63
144	So Uk	Larkspur	1960-63
145	So Uk	Lilac	1960-63
146	So Uk	Lotus	1960-63
147	So Uk*	Marigold	1960-63
148	So Uk*	Orchid	1960-63
149	So Uk	Peony	1960-63
150	So Uk	Willow	1960-63
151	Tai Hang Tung*	Tung Fu	1956
152	Tai Hang Tung*	Tung Wan	1956
153	Tai Hang Tung*	Tung Wing	1956
154	Tai Hang Tung*	Tung Wo	1956
155	Tung Tau 1	22	1965-66
156	Tung Tau 1	23	1965-66
157	Un Chau Street	4	1969
158	Un Chau Street	5	1969

	<i>Estate</i>	<i>Block Name</i>	<i>Handover Date</i>
159	Un Chau Street	6	1969
160	Un Chau Street	7	1969
161	Upper Ngau Tau Kok	2	1967-68
162	Upper Ngau Tau Kok	3	1967-68
163	Valley Road	1	1964-65
164	Valley Road*	2	1964-65
165	Valley Road	3	1964-65
166	Valley Road*	4	1964-65
167	Valley Road*	5	1964-65
168	Valley Road	6	1964-65
169	Valley Road*	7	1964-65
170	Valley Road	8	1964-65
171	Valley Road*	9	1964-65
172	Valley Road*	10	1964-65
173	Valley Road*	11	1964-65
174	Valley Road*	12	1964-65
175	Valley Road*	14	1964-65
176	Valley Road*	15	1964-65
177	Valley Road*	17	1964-65
178	Wah Fu	Wah Cheung	1968-70
179	Wah Fu	Wah Chun	1968-70
180	Wah Fu	Wah Hing	1968-70
181	Wah Fu	Wah Kee	1968-70
182	Wah Fu	Wah Kwong	1968-70
183	Wah Fu	Wah Lok	1968-70
184	Wo Lok	Cheung On	1962-63
185	Wo Lok	Fu On	1962-63
186	Wo Lok	Hing On	1962-63
187	Wo Lok	Kin On	1962-63
188	Wo Lok	Man On	1962-63
189	Wo Lok	Ping On	1962-63
190	Wo Lok	Tai On	1962-63
191	Wo Lok	Yee On	1962-63
192	Wong Chuk Hang*	1	1968-73
193	Wong Chuk Hang	2	1968-73

	<i>Estate</i>	<i>Block Name</i>	<i>Handover Date</i>
194	Wong Chuk Hang	5	1968-73
195	Wong Chuk Hang	7	1968-73
196	Wong Chuk Hang	8	1968-73
197	Wong Chuk Hang	10	1968-73
198	Yau Tong*	1	1964-65
199	Yau Tong	2	1964-65
200	Yau Tong*	3	1964-65
201	Yau Tong	8	1964-65
202	Yau Tong	11	1964-65
203	Yau Tong*	12	1964-65
204	Yau Tong*	14	1964-65
205	Yau Tong	15	1964-65
206	Yau Tong	16	1964-65
207	Yuen Long*	1	1966-67
208	Yuen Long*	3	1966-67
209	Yuen Long*	4	1966-67
210	Yuen Long*	5	1966-67
	Total	210	

- * Strengthening work has not been done on these 84 blocks. Seventy-six of them do not require strengthening work. We are conducting a detailed appraisal of the remaining eight blocks to see whether strengthening work is required.

Annex 2

Contractors involved in building housing blocks with sub-standard concrete strength before 1981

1. Hing Lee Construction Company Limited
2. Wan Hin and Company Limited

3. Wing Hong Contractors Limited

MR CHAN WING-CHAN (in Cantonese): *Mr President, I strongly disagree with what is mentioned in the second paragraph of the main reply, that is "Non-compliance with the design specifications does not necessarily imply danger for the building", since there are often cases of injuries to public housing tenants caused by falling pieces of concrete. In the third paragraph of the main reply, it is said that of the concrete samples taken from 836 blocks for testing, 411 of them, or 50%, were found to have average concrete strength not fully complying with the originally designed specifications. Also, a certain television programme once reported that those public housing estates actually accounted for 86.5% of the total number. Why is there such a big discrepancy? Which figure is the correct one? Mr President, 411 of the public housing blocks were found to have average concrete strength not complying with the designed specifications. Was it due to the jerry-building of the contractors or the negligence of the Government in the monitoring and inspection of the public housing blocks, or was it due to malpractices and corruption? In the main reply, it is pointed out that 125 blocks only require strengthening works, but is it possible to maintain the structural safety of the blocks simply by relying on partial repair works?*

SECRETARY FOR HOUSING (in Cantonese): *Mr President, I would like to reiterate that although there is a required international standard of concrete strength in its design, we have already raised this international standard at the design stage to cater for possible requirements under different circumstances. Therefore, my conclusion is that non-compliance with the design specifications, or exceeding the standard loading capacity, does not necessarily imply danger for the building. This is where the reason lies. In this regard, I can say that if these blocks have loading problems, the Housing Authority will carry out the remedial works immediately. As what I have mentioned, we are conducting a detailed appraisal of the remaining eight blocks to see whether strengthening works should be required. Regarding Mr CHAN's question of whether there will be any problem if these public housing blocks are repaired partially, the*

answer is even in the same building, not all the parts will pose a danger. Therefore, if it is possible to locate which part may have problems and carry out repair works beforehand, then no immediate danger will come about.

PRESIDENT (in Cantonese): Mr CHAN Wing-chan, are you claiming that your question has not been answered?

MR CHAN WING-CHAN (in Cantonese): *My question is whether there was anyone involved in corruption, malpractices and jerry-building.*

SECRETARY FOR HOUSING (in Cantonese): Mr President, we have already studied this matter before. As far as I can remember, only a few buildings were involved in *prima facie* cases of negligence and corruption. As regards corruption, the Independent Commission Against Corruption (ICAC) has already taken action to prosecute those involved, and they have already been convicted by the court.

MR LEE WING-TAT (in Cantonese): *Mr President, the Government was made to pay compensations amounting to \$1.9 billion in connection with the New Airport Programme projects. Regarding the contractors of these 400-odd blocks, how much compensation could the Government and the Housing Department claim on behalf of the public? As far as I know, some of these claims could not be pursued because of not sufficient information. Under such circumstances, who should be held responsible?*

PRESIDENT (in Cantonese): I do not quite understand your question.

MR LEE WING-TAT (in Cantonese): *Mr President, I can repeat my question if you do not understand.*

Mr President, the question is, just now when the Secretary replied to that part of

PRESIDENT (in Cantonese): I do not understand the relation between the claims in connection with the New Airport Programme projects and your question.

MR LEE WING-TAT (in Cantonese): *Mr President, that is only a preamble. What I mean is I heard the Secretary just now say in his reply to Mr CHAN that some contractors have already been prosecuted in court and the Government has already received the compensation. My question is: What was the actual amount of compensation that the Government received from these 25 contractors, and is it now impossible to claim all the compensation since these blocks were built around the 1960s and the information could be too outdated? If this is the case, who should be held responsible?*

PRESIDENT (in Cantonese): I still cannot understand the relation between the claims under the new airport projects and your question.

MR LEE WING-TAT (in Cantonese): *Mr President, I have already explained many times that the claims under the new airport projects is only a preamble.*

PRESIDENT (in Cantonese): However, are the contractors claiming compensation from the Government or is the Government claiming compensation from the contractors?

MR LEE WING-TAT (in Cantonese): *Mr President, regarding the new airport projects, the contractors were claiming compensation from the Government, but in this case, it is the Government who claims compensation from the 25 contractors.*

SECRETARY FOR HOUSING (in Cantonese): Mr President, as far as we know, civil litigation cannot exceed the limit of 12 years. Therefore, if the cases of these contractors have exceeded the limit of 12 years, the Government would not have the right to make any claim. For cases which have not exceeded the limit of 12 years, in fact there are seven within the time limit and the Government has the right to pursue those cases. Among those seven cases, the Government has successfully claimed compensation from four of them, and the sum of compensation, as far as we know, amounted to \$19 million last year. For the remaining three cases, one of the contractors was liquidated and another one is close to liquidation. It is not possible to pursue the third case because it has already exceeded the time limit of six years stipulated in the contract. All in all, the Government could only successfully get compensation from four cases.

MR CHEUNG HON-CHUNG (in Cantonese): *Mr President, according to a recent current affairs programme on television, the average concrete strength tested is only six to seven MPa in the sub-standard public housing blocks, which is far below the designed standard strength of 20 MPa. Regarding the second point raised by the Honourable CHAN Wing-chan just now, that is, the discrepancy between the actual concrete strength of blocks built with sub-standard concrete and the standard concrete strength, the Government's reply is that only 411 blocks are below standard. It seems that it has deliberately avoided the seriousness of the issue. As it is claimed that all the blocks are structurally safe, then why do so many public housing blocks still have to be supported by steel bars to reinforce the buildings? If those blocks are safe, why should such projects be carried out?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, I would like to emphasize once again that all the blocks which we have inspected are safe. If sometimes there is concrete falling off, the Housing Authority will carry out the repair works themselves, but this does not mean that the blocks are structurally unsafe.

MISS CHAN YUEN-HAN (in Cantonese): *Mr President, the Secretary has just*

mentioned that they were able to claim \$19 million from the construction companies concerned in the past. However, we understand that the Government has spent about \$1 billion on repairing the public housing blocks in the past 10 years. That was the situation in the past, but the Government is still hiring the three sub-standard contractors. What strategy will the Government adopt to address this problem?

SECRETARY FOR HOUSING (in Cantonese): Mr President, regarding these three contractors, we have in fact been monitoring every aspect of them very closely, such as, bidding, works progress, performance, capability and financial status. Up to this day, we believe two of the three companies still have the required ability and financial strength. And their performance can enable them to continue participating in the construction of public housing estates. Regarding the third company, it has not participated in the tenders for a long time and the Housing Authority will decide whether it should remain on the list, or whether its name should be deleted from the list after considering its situation in future.

MR LEE WING-TAT (in Cantonese): *Among those sub-standard blocks, one particular case is that the block was built in the 1960s by company A. This very company was also responsible for the repair and maintenance works as well as its demolition. After the demolition, the reconstruction of a new block was also carried out by company A. Mr President, actually this is very ridiculous, but it really happened. I would like to ask the Secretary whether he thinks the Government has any responsibility in this problem. Why did the Government all along allow the same company to build and demolish that sub-standard block, and also to build another new block? I would like to ask the Government if it has learned any lesson from that case.*

SECRETARY FOR HOUSING (in Cantonese): Mr President, I think Members will appreciate that supervision of the construction industry under some circumstances was not so adequate before the 1980s. But that was already history and the Government also understood the situation. In particular, the Housing Authority had already implemented a series of reviews and repair works

in the early 1980s, and I have also explained this situation in my main reply today. Regarding the present circumstances, I can inform all Members that the Housing Authority has already strengthened the different procedures in selecting contractors and more attention is paid to these companies' performance, financial strength, labour skills and so on. It means that even after the commencement of works, we will carefully step up the monitoring of every construction process. Also, recently, we have adopted a standard — International Standard ISO9000 — in approving or selecting contractors. Whether it is in the construction industry or the choice of materials, we have adopted a more stringent international standard in recent years. I strongly believe that with various improvements, the quality of our recently built public housing blocks has been upgraded. Facts have also proved that the quality of recently built public housing estates is better and there are fewer complaints.

PRESIDENT (in Cantonese): Last supplementary.

MISS CHAN YUEN-HAN (in Cantonese): *Mr President, I think the Secretary just now did not fully answer my question, although from his reply to the Honourable LEE Wing-tat's question, I think I have obtained some more supplementary information. Among the 800 blocks built by the Government in the early years, half of them were below standard. Up to the present time, \$1 billion have been spent on repair works, but the claims only amounted to just over \$10 million. However, the Government has stated that it will continue to adopt the old standard, including inspection of the financial strength and manpower, plus what is called ISO9000. I do not want to see a repetition of these excuses from the Government when there are problems again in future. I would like to ask. In the face of these sub-standard public housing blocks, should the Government take up some responsibilities, including sacking some of the officials concerned?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, in respect of the actions taken, I have already answered in detail earlier. However, regarding the incidents happened before 1980s and the amount of claims against the contractors by the Government being lower in principle, these were already things in the past, and it is hoped that they will not happen in future. I have mentioned earlier that we have taken a series of positive measures, and I believe

that the public housing blocks can be improved dramatically both in terms of quality and supervision.

PRESIDENT (in Cantonese): The question raised by Miss CHAN just now included a specific question, and that is whether some people or officials concerned will be sacked?

SECRETARY FOR HOUSING (in Cantonese): Mr President, as far as I know, the Government has already looked into the past incidents, and from what we can gather, nothing of this nature has ever happened.

Traffic Sign Placement

5. **MR CHOY KAN-PUI** asked (in Cantonese): *At present, directional traffic signs (such as those indicating right turn, left turn, straight ahead, and so on) are painted on the road surface and mostly in positions at a short distance from traffic lights and road junctions. Will the Government inform this Council whether, in order to enable motorists to have sufficient time to see these signs and to change lanes at an appropriate distance from traffic lights, it will consider:*

- (a) *adopting the practice in other countries (for example the United States) of displaying such signs in overhead positions; and*
- (b) *erecting such signs on roads at a further distance, say 20 m to 30 m, from traffic lights and road junctions?*

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, in Hong Kong, overhead signs are already used in expressways and major trunk roads to guide motorists to the appropriate lane. Their use in congested urban areas poses difficulties because such signs, particularly those over the nearside lane, would be obscured or distracted by large advertisement signs. However, where suitable sites can be found, road-side signs are erected in addition to directional

signs on the road surface.

As regards directional arrows painted on the road surface, in order to give motorists as much advance notification as possible before road junctions, normally two directional arrows are painted in each lane. On roads with a speed limit of 50 km/h, the first directional arrow is located 15 m from the stopline, and the second, 45 m from the stopline. For difficult locations where there are queues of stationary traffic at traffic lights, a third directional arrow is provided, at 90 m from the stopline.

For high-speed roads, larger directional arrows are painted at 25 m, 75 m and 150 m from the stopline.

MR CHOY KAN-PUI (in Cantonese): *Mr President, has the Government compiled statistics to indicate how many traffic accidents, out of the annual figure, have been caused by motorists failing to notice traffic signs in advance?*

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, the Government does not have such statistics.

MR YUM SIN-LING (in Cantonese): *Mr President, it is mentioned in the first paragraph of the main reply that where suitable sites can be found, additional road-side signs will be erected. However, no matter where the road-side signs are erected, there is the possibility that they may be obscured by lorries or container trucks while the arrows on the roads will be obscured by vehicles in front, thereby preventing motorists behind from seeing them. Will the Government consider erecting overhead signs and overhead traffic lights at road junctions in the urban area where there are no large advertisement signs?*

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, it has already been mentioned in the first paragraph of the main reply that where possible, the Government will try its best to locate suitable sites for erecting traffic signs of various kinds, including overhead signs.

Light Rail Transit Accidents and Cost Implications

6. **DR SAMUEL WONG** asked (in Cantonese): *Will the Government inform this Council:*

- (a) *the total number of traffic accidents involving Light Rail Transit (LRT) trains, and the number of persons who have sustained serious injuries or died as a result of such accidents, since the commencement of the LRT service in 1988;*
- (b) *the total estimated cost of the losses arising from damage caused to locomotives and carriages of LRT trains in the above traffic accidents; and*
- (c) *whether the Government and the Kowloon-Canton Railway Corporation have taken steps to prevent the occurrence of accidents at level crossings, and whether consideration has been given to reducing the number of such crossings?*

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, since the Light Rail Transit (LRT) system commenced operation in September 1988, there have been 187 accidents involving Light Rail Vehicles (LRV). These accidents resulted in 376 casualties, including passengers of other vehicles. All together 23 persons were killed, 84 persons were seriously injured and 269 persons sustained slight injuries.

A total of \$3 million has been spent on repairs and maintenance arising from these accidents. In July 1994, a container lorry collided with an LRV, resulting in substantial damage to the LRV. Subsequently the LRV had to be written off at its original cost of \$7.5 million. Part of the expenses incurred have been recovered from insurance or damages claimed from the other parties involved in the accidents.

The Administration has been making a conscious effort in conjunction with the Kowloon-Canton Railway Corporation (KCRC) to promote road safety at LRT junctions. A working group, comprising representatives from the KCRC, the Transport Department, the Police, the Territorial Development Department, and the Hong Kong Railway Inspectorate, meets once every three months to consider issues concerning vehicular and pedestrian safety at LRT junctions. So far, they have introduced over 200 safety improvement measures

at 87 locations. Moreover, since October 1994, one of my Deputies has convened an Inter-departmental Committee to co-ordinate efforts to improve safety at LRT junctions and to enhance publicity and public education. After all these efforts, the numbers of such accidents have shown a downward trend.

Since June this year, we have installed Red Light Cameras at 13 junctions in the LRT area to discourage drivers from jumping red lights and to collect evidence for the prosecution of offenders. The Police have given high priority to taking enforcement action at LRT junctions against drivers who disobey traffic light signals.

In 1997, Transport Department will undertake a traffic study in Yuen Long and Tuen Mun districts. This study will, *inter alia*, look into the safe and efficient operation of the LRT, particularly at road junctions and will examine the need for, and explore the feasibility of, grade separation at some of the busier junctions, taking into account land, environmental and other constraints.

DR SAMUEL WONG (in Cantonese): *Mr President, from the Secretary's reply we can see that the safety record of the LRT's operation is in fact not so good and it is certain that the problem lies with the large number of junctions — there are at least 35 in Tuen Mun and Yuen Long districts. I would like to ask the Government whether it will do its best to reduce the number of LRT junctions as soon as possible.*

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, in the fifth paragraph of the main reply, I have already mentioned that we will conduct a comprehensive review in 1997 with the aim to locate and study the busiest junctions to find out the means, such as building flyovers, to minimize the occurrence of collisions of LRT with the pedestrians or other vehicles.

MR EDWARD HO (in Cantonese): *Mr President, from the Secretary's reply, it seems that he considers the motorists are at fault in all accidents. I would like to ask whether the Government has studied the possibility that LRT drivers may also have to bear part of the blame. Furthermore, are LRT drivers required to possess a Hong Kong driving licence for private cars or light goods vehicles*

before being qualified for driving the LRT?

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, generally speaking, any vehicle operators, including motorists and LRT drivers and the pedestrians, may cause a traffic accident. Therefore, the police will examine whose fault it is after every accident. If it is found that the LRT driver should be held responsible, the LRT will certainly give appropriate training or take appropriate actions in the hope of making improvements.

As regards driving licences for LRT drivers, the KCRC does have a training programme for its LRT drivers. I will give the Honourable Edward HO a written answer regarding whether they need to obtain other driving licences. (Annex IV)

MR ALBERT HO (in Cantonese): *Mr President, the Secretary has said in the fifth paragraph of the main reply that the Transport Department will undertake a traffic study in 1997. I would like to ask whether the study will be undertaken by an independent consultancy firm or by the Department itself. In the course of the study, will there be any open investigation or consultation, including gathering the views of the district boards and bodies in the transportation industry? And is there a timetable set out for the completion of the study?*

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, we will certainly conduct a consultation. When we see where the problem lies or there is suggestion for improvement, we will surely consult the district boards first. As for whether the study will be undertaken by the Government or a consultant, it will depend on the future phasing of the plan. As for the timeframe, we hope that the whole study will be finished within 18 months.

MR WONG WAI-YIN (in Cantonese): *Mr President, the Secretary has said in the third paragraph of the main reply that over 200 safety improvement measures at 87 locations have been introduced since the establishment of the working group in October 1994. In a short period of only two years, there have been 200 improvement measures. The number is rather startling. I would like*

to ask the Secretary whether the departments concerned had neglected the safety measures of the LRT, so that over 200 safety improvement measures had to be carried out within two years.

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, these measures actually include various kinds of improvements, including erecting signs, installing more traffic lights or larger signal lights to allow clearer vision. There is absolutely no negligence involved but we may say that there is always a lesson to be learned from each experience gained. After we have spotted a problem in a junction, we will take improvement measures in other junctions as well. It has nothing to do with negligence.

WRITTEN ANSWERS TO QUESTIONS

Medical Services for New Territories West

7. **MR CHAN YUEN-HAN** asked (in Chinese): *In view of the continuing growth in population in the New Territories West region in recent years, does the Government know whether the medical services currently provided by Tuen Mun Hospital and Pok Oi Hospital are able to meet the demand for such services in the region over the next 10 years; if not, what measures does the Hospital Authority have to tackle the problem?*

SECRETARY FOR HEALTH AND WELFARE (in Chinese): Mr President, we are monitoring closely the impact of projected population growth on the provision of medical services in the New Territories West region, particularly in Yuen Long and Tin Shui Wai where new residential developments are concentrated.

The Hospital Authority has established a mechanism to assess regularly the projected supply of and demand for public hospital beds in Hong Kong. A major review will be conducted after each population census and by-census, while a minor review will take place in between. The last major review was completed in 1992, leading to the construction of North District Hospital and Tsueng Kwan O Hospital, and the next exercise will be carried out once results of the 1995 by-census is known.

The opening of North District Hospital with 618 new beds in early 1998 will serve not only to strengthen the quality and scope of medical services for residents in this region, but also to improve the networking between Tuen Mun Hospital, Fanling Hospital and Pok Oi Hospital. In the longer term, we are working with the HA on a proposal to redevelop Pok Oi Hospital with expanded facilities to meet the needs of the growing population.

Although the number of hospital beds can be regarded as a useful indicator, the optimal mode of service delivery is influenced by other factors such as demographic structure, disease pattern and development of medical technology. Prevalent use of day surgery and ambulatory care, for instance, has reduced the need for hospital admission in the interest of patient comfort, and led to a decreasing trend of hospital beds in many developed countries.

Direct Emergency Access in Remote Villages

8. **MR WONG WAI-YIN** asked (in Chinese): *At present, many villages located in the remote parts of the New Territories do not have direct access roads for fire engines and ambulances in the event of an emergency, and this has resulted in rescue efforts being delayed. In this connection, will the Government inform this Council:*

- (a) *of the number of cases in which rescue efforts have been delayed due to the above problem in each of the past three years;*
- (b) *of the difference between the time taken for fire engines and ambulances to reach the scene of accidents in the areas mentioned above and the arrival time in other areas; and*
- (c) *whether there are any short-term or long-term measures to reduce the difference in arrival times mentioned in the answer to (b) above, so that the lives and properties of residents in the villages located in*

the remote parts of New Territories can be better protected?

SECRETARY FOR SECURITY (in Chinese): Mr President,

- (a) The number of cases in the past three years where the Graded Response Time (GRT) for fire calls, and the target travelling time for emergency ambulance calls could not be met due to long distance travelling in the rural areas in the New Territories is as follows:

<i>Year</i>	<i>No. of fire calls where GRT could not be met</i>	<i>As % of total no. of fire calls</i>	<i>No. of emergency ambulance calls where target travelling time could not be met</i>	<i>As % of total no. of emergency ambulance calls</i>
1994	70#	6.28	314*	0.37
1995	125	5.77	253	0.21
1996	61	4.17	234	0.23

(up to October)

Data only available since September 1994

* Data only available since April 1994

- (b) The average time taken for the fire engines to respond to fire calls in the rural areas in the New Territories in the past three years exceeds the GRT by 6.9 minutes due to long distance travelling; whereas the average time to respond to fire calls in other built-up areas in the New Territories exceeds the GRT by 2 minutes due to the same reason. As regards the emergency ambulance service, we do not have such statistics readily available.
- (c) Measures adopted by the Fire Services Department to improve the

fire and ambulance services in the New Territories include:

Fire Services

To better serve the rural areas in the New Territories, we plan to commission new fire stations in Tuen Mun and Sham Tseng within the next three years and to procure additional Light Pumping Appliances in 1997-98 to enable land crews to gain access to remote areas where access by major fire appliances is difficult or impossible.

Ambulance Services

We plan to deploy additional Ambulance Aid Motor Cycles (AAMC) in the New Territories to cover Tin Sum, Ma On Shan, Tai Po, Lei Muk Shue, Tin Shui Wai and Kwai Chung in the next two years. AAMC can respond to emergency cases at locations inaccessible by a standard town ambulance due to road configuration. A new ambulance depot at Sham Tseng will be completed in 1997-98. The department will then redeploy the ambulance fleet to the new ambulance depot to further improve the emergency ambulance cover in the New Territories by reducing the travelling time.

Statutory Control on Radon Levels in Public Places

9. **MR JAMES TO** asked (in Chinese): *According to the findings of a study by the City University to measure the levels of radon daughter (which is a potentially lung-cancer-causing radioactive substance) in Mass Transit Railway (MTR) stations in the territory, 23 out of the 31 underground MTR stations have levels of radon daughters exceeding the average level in the world. The study has also found that workers engaged in overnight maintenance work on MTR*

tracks are exposed to a level of radiation one sixth higher than the level to which ordinary people are exposed. In view of this, will the Government inform this Council whether:

- (a) it will consider introducing statutory control on radon levels in public places; and*
- (b) it is aware of any steps taken by the Mass Transit Railway Corporation to reassess the quality of air in MTR stations in the light of the findings of the study; if so, what measures the Corporation will adopt to improve the air quality in MTR stations?*

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

- (a) May I first of all say that it is the view of the Mass Transit Railway Corporation (MTRC) that the findings of the City University study referred to by the Honourable Member are open to dispute, for example, the measurements for health assessment were taken from only one station at day time and considerable extrapolation and assumptions were made to apply them to night workers. Indeed, the MTRC has sufficient misgivings about the report that it would publish a rebuttal shortly in the *Journal of Radiological Protection*. For the Administration's part, we do not consider it necessary to introduce statutory control on radon levels in public places at this point in time. Surveys on radon levels conducted by the Environmental Protection Department in 1993 and by the Labour Department in 1995 indicated that radon concentrations in public places including Mass Transit Railway stations are within well established international standards and will not have adverse health impacts on the public and MTRC maintenance workers. Nevertheless, we have distributed publicity pamphlets, and will continue to educate the public, on measures to prevent radon pollution.

- (b) The MTRC follows the Labour Department and the Environmental Protection Department's regulations and guidelines on the protection of the health and safety of its staff. A survey undertaken by the Labour Department in 1995 indicated that the radon exposure for MTRC maintenance workers was about 0.01 to 0.022 Working Level, which is very low against the recommended Working Level of 0.05 adopted by the International Commission of Radiological Protection. There is therefore no need to take action to reduce radon levels in the railway premises although the MTRC will continue to regularly review the situation.

Enforcement of Vehicle Emission Standards

10. **MR DAVID CHU** asked: *Regarding the air pollution problem in the territory, will the Government inform this Council whether it will:*

- (a) *review the vehicle emission standards which have been in use for over 10 years;*
- (b) *take steps to tighten the enforcement of the vehicle emission standards; if so, what the details are; and*
- (c) *consider hiving off the Environmental Protection Department from the Planning, Environment and Lands Branch and upgrading the Department to a separate Policy Branch so as to give the new set-up greater independence and flexibility in the redeployment of its resources towards tackling the air pollution problem, particularly in the control of emissions from motor vehicles?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

- (a) The assertion in part (a) of the question is not true. On the contrary,

the emission standards for new vehicles are reviewed regularly and have been progressively tightened in tandem with the latest international standards and technological advancement. The standard for petrol vehicles was last tightened in 1991, which required new vehicles registered after 1992 to use unleaded petrol and be fitted with a catalytic converter. The standard for diesel vehicles was also upgraded in 1995 in line with the Euro I standard. The more stringent Euro II standard, which was adopted in Europe in October 1996, will be implemented on large diesel vehicles in April 1997. We are now reviewing the standard for small diesel vehicles. In addition, in-use vehicles on the road are required to meet a smoke emission standard of 60 Hartridge Smoke Unit (HSU) to ensure that they are maintained to a satisfactory condition. Since 1995, vehicles manufactured in or after 1990 are required to meet a more stringent test standard of 50 HSU.

- (b) Under the Road Traffic (Registration and Licensing of Vehicles) Regulations, vehicles unable to comply with the specified emission standards will not be registered. On the other hand, in-use commercial vehicles, and private cars over six years old, have to attend annual inspections during which they have to pass an emissions test before they can have their licences renewed by the Transport Department. Moreover, emission of excessive smoke is an offence under the Road Traffic (Construction and Maintenance of Vehicles) Regulations, which is enforced by the Environmental Protection Department and the police. We are now working on measures to further strengthen the emission inspections and to increase the penalties on repeated offenders.
- (c) We do not support transforming the Environmental Protection Department into a separate Policy Branch. Like other government departments, the Environmental Protection Department already enjoys a large degree of autonomy and flexibility in deploying resources to meet its priorities and to ensure effective and efficient implementation of environmental protection policies. Given that the prevention and abatement of pollution requires concerted efforts in planning and land controls, there is a clear need to ensure that environmental protection work is integrated with planning and land administration procedures, and that environmental control is co-ordinated with land and building control. The existing integrated

set-up of the Planning, Environment and Lands Branch provides this essential linkage and collaboration at the policy level and it would not be cost effective to establish a dedicated Policy Branch for environmental protection.

Hong Kong Permanent Identity Cards for Persons Short of Seven Years' Residence

11. **MR HENRY TANG** asked (in Chinese): *Will the Government inform this Council whether any person with less than seven years' residency in the territory was issued with a Hong Kong Permanent Identity Card in the past; if so, what the reasons for this were, and the number of cases in which Hong Kong Permanent Identity Cards were issued to such persons in each of the past five years?*

SECRETARY FOR SECURITY (in Chinese): Mr President, Hong Kong Permanent Identity Cards are issued to persons who have the right of abode in Hong Kong. The categories of persons who are Hong Kong permanent residents are defined in Schedule 1 to the Immigration Ordinance, Cap. 115.

Not all Hong Kong permanent residents have to have resided in Hong Kong for seven years to acquire the right of abode status: Hong Kong British Dependent Territories citizens (HKBDTCs) are Hong Kong permanent residents regardless of how long they have resided in Hong Kong. HKBDTCs who acquired this status through being born in Hong Kong or by descent, for example, have this status at birth. Thus they are issued with Hong Kong Permanent Identity Cards even if they have not resided in Hong Kong for seven years.

The number of Hong Kong Permanent Identity Cards issued in each of the past five years is as follows:

1992	421 571
1993	458 979
1994	500 961
1995	503 702
1996 (January-October)	517 607

The Immigration Department does not keep a separate record of the

number of Hong Kong Permanent Identity Cards issued to Hong Kong permanent residents who have resided in Hong Kong for less than seven years.

Speed Limit on Expressways

12. **MR ALBERT CHAN** asked (in Chinese): *There are many types of vehicles, and in great numbers, running on the limited number of roads in the territory. Furthermore, the capacity of many roads, particularly expressways, is not fully utilized because of the imposition of speed limits on such roads. For example, private cars are subject to a speed limit of 70 km/h when running along Tuen Mun Highway, and this has resulted in private cars not being able to make effective use of Tuen Mun Highway. In this connection, will the Government inform this council whether:*

- (a) it will follow the practice in other places and impose different speed limits on different types of vehicles using expressways; and*
- (b) it will carry out a pilot scheme to assess if the measure mentioned in (a) above will result in an improvement to the utilization of the territory's expressways?*

SECRETARY FOR TRANSPORT (in Chinese): Mr President, when setting speed limits for roads in Hong Kong, the Administration has regard primarily to safety and takes into consideration a number of factors including:

- (a) the length of the route;
- (b) the topography and geometric design of the route;
- (c) the road surface characteristics;
- (d) the accident history; and
- (e) the speed generally adopted by vehicles using the route.

For most roads in the urban areas where pedestrian flow is heavy and junctions are closely spaced, a speed limit of 50 km/h applies. For trunk roads

and expressways, a higher speed limit is allowed and it ranges from 70 km/h to 100 km/h depending on the topography, design and so on. However, medium goods vehicles, heavy goods vehicles and buses are not allowed to travel in excess of 70 km/h on these roads.

As to the suggestion of increasing the speed limit to increase the capacity of roads, it should be noted that permitting higher vehicle speed would not necessarily increase road capacity as a longer distance between vehicles is required for safe braking. The speed limit for Tuen Mun Highway is set at 70 km/h for safety reasons having regard to the hilly terrain with extensive cuttings and fillings influencing the alignment and gradient of the road.

Electronic Transfer of Patients' Data

13. **DR HUANG CHEN-YA** asked (in Chinese): *Is the Government aware of:*

- (a) *the number of patients transferred from one public hospital to another as well as the number of such transfers in each of the past two years; and the reasons for such transfers; and*
- (b) *whether an electronic data transfer system has been adopted in public hospitals to facilitate the transfer of patients' data between hospitals in a prompt and reliable manner?*

SECRETARY FOR HEALTH AND WELFARE (in Chinese): Mr President, transfers between public hospitals are mainly caused by the need for patients to receive specialized medical treatment or make use of sophisticated equipment which cannot be provided in every hospital. Furthermore, introduction of service networking and hospital clustering has facilitated tertiary referrals as well as patient movements between acute and convalescent hospitals for the continuity of care. A total of 66 453 and 60 851 transfers were made during the

12-month period ending October 1995 and 1996 respectively. Since any one patient might be involved in more than one transfer, the corresponding number of patients were 63 319 and 58 101.

Although medical records are not yet fully computerized, we are capable of transferring electronically some basic information between hospitals, such as patient demographics, brief diagnostic data and medical history. Progressive development of information technology applications will soon enable more clinical information to be transferred electronically, both within each hospital and between different hospitals. While these developments are taking place, paper medical record is still currently the major medium of capturing patient information. Over the past few years, the Hospital Authority has been reforming its medical record management system to improve efficiency and reliability.

Exorbitant Placement Fees Paid by Foreign Labourers for ACP Projects

14. **DR DAVID LI** asked: *It is learnt that some Filipino workers have paid exorbitant placement fees to certain recruiting agencies which supply foreign labour for the Airport Core Programme projects. In this connection, will the Government inform this Council whether any complaints have been received in this regard; if so, of the number of complaints which have been investigated and the number of prosecutions, if any, which have been instituted as a result of such investigations?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the operation of employment agencies in Hong Kong is subject to the Employment Agency Regulations under the Employment Ordinance. The fees which these employment agencies may collect from job applicants are prescribed in Part II of the Second Schedule of the Regulations. These Regulations prohibit employment agencies in Hong Kong from charging job registrants any amount more than that prescribed under the Schedule. The Labour Department has the responsibility to monitor the operation of the local employment agencies in accordance with the Regulations.

The Labour Department has so far not received any complaints from imported Filipino workers on the new airport sites about being charged excessive placement fees by employment agencies in Hong Kong. It will continue its enforcement efforts to ensure that all employment agencies in Hong Kong comply with these Regulations.

At the same time, the Government has, through its liaison efforts, built up a close rapport with authorities of the labour exporting countries over the regulation of labour exportation activities. In the case of Filipino workers, the Labour Department has maintained regular contacts with the Philippine Consulate for this purpose. We will continue with such efforts to ensure that all imported workers are sufficiently aware of their rights and benefits, and that any problems can be resolved promptly through co-operation.

Provision of Acute Beds in Public Hospitals

15. **MISS CHRISTINE LOH** asked: *Is the Government aware of:*

- (a) *the current provision of acute beds in public hospitals on Hong Kong Island; and*
- (b) *the provision of acute beds in each of the following hospitals upon becoming fully operational:*
 - (i) *Prince of Wales Hospital;*
 - (ii) *Tai Po Nethersole Hospital;*
 - (iii) *North District Hospital;*
 - (iv) *Tseung Kwan O Hospital?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the current provision of acute beds in public hospitals on Hong Kong Island is 4 239 as at 31

March 1996. The information requested for each of the four individual hospitals is as follows:

<i>Hospital</i>	<i>Number of Acute Beds</i>
Prince of Wales Hospital	1 294
Tai Po Nethersole Hospital	642
North District Hospital	618
Tseung Kwan O Hospital	458

Question Number 16 Withdrawn

Babies Lapsing into "Vegetative" State

17. **MR LEUNG YIU-CHUNG** asked (in Chinese): *Regarding the occurrence of cases in public hospitals involving babies lapsing into a "vegetative" state because of deficiency of oxygen in the brain during birth, does the Government know:*

- (a) of the number of such cases which have occurred in public hospitals in the past three years and their causes; and whether these causes are related to the staffing establishment for obstetric services in public hospitals or the fact that a woman in labour is allowed to choose between natural delivery and delivery by caesarean section;*
- (b) how the incidence of such cases in the territory compares with those in other countries; and*
- (c) what measures have been put in place in public hospitals to prevent new-born babies lapsing into a "vegetative" state?*

SECRETARY FOR HEALTH AND WELFARE (in Chinese): Mr President, the term "persistent vegetative state" is often used to describe patients with

sustained, complete loss of cognition whilst wake/sleep cycles and other automatic functions remain relatively intact. This condition can either follow acute, severe bilateral brain damage or develop at the final stage of progressive dementia.

Severe brain damage among new-born babies occurs most commonly as a result of birth asphyxia, leading to various degree of mental disability. Although statistics are not readily available, it is extremely rare for "permanent vegetative state" to be caused by birth asphyxia. As far as we can ascertain, no such cases was reported by public hospitals in the past three years.

There is no recognized indicator for the comparison between countries of "permanent vegetative state" as a result of birth asphyxia. The indicator most widely used internationally to compare the health status of new-born babies is the Infant Mortality Rate. At less than five per 1 000 live births in recent years, the Infant Mortality Rate in Hong Kong ranks among the best in the world.

All obstetric units in our public hospitals are managed by qualified professional staff, including midwives, to ensure quality patient care. Additional resources will be allocated by the Hospital Authority to individual units through the annual planning process, where necessary, to meet prevailing operational needs. The Authority is also refining its manpower indicators with a view to reflecting more accurately the casemix and patient acuity prevalent in different hospitals.

Natural delivery is advocated under normal circumstances for child birth which takes place in public hospitals. Where justified, clinicians will recommend caesarean section for the delivery after taking into account the prevailing medical conditions and expressed wish of patients. In all cases, however, advice will be given to the patient whose prior consent must be obtained.

Many conditions such as premature labour, multiple birth, prolapsed umbilical cord, severe maternal bleeding, maternal hypertension and toxæmia may give rise to birth asphyxia. About 70% of these complicated pregnancies can be detected in advance and the risk minimized with good fetal monitoring as well as perinatal care. All public hospitals with obstetric units have established practices and procedures to prevent or reduce the occurrence of birth asphyxia.

Stock Futures Trading Volume

18. **MR CHIM PUI-CHUNG** asked (in Chinese): *Is the Government aware of:*

- (a) *the daily average turnover of stock futures since their introduction at the Hong Kong Futures Exchange (HKFE); and*
- (b) *if the turnover mentioned in the answer to (a) above is lower than expected, whether consideration will be given to asking the HKFE to cease stock futures trading?*

SECRETARY FOR FINANCIAL SERVICES (in Chinese): Mr President,

- (a) Since the introduction of stock futures contracts in the Hong Kong Futures Exchange (HKFE) in March 1995, the average daily turnover up to the end of October is 11.3 contracts.
- (b) The HKFE did not indicate the level of turnover it expected at the time of the launch of stock futures contracts. The HKFE is licensed under the Commodities Trading Ordinance and is subject to regulation by the Securities and Futures Commission. So long as the HKFE complies with the regulatory requirements, it is free to decide whether to continue or discontinue the trading of any products on the Exchange. So far, the HKFE has no plans to discontinue trading of stock futures contracts.

Hotel Trade Effluent Surcharge

19. **MR HOWARD YOUNG** asked: *Regarding the collection of wastewater*

samples from hotels by the Environmental Protection Department (EPD) for the purpose of obtaining information that is needed in determining the rate of trade effluent surcharge, will the Government inform this Council:

- (a) of the criteria adopted by the EPD for selecting the location of the wastewater outlet in hotel premises for taking wastewater samples; and*
- (b) whether the Government will consider allowing hotels to connect different wastewater outlets to a single outlet so that a joint sample reading of the different categories of wastewater can be taken?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I have to clarify at the outset that the EPD collects wastewater samples from hotels for the purpose of enforcing the Water Pollution Control Ordinance (WPCO), and not for determining the trade effluent surcharge (TES) which is handled by the Drainage Services Department. Samples taken by the EPD are used to assess the instantaneous quality of the wastewater discharge and monitor compliance with the conditions of the discharge licence issued under the WPCO. The samples cannot be used by the Drainage Authority (DSD) for purposes related to the TES scheme because they may not conform to the requirements of the Technical Memorandum promulgated under the Sewage Services Ordinance, which requires composite samples collected over a longer period, whereas samples taken for enforcing the WPCO are grab samples.

- (a) The criteria adopted by the EPD in selecting the location of a sampling point for taking wastewater samples for enforcement of the WPCO are that the sample taken must be from the wastewater which is discharged to the sewers or waters; the location of such sampling point is set out in the discharge licence issued under section 14 of the WPCO. In determining the location of such sampling point, the Department will take into account practical requirements such as accessibility, convenience and minimal interference in the activities

of the discharger. Section 29 of the WPCO provides that the licensee may appeal within 21 days of the issue of a licence if he is not satisfied with the sampling points identified in the licence.

- (b) While combining wastewater streams into one discharge is not prohibited for discharge to sewers or waters, dilution of the discharge to achieve compliance with licence conditions is prohibited by the Technical Memorandum under the WPCO. If dilution occurs due to combination of wastewater streams, the wastewater streams will be controlled separately under the Ordinance. If the premises produces a wide range of different types of wastewater, the decision to control the combined wastewater streams as a single discharge will be taken on a case by case basis, taking into account the prohibition against dilution.

GOVERNMENT BILLS

First Reading of Bills

FRAUD BILL

DISTRICT COURT (AMENDMENT) BILL 1996

SUBMARINE TELEGRAPH BILL

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

Second Reading of Bills

FRAUD BILL

THE ATTORNEY GENERAL to move the Second Reading of: "A Bill to create the offence of fraud, to abolish the offence at common law of conspiracy

to defraud and to provide for related matters."

He said: Mr President, I move that the Fraud Bill be read a Second time.

The purpose of the Bill is to improve the existing law in respect of fraud-related crimes by creating a new statutory offence of fraud, and abolishing the existing common law offence of conspiracy to defraud, which will be replaced with a statutory conspiracy to commit the new offence of fraud.

The Bill follows recommendations contained in a report by the Law Reform Commission published in July this year, in which the Commission argued that the existing law was illogical and unsatisfactory.

Mr President, it would probably come as a surprise to many to learn that there is at present in Hong Kong no general offence of fraud, either at common law or under any Ordinance. Instead, what might loosely be described as fraudulent conduct is dealt with in a variety of ways.

- Firstly, the Theft Ordinance creates a number of specific offences of fraud-related dishonesty, such as obtaining property by deception. But these offences, because they are drawn in very specific terms, are too restrictive and technical. Developments in modern technology have revealed serious weaknesses. For example, a recent judgement from England has shown that mortgage fraud involving the electronic transfer of money did not amount to obtaining by deception. That decision, from the highest English court, has caused much confusion and uncertainty;
- Secondly, some fraudulent conduct can only be prosecuted by charging the offenders with the common law offence of conspiracy to defraud. But the trouble with this is that the essence of a conspiracy only applies to the actions of two or more persons. The actions of a single person fall outside the offence of conspiracy to defraud and are only criminal if one of specific fraud-related offences applies.

An additional problem is that the common law offence of conspiracy to defraud is so wide that it may cover almost every offence in the Theft Ordinance,

and conduct which perhaps ought not to be criminal at all. The width of the offence has also been criticized insofar as it enables the prosecution to charge a person with conspiracy instead of with a substantive offence. This can materially affect the way the trial is conducted.

Mr President, the Law Reform Commission noted in their report on the "Creation of a Substantive Offence of Fraud" that a number of jurisdictions, including Canada, Scotland and South Africa, have had a general offence of fraud for many years. Their experience is that it works well, and can readily be understood by laymen and lawyers alike. The Law Reform Commission report concluded that a general offence of fraud should be enacted in Hong Kong.

The Commission further recommended that once a general offence of fraud is created, any prosecution for conspiracy to defraud should be a prosecution for conspiracy to commit that general offence and the existing common law offence should be abolished.

Before the Law Reform Commission published its report, a consultation exercise was conducted. The overwhelming majority of those who responded to the Commission's consultation paper agreed with the recommendations. Following the publication of the Commission's report, the Bar Association and the Law Society have been consulted and both support the recommendations.

The Administration also accepts the Law Reform Commission's recommendations. A new offence of fraud would remedy the deficiencies and shortcomings in the existing law, would correspond to what most people believe should be the law, would be a welcome addition in the fight against crime and would add to Hong Kong's reputation as an international financial centre.

Let me now turn to the Bill. Clause 2 creates the offence of fraud. The offence will be committed when a person by deceit induces another to act or to make an omission resulting either in prejudice, or a substantial risk of prejudice, to another, or benefit to the fraudster or to some other person. The advantage of the new offence is that it would enable conduct to be properly charged as a substantive offence against an individual acting alone, without the necessity of involving another participant. The new offence would also avoid the artificiality of charging a person with conspiracy to defraud where the fraud has

actually been committed and the fraudster has achieved his ends. The new offence would place fraudulent conduct within more precise bounds by tying it to deceit rather than dishonesty.

Clause 3 of the Bill abolishes the common law offence of conspiracy to defraud.

Mr President, this Bill is short but important. By putting in place a general offence of fraud, and abolishing the common law offence of conspiracy to defraud, it will rid our law of many defects, technicalities and loopholes, and will enable us to deal more effectively with all types of fraud. I commend the 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).

DISTRICT COURT (AMENDMENT) BILL 1996

THE ATTORNEY GENERAL to move the Second Reading of: "A Bill to amend the District Court Ordinance."

He said: Mr President, I move that the District Court (Amendment) Bill 1996 be read the Second time. The Bill aims to encourage a greater flow of civil work directly into the District Court and to improve the District Court Ordinance in various respects.

First established in 1953, the District Court is the second tier of the court system in Hong Kong. At present, the District Court has a general jurisdiction to deal with claims in contract or tort where the amount claimed is, or is worth, not more than \$120,000. In relation to such matters as the administration of an estate or the execution of a trust, the District Court also has jurisdiction where the property is worth not more than \$120,000. Where the proceedings are for the recovery of land, or relate to the title to land, the rateable or annual value of the land must be not more than \$100,000 in order for the District Court to have jurisdiction.

These financial limits were set in July 1988. The accumulated inflation rate from 1 July 1988 to 30 June 1996, as measured by the Consumer Price Index (A), was 98.2%. Property prices and rental values have also increased significantly during this period. Many civil cases that would in the past have been within the jurisdictions of the District Court now fall outside that court's jurisdiction. The result is that there is increasing pressure on, and delay in, the High Court.

In October 1991, the Chief Justice appointed a working party under the chairmanship of the Honourable Mr Justice KEMPSTER to consider the terms of the District Court Ordinance, the District Court Civil Procedure (General) Rules and the District Court Civil Procedure (Forms) Rules and to recommend amendments. The working party submitted its report in June 1993 and the Chief Justice accepted those recommendations in August 1993.

After further consultation and consideration, the Administration has accepted the working party's recommendations. The implementation of these recommendations will entail extensive amendments to the District Court Ordinance. Some of the working party's recommended financial limits also have had to be revised further to take account of inflation and the increase in property prices and rental values since the report was completed.

The Bill proposes to raise the various financial limits of the civil jurisdiction of the District Court to enable more civil cases dealing with claims in contract or tort to be heard in the District Court, and also to reflect inflation and the rise in property prices and rental values since these limits were last fixed. These proposals include revising the general jurisdiction of the District Court in respect of contract and tort from \$120,000 to \$300,000; and in respect of the recovery of land or the title to land from a rateable value of \$100,000 to \$500,000. For claims in respect of personal injuries, the Bill proposes a financial ceiling of \$600,000.

The Bill also makes clear that the District Court has jurisdiction over applications made under section 6 of the Married Persons Status Ordinance.

That section enables a married person to seek a determination by the court of any question between the married couple as to the title to or possession of property. The various amendments to the jurisdiction of the court are found in amendments contained in clauses 19 to 21 of the Bill.

The proposed increase in the District Court's jurisdiction may mean that some cases are started in that court which would more appropriately be dealt with in the High Court. It is therefore proposed that the District Court should have the power, either on its own motion or on the application of any party, to order the transfer to the High Court of all or part of the proceedings before it. This power is set out in the proposed new section 43, in clause 21 of the Bill. That clause also contains new sections providing for the transfer to the District Court of cases inappropriately commenced in the High Court and *vice versa*. A court that orders a transfer of proceedings in the situations I have described is empowered to make an order for costs both prior to the transfer and in respect of the transfer.

The increase in the jurisdictional limit of the District Court is also likely to result in additional judicial work being handled by the Registrar of the District Court. This is reflected in amendments to the Ordinance that recognize the Registrar's role in the court process. For example, the proposed new section 71A of the Ordinance, in clause 38, empowers the Registrar to apply to the Court for an order giving directions to a court bailiff in a difficult or doubtful case. And proposed new section 71B, in the same clause, provides protection to the Registrar for acts done by a bailiff in accordance with directions given by the Registrar or by the Court.

Mr President, it is also considered appropriate to bring the powers of the District Court into line with those of the High Court in two respects. First, the proposed new section 48B, contained in clause 22, gives a District Judge the same powers as a judge of the High Court to punish a person for disobeying a court judgment or order, or a breach of undertaking. Secondly, new sections contained in clause 22 introduce procedures for disclosure in respect of proceedings for personal injuries, and proceedings arising out of the death of a person. These procedures will enable a person who is, or is likely to be, bringing such proceedings to apply to the court for an order requiring another

person to produce to the applicant's legal or other professional adviser documents that are relevant to the claim.

Clauses 13, 14 and 15 provide for heavier penalties for various offences by officers of the court who abuse their authority, and clauses 16 and 17 provide for heavier penalties for persons who wrongfully retake goods seized by the court, or who assault officers of the court. Most of the existing penalties were set long ago in 1962.

Mr President, this Bill represents a further reform to the administration of justice in Hong Kong, and once again, I commend it to this Council for early passage into law.

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).

SUBMARINE TELEGRAPH BILL

THE SECRETARY FOR ECONOMIC SERVICES to move the Second Reading of: "A Bill to give effect in Hong Kong to the Convention for the Protection of Submarine Cables made at Paris on 14 March 1884."

He said (in Cantonese): Mr President, I move that the Submarine Telegraph Bill be read a Second time.

The purpose of this Bill is to localize the United Kingdom Submarine Telegraph Act 1885 which currently forms part of the law of Hong Kong. The Act and the Convention for the Protection of Submarine Cables on which the Act is based are still relevant to Hong Kong today. The main purpose is to protect submarine cables which are an essential part of our modern telecommunications infrastructure.

The Bill basically replicates the provisions of the United Kingdom Act but with modifications to conform to Hong Kong's legislative style, with updated

penalties and with omissions where there are already comparable provisions or where the Act's provisions are archaic.

The Bill will continue the protection given by the Act to submarine cables landed in the territories of Contracting Parties to the Convention for the Protection of Submarine Cables. This includes submarine cables landed in Hong Kong and this will continue to be the case after 30 June 1997. The Bill provides that persons who deliberately break or damage such a cable are liable unless they come within the scope of certain defences. Where any offence under the Bill is committed by means of a vessel, the master of a vessel is deemed to be in charge of and navigating it unless some other person can be shown to have been so.

Clause 3 establishes that the Convention will continue to have the force of law.

Clause 4 makes it an offence for persons to damage submarine cables landed in the territory of Contracting Parties to the Convention (including Hong Kong). Certain defences, such as that showing the action which led to the damaging of the submarine cable was necessary to avoid injury, loss of life or of a vessel, are provided under clause 5.

Mr President, with these words, 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).

Resumption of Second Reading Debate on Bill

THE HONG KONG INSTITUTE OF EDUCATION (AMENDMENT) BILL

1996

Resumption of debate on Second Reading which was moved on 9 October 1996

Question on the Second Reading of the Bill put and agreed to.

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.

THE HONG KONG INSTITUTE OF EDUCATION (AMENDMENT) BILL 1996

Clauses 1 to 9 and 11 agreed to.

Clause 10

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, I move that clause 10 of the Hong Kong Institute of Education (HKIEd) (Amendment) Bill 1996 be amended as set out in the paper standing under my name which has been circulated to Members.

Clause 10 proposes to repeal the whole of section 22(3) in the Ordinance so as to relieve the HKIEd of the requirement for gazetting its rules. We have subsequently received legal advice that repealing section 22(3) of the Ordinance altogether may give rise to a legal argument that the intention is to turn the rules

made by the HKIEd Council into subsidiary legislation for the purpose of section 34 of the Interpretation and General Clauses Ordinance. This is because subsection 22(3) expressly specifies that rules made under that section shall not be treated as subsidiary legislation.

To avoid possible doubts and to reflect the intention of the Administration accurately, we therefore propose that, instead of repealing the whole of section 22(3) of the Ordinance, it should be amended by substituting the words "shall be published in the Gazette but" with "shall be published, for information, in such manner as the Council thinks fit and". The new proposed amendment has the added advantage of enabling the HKIEd Council to determine how the rules are to be published.

The proposed Committee stage amendment to clause 10 of the Bill has been agreed by the House Committee of this Council.

Mr President, I beg to move.

Proposed amendment

Clause 10

That clause 10 be amended, by deleting "repealed" and substituting —

"amended by repealing "in the Gazette but" and substituting "for information, in such manner as the Council thinks fit and".

Question on the amendment proposed, put and agreed to.

Question on clause 10, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bill

THE SECRETARY FOR EDUCATION AND MANPOWER reported that

THE HONG KONG INSTITUTE OF EDUCATION (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.

MEMBERS' MOTIONS

LEGISLATIVE COUNCIL (POWERS AND PRIVILEGES) ORDINANCE

MR IP KWOK-HIM to move the following motion:

"That, with effect from 20 November 1996, the Resolution made and passed by the Legislative Council for the purpose of section 15 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) on 25 May 1994 be amended -

(a) by deleting paragraph 1 of the Schedule and substituting -

"1. In this Schedule -

"relevant body" (有關方面) means the chairman and deputy chairman (if any) of the committee before which the witness is attending to give evidence or to produce any paper, book, record or document, and references to the delivering of the opinion of the relevant body, where it comprises a chairman and a deputy chairman, shall be taken to mean the opinion of the chairman where the chairman and deputy chairman disagree;

"witness" (證人) means -

- (a) a person lawfully ordered to attend to give evidence or to produce any paper, book, record or document before a committee; and
- (b) any public officer designated by the Governor under section 8A(2)(b) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) for the purpose of attending sittings of a committee.";

(b) by adding a Chinese text as set out in the Schedule to this Resolution.

附表

議決由一九九四年五月二十五日起，對於任何人士應訊出席立法局某委員會會議時所提出有關“基於公眾利益而享有特權”的要求，作出裁決的常習及慣例將如本決議附表所載述。

1. 在此附表 —

“有關方面” (relevant body)指委員會的主席及副主席（如有的話），而該委員會是證人到其席前作證或出示任何文據、簿冊、紀錄或文件，若有關方面由主席及副主席組成，在正副主席意見出現分歧的情況下，凡提述有關方面作出的裁定，須理解為主席的裁定；

“證人” (witness)指 —

- (a) 被合法地命令到委員會席前作證或出示任何文據、簿冊、紀錄或文件的人士；及
- (b) 總督根據《立法局（權力及特權）條例》（第382章）第8A(2)(b)條為出席委員會會議事宜而指定的任何公職人員。

2. 倘在委員會的公開會議上，證人拒絕公開或閉門回答任何可能向他提出的問題，或拒絕出示任何文據、簿冊、紀錄或文件，並要求享有特權，所稱原因是作答或出示有關文據、簿冊、紀錄或文件將有違公眾利益，則下列程序適用 —

- (1) 主席須告知證人，他可以向有關方面在保密情況下解釋其理由，而該有關方面將向委員會作出裁定，但卻不會透露證人聲稱他應有特權不透露的任何資料或文據、簿冊、紀錄或文件。
- (2) 倘證人同意有關方面解釋其理由，則該有關方面須作出安排考慮此等理由，並告知委員會其裁定。
- (3) 倘有關方面裁定，證人要求有特權，毋須回答某一問題或出示某份文據、簿冊、紀錄或文件的理由充分，則委員會須免證人回覆此問題或出示此份文據、簿冊、紀錄或文件。
- (4) 倘有關方面裁定，證人要求享有特權，毋須回答某一問題或出示某份文據、簿冊、紀錄或文件的理由不充分，則委員會可命令證人回答有關問題或出示有關文據、簿冊、紀錄或文件。
- (5) 倘證人繼續拒絕回答某一問題或出示某份文據、簿冊、紀錄或文件，則委員會可採取其認為合適並在其權力範圍內的行動。
- (6) 倘證人不同意根據第(2)分段的安排向有關方面解釋其理由，則委員會可採取其認為合適並在權力範圍內的行動。

3. 倘證人在委員會公開會議上，以基於公眾利益而享有特權為理由，拒絕公開回答任何可能向其提出的問題，或拒絕公開出示任何文據、簿冊、紀錄或文件，但卻要求在委員會的閉門會議上回答此等問題或出示此等文據、簿冊、紀錄或文件，則下列程序適用 —

- (1) 委員會閉門商議是否接納證人的要求。
- (2) 委員會須正式表決以作決定。
- (3) 倘委員會決定接納證人的要求，則證人在閉門會議所作的答覆或所出示的文據、簿冊、紀錄或文件一律不得公開。除非委員會在有關閉門會議決定證人要求保密的理由不充分，則作別論。在作出此等決定前，委員會須讓證人有機會就某項答問或某份文據、簿冊、紀錄或文件而說明其基於公眾利益，要求享有特權的理由。"

MR IP KWOK-HIM (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

The motion seeks to propose certain technical amendments to the Resolution made and passed by the Legislative Council on 25 May 1994 which sets out the usage and practice in regard to the determination of claims of "public interest privilege" made by persons appearing before a committee of the Council under the Legislative Council (Powers and Privileges) Ordinance.

This Council passed a resolution on 23 October 1996 to appoint a Select Committee to inquire into the circumstances surrounding the departure of Mr LEUNG Ming-yin, former Director of Immigration, from the Government and related issues. The Select Committee has held its first meeting and noted that in the Resolution passed in 1994, the authority for determining whether to allow a claim of "public interest immunity" rests with the "relevant body" which is defined as "the Chairman and Deputy Chairman of the Committee before which the witness is attending to give evidence or to produce any paper, book, record or document". It further stipulates that "reference to the delivering of the opinion of the relevant body shall be taken to mean the opinion of the Chairman where the Chairman and Deputy Chairman disagree".

The Select Committee envisages that if its inquiry should come to a stage where a claim of "public interest immunity" is made, the application of the above provisions in the 1994 Resolution may run into a technical difficulty because the Standing Orders of the Council do not provide for the appointment of a deputy chairman for a select committee.

In order to ensure that the provisions in the 1994 Resolution may be applied if a claim of "public interest immunity" is made in the course of the Select Committee's inquiry, the Committee recommends that the Resolution be amended to the effect that the authority for determining whether to allow a claim of "public interest immunity" is with the Chairman of the Select Committee. The recommendation has been endorsed by the House Committee.

The opportunity is taken to adopt a Chinese text of the Resolution at the same time the proposed technical amendments are made.

With these remarks, Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

PRESIDENT (in Cantonese): A motion with no legal effect. I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debate, and Members were informed by circular on 19 November. The mover of the motion will have 15 minutes for this speech including this reply, and another five minutes to speak on the proposed amendments. Other Members, including the movers of the amendments, 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 speech.

Members were informed on Monday that I would make a more detailed announcement at this sitting concerning my ruling that the Honourable Miss Emily LAU's notice of her proposed motion on "Election of the Chief Executive of the Hong Kong Special Administrative Region" should be returned to her.

On 5 November 1996, Miss LAU gave notice of the motion to the Clerk. I directed on 7 November 1996 that the motion be printed in the Order Paper in the terms in which it was handed in, and Members were notified of the proposed motion on 8 November 1996.

On 12 November 1996, I ruled that the Honourable SZETO Wah's Bill — the Prevention of Corrupt and Illegal Practices at the Election of the Chief Executive of the Hong Kong Special Administrative Region Bill, had no charging effect within the meaning of Standing Order 23, and ordered that arrangements be made for it to be published in the Gazette last Friday. And Mr SZETO has given notice to introduce the Bill at this sitting.

Since then, I have had time to study in detail the content of Mr SZETO's

Bill and the related Legislative Council Brief issued by Mr SZETO to Members. My conclusion is that both Miss LAU's proposed motion and the Bill refer in essence to the same matter — that there have not been clear regulations made to supervise the process of selecting the Chief Executive and that the guidelines issued to the Selection Committee are not adequate.

Erskine May (21st Edition, pp. 327-8), on the rule of anticipation, states that "a matter already appointed for consideration cannot be anticipated by a motion"; "a matter must not be anticipated if it is contained in a more effective form of proceeding"; and "A bill is more effective than a motion".

The essence of the matter is that this Council's time can be employed more effectively by considering the more effective Bill.

I have therefore ruled that Miss Emily LAU cannot proceed with her proposed motion as it anticipates Mr SZETO's Bill which has been appointed for consideration by the Council.

As Miss LAU's motion cannot be moved, the Honourable David CHU's proposed amendment cannot proceed either.

I regret any inconvenience caused to Members eventuated by the change in circumstances.

GARRISON LAW

DR ANTHONY CHEUNG to move the following motion:

"That this Council urges the Chinese Government to explain and consult the people of Hong Kong as soon as possible on the draft law governing the garrison in the Hong Kong Special Administrative Region (SAR); and to listen to the views of the Hong Kong people on the jurisdiction of the courts over the garrison stationed in Hong Kong and revise the draft law to the effect that any contravention of the laws of the SAR by the garrison and related members, irrespective of whether they are on duty or not, shall be tried by the courts in Hong Kong, so as to ensure that the law governing the garrison is in line with Article 14 of the Basic Law which provides that members of the garrison shall abide by the laws of the SAR".

DR ANTHONY CHEUNG (in Cantonese): Mr President, I move the motion

standing in my name on the Order Paper.

This is the second time that I move a motion debate on the question of the Garrison Law. I move a second debate within a short period of four months because the Chinese Government has recently announced a draft law governing the garrison without actually consulting the Hong Kong people. Besides, the stipulation concerning jurisdiction in the draft has aroused wide public concern. As the most important organization representing public opinions in Hong Kong, the Legislative Council has a duty to discuss the controversial parts in the draft Garrison Law and reflect the various views and anxieties of the community.

The Democratic Party has long been concerned about the Garrison Law and has already published four reports on the subject. On 10 July this year, I moved a motion debate on the Garrison Law. However, some Members expressed that it was beyond the functions and powers of the Legislative Council and was inappropriate for this Council to discuss the Garrison Law. I hope that in the motion debate today, Honourable Members can, in a pragmatic manner, have a substantive discussion on the draft Garrison Law and make concrete recommendations instead of evading the question under the pretext that "the Legislative Council is only a consultative organization of the British Hong Kong Administration".

On 23 October, the Chinese military authorities submitted the draft law governing the garrison in the Hong Kong Special Administrative Region (SAR) to the Standing Committee of the National People's Congress (NPC). On the same day, Mr FU Quanyou, Chief of the General Staff of the Chinese People's Liberation Army (PLA), made a presentation on the draft Garrison Law to the Standing Committee of the NPC. Nevertheless, up till now, the Chinese Government has not in any way consulted the Hong Kong people on this issue through any formal channel. Moreover, the public can only learn about the text of the draft law through a local newspaper. But there is no way we can find out whether this text is the "authentic" version or not. Such dodgy way of not announcing this draft law which has a significant impact on all the people of Hong Kong is indeed unbelievable and regrettable. Here, I would like to call upon the Chinese Government to open itself and decide on a reasonable public consultation period, truly listen to the opinions of the Hong Kong people and improve the draft law through incorporating people's views so that it is acceptable to the Hong Kong people.

In the presentation by Mr FU Quanyou to the Standing Committee of the NPC on the draft Garrison Law, he said that the draft law was formulated with reference to the Hong Kong legislation and the legal system relating to the British garrison in Hong Kong. However, we have to bear in mind that simply copying or conforming to the existing practice of the British garrison in Hong Kong is not necessarily the right approach. As I emphasized in the motion debate on 10 July, the draft Garrison Law should have "three compliances": that is, it should comply with the principle of "one country, two systems", comply with the Basic Law and comply with the regulatory and legal principles familiar to the Hong Kong people. After the draft Garrison Law has come into light, not a few Hong Kong people are mainly concerned and worried that the arrangement on jurisdiction in the draft law may not achieve the above "three compliances", particularly the regulatory and legal principles familiar to the Hong Kong people.

Mr President, in regard to criminal jurisdiction, Article 20 of the draft law only states that the guiding principle in criminal jurisdiction is that "criminal offences committed by members of the Hong Kong garrison shall fall within the jurisdiction of the military courts". In other words, it is a principle of "the military court takes precedence". And only when "members of the Hong Kong garrison, not in the course of their duties, infringe the personal rights and property rights of Hong Kong residents and other persons not belonging to members of the Hong Kong garrison, and commit other acts which constitute a crime in the SAR, shall they be subject to the jurisdiction of the courts and the relevant law enforcement agencies of the SAR". In other words, only when members of the garrison break the law of the SAR when not in the course of their duties would they be subject to the jurisdiction of the courts of the SAR.

In the second paragraph of Article 20 of the draft law, it is provided that: "In respect of criminal cases committed by members of the Hong Kong garrison which are subject to the jurisdiction of the military courts, those Hong Kong residents or persons other than members of the Hong Kong garrison being charged as suspects shall be tried by the courts of the SAR." From this provision, we can deduce that all criminal cases solely concerning military personnel in the course of their duties, shall be tried by the military courts. For criminal cases committed in the course of execution of duties involving members of the garrison and Hong Kong residents or persons not belonging to the garrison, the factor of identity comes in. Members of the garrison will be tried by the military courts while the other persons will be tried by the courts of the SAR. Superficially, this arrangement is a combination of the Chinese practice of

determining whether it is the jurisdiction of the military courts or the civil courts based on the identity of suspects and the existing practice of the British garrison in Hong Kong. However, in reality, this arrangement has neglected the integrity of the jurisdiction of the courts of the future SAR.

The Democratic Party has all along advocated the principle of "the civil court takes precedence" in dealing with criminal and civil acts involving the garrison in the SAR. According to this principle, whenever there are criminal acts in breach of the laws of the SAR and where Hong Kong residents and non-garrison personnel are involved, the case shall first be tried by the courts of the SAR. Only when the SAR court thinks that the case should not be tried by it that the case would then be transferred to the military courts. This approach is adopted to show respect for the courts of the SAR. According to Article 19 of the Basic Law, there is full arrangement on jurisdiction. According to the Basic Law, the SAR courts have jurisdiction over all cases except the "acts of state". However, not all the acts of members of the garrison "in the course of their duties" are "acts of state".

On the other hand, Mr President, in regard to civil jurisdiction, this is stipulated in Article 23 of the draft Garrison Law. Where there is failure of mediation or unwillingness to mediate, cases of tortious acts committed by members of the garrison "not in the course of their duties" shall be tried by the courts of the SAR, whereas those tortious acts committed "in the course of their duties" shall be tried by the Supreme People's Court in Beijing. This stipulation entails serious legal and practical operational difficulties.

Some groups have held that although the current arrangement of the draft law is not ideal, it is still acceptable. That is because according to Article 146 under Chapter VIII of China's General Rules of Civil Law concerning the application of civil laws in cases involving an external party, damages for tortious acts shall be determined by the laws of the place where the tortious acts occur. They therefore think that the laws of the SAR will be applicable in the Supreme People's Court. We do not think so.

As some scholars have pointed out, in respect of the General Rules of Civil Law, the term "external party" does not include Hong Kong residents. This view can be substantiated by a written comment from the Supreme People's Court on 6 December 1984, entitled "Comment on whether cases involving people from Hong Kong and Macau holding British Dependent Territories

Citizen Passports and Identity Cards issued by the Portuguese Macau authorities suing and being sued at the people's courts in China should be regarded as cases involving an external party". It has given a very clear remark on this question. We, therefore, reckon that civil cases of Hong Kong should not be treated as cases "involving an external party" after 1997.

Even though in the future the NPC of China is willing to legislate to grant the "external party" status to the SAR within the same country, there still exist major problems on the practical application and technical aspects of law. It is not appropriate for the Supreme People's Court to be the place of trial. In regard to the trial of civil cases, the legal system in mainland China has long been emphasizing the principle of "facilitating litigation by the people". Therefore, future civil litigation involving the garrison should also adopt the principle of "the civil court takes precedence". It is because the Supreme People's Court in Beijing is too far away and is totally inconvenient for litigation by Hong Kong residents. Besides, in respect of legal application, we can hardly expect the Supreme People's Court, which is under a different legal system, to adopt the common law principles customarily used in Hong Kong to try those cases occurred in Hong Kong. According to the stipulations in the Law of Organization of the Chinese People's Courts", final adjudication lies in the Supreme People's Court. This "single trial final appeal system" is totally different from the "multiple trial final appeal system" which is more familiar to the Hong Kong people or the "double trial final appeal system" adopted in the Mainland. Also, the prescription in civil litigation is shorter in the Mainland than that in Hong Kong. Even in other matters, for example, the principles of compensation for tortious acts, arrangement of submitting evidence, handling of cross-border documents and the like, there is still a lack of clear and reasonable arrangement. With all these kinds of practical difficulties still up in the air, the present draft Garrison Law has never helped, as some people have suggested, to allay the worries of the Hong Kong people in regard to the arrangements of the garrison in the future.

The Democratic Party thinks that in respect of civil jurisdiction, the principle of "the civil court takes precedence" should also apply. All civil cases involving members of the garrison in Hong Kong and the SAR residents as well as non-garrison personnel should first be tried by the courts of the SAR. Only in this way can the worries of the public towards the jurisdiction of the future garrison be really allayed.

Mr President, we are not worried that the PLA will not display itself as a powerful force. We are also not blowing it out of scale by painting the PLA as the force of all evil or as sinners condemned through the ages. The purpose of the debate is for Members to put forward constructive ideas which are in line with legal principles and the legal system, as well as to voice our views on the concerns of Hong Kong people in the hope that the Chinese Government and the Chinese garrison will be law-abiding without seeking privileges and will not interfere in the internal affairs of the SAR. More often than not, extreme situations are considered in the process of legislation to devise a corresponding legal scenario. In regard to the current criticism against the draft Garrison Law, the Democratic Party is also adopting this attitude.

Mr President, in this motion debate, we hope that the Chinese Government will listen to the opinions of the Hong Kong people with an open attitude, will not mechanically react strongly to some of the views of the Hong Kong Government or the British Government and regard them as the "apple of discord", turning the issue of the Garrison Law into yet another Sino-British struggle lashing out at Hong Kong.

Other issues concerning the draft Garrison Law, for instance the legal status of the Garrison Law in Hong Kong in the future and some ambiguous definitions, will be discussed by other Members from the Democratic Party later on.

Mr President, with these remarks, I beg to move.

Question on the motion proposed.

PRESIDENT (in Cantonese): Members have been informed by circular on 18 November that Mr IP Kwok-him and Mr LEUNG Yiu-chung have separately given notice to move an amendment to this motion. As there are two amendments to the motion, I propose to have the motion and the amendments debated together in a joint debate.

Council shall now debate the motion and the two amendments together in a joint debate. I will call upon Mr IP Kwok-him to speak first, to be followed by

Mr LEUNG Yiu-chung; but no amendments are to be moved at this stage. Members may then express their views on the original motion as well as the proposed amendments to the motion.

MR IP KWOK-HIM (in Cantonese): Mr President, this is the second time that I speak on the question of the Garrison Law on behalf of the Democratic Alliance for the Betterment of Hong Kong (DAB) within a short period of four months.

The various arrangements contained in the draft Garrison Law announced by the Chinese Government differ significantly from the established practice the central authorities of China used to govern the armed forces. The difference is even more marked on the question of jurisdiction: The draft law has clearly stipulated that should members of the garrison forces get involved in civil or criminal cases whilst they are not in the course of execution of duties, the Hong Kong Special Administrative Region (SAR) Government has the full power of adjudication. As to cases arising in the course of execution of duties, the draft law has also made specific arrangements. From this we can see that in drafting the Garrison Law, there have been meticulous studies and references have been made to the relevant ordinances governing the British garrison in Hong Kong. Also, a number of existing arrangements for the British garrison in Hong Kong have been adopted.

Undeniably, the Garrison Law has been drawn up according to the legal system in mainland China, and Hong Kong people who have been living in a common law environment may find the wording in certain parts of the Garrison Law not so easy to understand. The DAB is of the view that there are areas in the Garrison Law that need be improved, and it is necessary for the Chinese Government to further explain to the people of Hong Kong certain parts of the wording. However, the DAB generally feels that the announcement of the Garrison Law has helped remove quite a lot of the misgivings of the Hong Kong people. We can see this simply by reading the positive public opinions the mass media have covered since the announcement of the draft law, and even officials of the Hong Kong Government have openly expressed that "the draft law is a reassurance to Hong Kong". All these are forceful proof that the announcement of the Garrison Law has positively helped the people of Hong Kong to deal with matters regarding the garrison of the People's Liberation Army in Hong Kong.

Mr President, the DAB have reservations about the two main points put

forth by Dr CHEUNG in his motion, namely, to ask the Chinese Government to openly consult the people of Hong Kong and to let the courts of the SAR deal with criminal or civil proceedings involving members of the garrison who have contravened the laws of Hong Kong, irrespective of whether they are on duty or not when they commit the offence.

First of all, on the question of the so-called "open consultation". If we support Dr CHEUNG's motion, it means that we are accusing the Chinese Government of not listening to the views of the people of Hong Kong to this day. In fact, by announcing the draft Garrison Law, the Chinese Government is

PRESIDENT (in Cantonese): Mr IP Kwok-him, please be seated for the moment. Mr James TO, do you have a point of order?

MR JAMES TO (in Cantonese): Mr President, why has the Honourable IP Kwok-him mentioned thrice that China has announced the draft Garrison Law? Are we debating this question? It is because in fact, the Chinese Government has never promulgated the draft Garrison Law. I wonder whether the President has already made a ruling to the effect that he can use the wording as such. If not, the focus of the entire debate later on, including the speech of Mr IP Kwok-him, will be incorrect. Mr President, has the draft Garrison Law been announced recently? Have you approved that he can use such wording when he moves his amendment later?

PRESIDENT (in Cantonese): Mr James TO, please be seated. Mr IP Kwok-him has deleted all the effective wording in the motion moved by Dr Anthony CHEUNG and replaced it with the following: "the draft law governing the garrison in the Hong Kong Special Administrative Region recently announced by the Chinese Government". To show whether the draft Garrison Law has been announced or not is entirely the responsibility of Mr IP Kwok-him himself. The Chair has no obligation to verify whether the draft Garrison Law has been announced.

MR IP KWOK-HIM (in Cantonese): If, as the Honourable James TO said, the Garrison Law has not been announced, I do not know how Dr Anthony

CHEUNG could propose to discuss it. Mr President, first of all, I would like to touch on the question of "public consultation". If we support Dr CHEUNG's motion, it would imply that we think the Chinese Government is still unwilling to listen to Hong Kong people's views. In fact, by announcing the draft Garrison Law, the Chinese Government is seeking opinions from all sides. We believe that the Chinese Government is receptive to views and suggestions published in different forms and through different channels by the Hong Kong people, including the views expressed by Dr CHEUNG even before the announcement of the draft. The Democratic Alliance for the Betterment of Hong Kong (DAB) would like to call upon the people of Hong Kong to actively put forward their views on the draft Garrison Law and not to wait for the Chinese Government to start any "open consultation" as Dr CHEUNG suggests. In fact, open consultations have already begun.

Jurisdiction

With regard to the second point raised by Dr CHEUNG on the question of jurisdiction, Dr CHEUNG suggests in his motion that all legal cases involving Hong Kong people should be tried in the courts of the SAR, irrespective of whether members of the garrison are carrying out their duties or not. The DAB has reservations about this.

First of all, Article 14 of the Basic Law clearly provides that the state shall be responsible for national defence and diplomatic affairs, which are deemed acts of state. Which country would let cases concerning offences committed by members of the military while they are on duty be tried by the civil courts? The answer, I am afraid, is no country would. Although at present the Commanding Officer of the British Forces stationed in Hong Kong can issue an administrative decree for cases involving offences committed by members of the military while on duty to be referred to Hong Kong courts for trial, please remember that the ultimate power to hand over such cases still rests with the British Forces, and not with the Hong Kong judiciary.

The DAB is of the opinion that the prevailing practices which apply to the British garrison should be assimilated and adopted as much as possible in formulating the Garrison Law. However, the prerequisite is that while protecting the interests of Hong Kong people, China's state sovereignty must be manifested, as opposed to what Dr CHEUNG suggests that all cases involving

Hong Kong people should be tried by the SAR courts.

With regard to the jurisdiction over cases of tort, as the DAB sees it, Article 146 under Chapter VIII of the General Rules of Civil Law should be sufficient to protect the rights and interests of Hong Kong people. The Article provides that in claims against tortious acts, the laws of the place of abode of the parties concerned shall apply. In other words, even if the cases are heard in the Supreme People's Court in mainland China, they may still be based on common law principles. Although the details of such trials are not spelt out explicitly in the draft law, these technical points can be resolved through mutual consultation by the two Governments in the future. The problem arising from the difference of opinion over whether such trials should be held in mainland China or in the SAR is not an insurmountable one.

Mr President, the DAB hopes that the future Garrison Law can manifest state sovereignty while protecting the interests of Hong Kong people.

With regard to the amendment proposed by the Honourable LEUNG Yiu-chung, it is already provided in Article 14 of the Basic Law. If Mr LEUNG can re-read the Basic Law, he will easily find the answer he wants.

Mr President, with these remarks, I propose the amendment.

PRESIDENT (in Cantonese): Mr IP Kwok-him, you cannot move your amendment yet.

MR LEUNG YIU-CHUNG (in Cantonese): Mr President, as the saying goes, "You can always gain new insight from studying old material." I will first quote an excerpt from a very well-known newspaper editorial in order to introduce my amendment:

"Very few people their purpose is neither for promoting the development of socialist democratic politics in China, nor for expressing their grievances. They wave the banner of democracy to damage the democratic legal system, aiming at confusing people's minds, disturbing the order of the nation, and destroying the stability and unity of the political situation. It is a planned conspiracy, a turmoil.....a serious political struggle, unfolding before the whole nation, the whole Party and all nationalities."

"If we adopt a lenient attitude towards this turmoil and let it develop at will, then a serious confusion will result. All the people's, including the young students' wishes for reformation and openness, order and restructuring, construction and development, price control, improvement in people's livelihood, anti-corruption, the establishment of democratic and legal systems, will all end up in smoke. The gigantic achievements after 10 years of reforms may also vanish, and the great hope of building a stronger China by the whole nation will never materialize. Also, a promising China with a bright future will become a chaotic and unstable China with no more future."

"The whole Party and all the people of China should fully appreciate the seriousness of this struggle, uniting all together to launch a counter-attack against the turmoil with a clear-cut stand....."

Mr President, as Members will recall, this is an excerpt from the editorial of the People's Daily on 26 April. It was an important editorial which determined the nature of the 1989 student movement in Beijing, and ultimately led to the crackdown by the People's Liberation Army on 4 June!

It can be said that "turmoil" is the most sensitive issue to the Chinese leaders, and "opposition to turmoil" can also be used by the Chinese Government as an excuse to suppress different opinions — it is strongly believed that as such is the case in China today, it will also be the case in Hong Kong after 1997.

Article 18 of the Basic Law stipulates that in the event that the Standing Committee of the National People's Congress (NPC), by reason of turmoil within the Hong Kong Special Administrative Region (SAR) which endangers national unity or security and is beyond the control of the government of the Region, decides that the Region is in a state of emergency, the Central People's Government may issue an order applying the relevant national laws in the Region. Article 6 of the draft Garrison Law also prescribes that in the event that the Standing Committee of the NPC decides that the Region is in a state of emergency, the Hong Kong garrison forces shall discharge their duties pursuant to national laws applied to the SAR in accordance with the decision of the Central People's Government.

In short, according to the provisions in the Basic Law and the draft Garrison Law, in future, apart from carrying out duties involving national defence and diplomatic affairs, when the Central Government by reason of turmoil in Hong Kong decides that Hong Kong is in a state of emergency, then

the national laws including the martial law will be applied in Hong Kong, and members of the Hong Kong garrison will also have the right to participate in "suppressing disturbances". Actually, what situation can be construed as a turmoil? When shall there be a curfew? Under what circumstances can the garrison carry out military suppression? The experience of the "June 4" crackdown clearly indicates to the people of Hong Kong and the world that the word "turmoil" to the Chinese Government is only a pretext for of its intolerance of any opposing voices. In order to suppress the dissidents, members of the army are empowered to shoot the ordinary citizens in the streets as they wish!

Therefore, I insist the Garrison Law shall prescribe that apart from carrying out duties involving national defence and diplomatic affairs, the Hong Kong garrison must obtain the approval from the SAR Government before they can carry out any other duties. In this way, it can be ensured that the Central Government will not send troops to suppress the dissidents under the guise of "stamping out disturbances".

Also, under Article 11 of the draft Garrison Law: "The Hong Kong garrison shall give notice in advance to the Government of the SAR for holding military activities such as training or exercise which involve the public interest of the SAR." The question is the SAR Government will only be informed about the military exercise, and there is no need to have its consent for such exercise. This may give the garrison a good opportunity to intervene in the internal affairs of Hong Kong in future. For example, if Members in the future legislature still have the courage to put forward motions like "the release of WANG Dan", will the Chinese Government send the People's Liberation Army to practise with live ammunition outside the legislature in order to threaten the Members, so as to demonstrate that the people's own army has the determination and ability to safeguard the judicial independence of China? Of course, if the SAR Chief Executive thinks that some people in the legislature have made too much noise which is not so desirable, will he also like to see the Hong Kong garrison carry out more exercises outside the legislature, so that Members of the legislature will not dare to make a sound?

Undoubtedly, in order to ensure that the Hong Kong garrison will not abuse their power, apart from carrying out duties involving national defence and diplomatic affairs which are the responsibilities of the Central Government, the Hong Kong garrison must obtain prior approval from the SAR Government before they can carry out any other duties. I have to reiterate that this Council

has the responsibility to clearly express the worries and views of the people of Hong Kong before the enactment of the Garrison Law. All my colleagues here also have the responsibility to declare their stance today and to safeguard the interests of the people of Hong Kong in future in order to prevent a recurrence of the "June 4" massacre in Hong Kong.

I therefore urge all Members to oppose the amendment of the Honourable IP Kwok-him and support my amendment as well as Dr the Honourable Anthony CHEUNG's motion. I certainly understand that my call will not change the stance of those people who would like to follow the line of the Chinese Government. I can only quote a poem from *The Book of Songs* to respond to their negligence towards Hong Kong people's rights and interests:

"The thorn at burial gate
Should soon be cut away;
The usurper of the State
Should be exposed to the day;
If he's exposed too late,
He'll still do what he may.

At burial gate there's jujube tree,
On which owls perch all the day long;
The usurper from evil is not free.
Let's warn him by a song!
But he won't listen to our plea,
For he takes right for wrong."

Mr President, these are my remarks.

MRS SELINA CHOW (in Cantonese): Mr President, earlier on when the Chinese Government published the draft Garrison Law for the Hong Kong Special Administrative Region (SAR), the public's reaction in general was quite positive. This is because the draft law has laid down clear requirements regarding the discipline of members of the garrison in Hong Kong, and it shows that the Chinese Government has taken into account the misgivings of the Hong Kong people about this sensitive subject, and therefore it has laid down

restrictive requirements in all respects.

However, the draft law still cannot remove all the misgivings of the people in Hong Kong.

According to the original motion, any contravention of the laws of the SAR by the garrison and related members, irrespective of whether they are executing their duties or not, shall be tried by the courts of the SAR, so as to ensure that it is in line with what the Basic Law provides. Such a statement is rather tricky as it has not elaborated on whether it will contravene the Basic Law if it is not done this way, but it does give people such an impression.

In fact, Article 14 of the Basic Law stipulates that in addition to abiding by national laws, members of the garrison shall also abide by the laws of the Hong Kong SAR. It has not mentioned that it is for the courts of the SAR to try such cases. Abiding by the laws of a place is not the same thing as allowing the courts of that place to try the cases.

Undeniably, the army belongs to the state. It is a matter of course for the state to have rights of jurisdiction over the army. The point is that when they are in the SAR, they have to abide by the laws of the SAR at the same time. However, this does not mean that the state can delegate its rights of jurisdiction completely to a local government.

Of course, since Britain has never in the past consulted the Hong Kong people on any garrison law regarding the British garrison in Hong Kong, we therefore have not felt that there is any major problem, nor have we had any opportunity to express our views. Today, the people of Hong Kong have the opportunity to express their views on the SAR Garrison Law; and they have certain misgivings about the People's Liberation Army (PLA). So, by expressing their views as much as possible, it helps the Chinese Government to understand what misgivings Hong Kong people have, and hence to perfect the Garrison Law.

Indeed, what the people of Hong Kong are most concerned regarding the garrison is that they worry that the army would abuse their functions and powers and commit acts for their private interests in the name of execution of duties. Therefore, the Garrison Law should be better defined in this respect.

Let me give an example. If a fire breaks out in a certain karaoke bar which results in a disaster, and the SAR Government finds it necessary to ask the PLA to help, then this is entirely in keeping with Article 14 of the draft Garrison Law. But if members of the PLA go to a karaoke bar for drinking and fun while they are on duty, and then they have a quarrel and a fight with other people, and some people are hurt in the incident, then should the case be dealt with by the Chinese military court?

In fact, Hong Kong people have often seen that uniformed personnel in China do not respect the law. To be fair, these people may not necessarily be members of the PLA. They may be public security officers or armed police. Of course, they can also be members of the PLA. There are occasions that they go to visit karaoke bars in uniform, that military vehicles go against the one-way direction of roads, that these vehicles move recklessly and cross the double white line to the opposite route to overtake other vehicles, or that they ignore the red light signal. How can Hong Kong people not worry in view of all these?

Therefore, the term "execution of duties" should be clearly defined as those acts directly needed and arising from the execution of duties. Apart from these, all other acts should not be protected by national laws.

The Honourable LEUNG Yiu-chung's amendment is such that its intention has reflected his worries. However, it is unfortunate that what he proposes has, contrary to what is intended, hinted that the garrison may take the initiative to propose the execution of duties other than diplomatic affairs and national defence, so long as it has obtained the consent of the SAR Government. Does it not amount to unlocking the door that bars the garrison from taking the initiative to ask for participation in Hong Kong's local affairs? Such a proposal is at variance with the Joint Declaration and the Basic Law. Therefore, we cannot support it.

Article 14 of the Basic Law and Articles 9 and 14 of the draft Garrison Law point out that the garrison "shall not interfere in the local affairs of the SAR", and that "the Government of the SAR may, when necessary, ask the Central People's Government for assistance from the garrison in the maintenance of public order and in disaster relief". These two statements have reflected the idea that the garrison should not, of its own accord, carry out duties other than

national defence and diplomatic affairs. This is because the Joint Declaration states that the SAR will enjoy "a high degree of autonomy", except in foreign affairs and national defence which are the responsibilities of the Central People's Government.

I believe that Hong Kong should insist on one thing, which is, unless the SAR Government asks for assistance, the garrison must not take the initiative to ask for involvement in local affairs. An example to illustrate this is the incident of the Pat Sin Range hill fire. Although the British army had had helicopters ready in waiting for the rescue, no request from the Government was made to them. Eventually, the British army did not take any action. In spite of the fact that it ended in a tragedy, it has also shown the relationship between the army and the local government. It is so today, and it shall be like this in future. The point is that the PLA is not allowed to execute of its own accord duties other than national defence and diplomatic affairs, unless it has received requests from the SAR Government. If this can be put in black and white clearly, it will be better able to put our minds at ease.

Mr President, with these remarks, I support the Honourable IP Kwok-him's amendment and oppose the other amendment and the original motion.

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

MR BRUCE LIU (in Cantonese): Mr Deputy, the British garrison in Hong Kong will be replaced by the People's Liberation Army (PLA) after the handover in 1997. The Chief Executive will no longer be the Commander-in-Chief. The garrison and the Hong Kong Government will be two executive systems on an equal footing and the Basic Law provides that the garrison must abide by the laws of Hong Kong as well as national laws. As to how the two separate executive entities can co-operate in Hong Kong after the handover in 1997 so that "the river water" and "the well water" can co-exist peacefully and how the relationship between the PLA and the Hong Kong Special Administrative Region (SAR) in respect of their rights and obligations in their interactions can be governed by means of law, these are matters that the Garrison Law must address and resolve.

With regard to the draft Garrison Law that the Standing Committee of the National People's Congress has made public recently, I would like to raise six

points on behalf of the Association for Democracy and People's Livelihood (ADPL) in respect of the jurisdiction of the courts of the SAR.

First, congenital deficiency and a lack of remedial measures: The Basic Law stipulates in clear terms that the courts of Hong Kong shall have no jurisdiction over national defence and foreign affairs. That is a point which has been made very clear. Therefore, it is very clear that the jurisdiction of the SAR is limited in this respect, although under Article 14 of the Basic Law, the Liberation Army shall abide by the laws of the SAR as well as national laws. If all the acts performed by the PLA while discharging their duties are defined as "acts for national defence purpose" or "acts of state", then according to the Basic Law, the courts of Hong Kong shall have no jurisdiction over such acts. For this reason, we will have to look to the Garrison Law for remedial measures such as stipulating in the law that not all the acts performed by the garrison in discharging their duties are necessarily regarded as "acts of state" or "acts for national defence purpose", and conferring on the courts of Hong Kong jurisdiction under certain specified circumstances over the violation of the laws of Hong Kong by the garrison. To this effect, one of the means is to ensure that the civil court shall take precedence and this is the clearest way to define jurisdiction. Yet, under the existing draft Garrison Law, all the acts performed by the garrison in discharging their duties are literally regarded as "acts for national defence purpose" or "acts of state", over which the courts shall have no jurisdiction. This is not totally inconceivable from the perspective of the laws of China. That said, taking into consideration the main direction of "one country, two systems", we, the ADPL, feel that this is not fully in line with the spirit of Article 14 of the Basic Law. Hong Kong people will not find it acceptable either. Indeed, the people of Hong Kong can hardly feel at ease about this.

Secondly, the court of first instance makes the final verdict: The draft law stipulates that civil cases of tortious acts committed by members of the garrison in the course of their duties shall be tried by the Supreme People's Court in China. However, under the Law of Civil Procedure of China, the court of second instance, as a general rule, makes the final verdict. Now, if the initial trial of a case is to be conducted in the Supreme People's Court, the court of first instance thus becomes the court of final instance. Under the circumstance, the victim in Hong Kong will only have one single opportunity to seek justice. This is out of tune with the existing judicial system in Hong Kong where the final verdict is made following trials by different levels of court.

Thirdly, an instance of incongruity: China adopts the continental law system whereas Hong Kong will uphold the common law system after the handover in 1997. Since Hong Kong people are unfamiliar with the judicial system and laws in China and given the existence of a language barrier as the great majority of Hong Kong people will be unable to argue their cases in Putonghua, victims in Hong Kong may find it perilous to institute legal proceedings in China. Consequently, they may give up and hence, justice will not be done. Some are of the view that should such legal proceedings arise in China, they can be conducted in accordance with the principles and precedents of common law and that there are sufficient talents in mainland courts to handle such proceedings in this manner. If this is the case, given that China allows the adoption of common law in the Supreme People's Court for the trial of such cases, it is better to deal with such cases in a more thorough way by referring their trials to the courts in Hong Kong. In addition, it will be even better if the courts in Hong Kong is given full jurisdiction.

Fourthly, an enormous input of efforts: In the event of tortious acts being committed in Hong Kong and when a proceeding is to be instituted in Beijing, all the evidence and exhibits, which are located in Hong Kong, will have to be transported all the way from Hong Kong to Beijing. This will increase the cost for transportation, retention of evidence and exhibits and so on, and the Hong Kong people involved will be made to face additional barriers and pressure.

Fifthly, opinions are diversified and uncompromising: Under the draft Garrison Law, whether the courts have jurisdiction will depend on the criteria of execution of duties. Yet, it fails to define in detail what circumstances satisfy the criteria of execution of duties. This is an obvious defect of the draft Garrison Law and it needs to be rectified because this will sow the seeds for future rows between China and Hong Kong. Who is to define the meaning of execution of duties after the handover in 1997? What is the criterion on which the interpretation is based? The interpretation of execution of duties will subsequently affect the decision of whether the garrison shall be tried in Hong Kong and so it is most important to define the term. Cases involving the military forces and civilians are always regarded as highly sensitive in a political sense. A very minor case in future may even trigger political polarization and confrontation between China and Hong Kong, in which case legal matters will

become politicized.

Sixthly, a lack of explanation and consultation: Since the announcement of the draft law, the general public can only learn about the situation from newspapers and they are unable to have an in-depth understanding of the details of the draft law. Besides, the public have no idea through what channels their views, if any, can be effectively conveyed to the Chinese side.

Therefore, in order to put the minds of Hong Kong people completely at ease, ensure the full implementation of the provisions in Article 14 of the Basic Law and assure Hong Kong people that justice will be done for them in Hong Kong, the ADPL suggests that appropriate amendments be made to the Garrison Law, stipulating that members of the garrison who are involved in civil cases of tortious acts in the course of their duties shall be tried in the courts of Hong Kong.

With these remarks, I support the original motion of Dr the Honourable Anthony CHEUNG.

MR ALBERT HO (in Cantonese): Mr Deputy, my speech today will focus on the legal status of the Garrison Law.

From the wording of the draft of the Garrison Law, it appears that it is a piece of legislation drawn up by the Central Government of China and to be applied in the Hong Kong Special Administrative Region (SAR). On what legal basis is this Law formulated? If we hastily accept this Garrison Law before this question is clarified, it is no different from accepting and tolerating that the Central Government can arbitrarily legislate for the SAR at any time they please. This will set a very dangerous precedent for the Central Government to intervene in our local affairs through direct legislation and it will in turn pose a serious threat to the "one country, two systems" principle.

In accordance with the overall spirit of Article 31 of the Constitution of China, the Basic Law and the resolutions of the National People's Congress (NPC), only under the following circumstances are the NPC or the Standing Committee of the NPC to legislate for the SAR:

- (i) formulating the Basic Law and making amendments to it;

- (ii) declaring those national laws of China to be applied in the SAR in accordance with Article 18 of the Basic Law and to be listed in Annex III of the Basic Law; and
- (iii) also in accordance with Article 18 of the Basic Law that when the Standing Committee of the NPC decides to declare a state of war or decides that the SAR is in a state of emergency, the central authorities may issue an order applying relevant national laws to the SAR.

Other than that, no matter whether it is the Central Government, the NPC or the Standing Committee of the NPC, none of them has the right to legislate directly for the SAR.

Therefore, legally speaking, the Chinese Central Government may not legislate directly for the SAR in the name of exercising the power of national defence or carrying out some so-called "acts of state". Any law that takes effect in Hong Kong must have the Basic Law as the legal basis and foundation, otherwise, it is unconstitutional and will be declared null and void.

Mr Deputy, to effect the Garrison Law in Hong Kong, we can consider the following three options:

- (i) incorporate the Garrison Law into the list of laws in Annex III in accordance with Article 18 of the Basic Law to make it part of the laws of the SAR;
- (ii) adopt the whole Garrison Law formulated by the Central Government through legislation by the legislature of Hong Kong; or
- (iii) let the SAR Government legislate accordingly at the request of the Central Government.

Obviously, as I have just said, the first option is impracticable because the Garrison Law is not a national law. A national law is a law to be observed throughout China, but the Garrison Law is only a regional law drawn up by the central authorities for the governance of the garrison or people in a particular place. Therefore it is not a national law as provided in Article 18 of the Basic Law. In addition, even if Article 18 of the Basic Law is to be applied, its

application has to come under the mechanism as specified in Article 18 which is through consultation with the SAR Government and the Basic Law Committee. How can we go through this mechanism now and put the Garrison Law in effect on 1 July 1997?

Secondly, there are many areas in the Garrison Law which touch on the internal affairs of the SAR, one of which is the jurisdiction, as the SAR courts do not have the power of adjudication over criminal and civil offences committed by members of the garrison while on duty. For instance, in the event that members of the garrison commit an offence of dangerous driving while on duty resulting in casualties, the SAR does not have the power of adjudication over the case.

However, we have to bear in mind that Chapter III of the Basic Law provides for the protection of the fundamental rights and obligations of SAR residents including their right to initiate action and appeal in legal proceedings. However, if the acts of the garrison on duty can only be tried in the military courts or People's Courts in China, Hong Kong residents will lose the protection provided by the laws, legal system and judicial proceedings of Hong Kong.

Therefore, we believe that the protection of Hong Kong residents' right to enjoy the basic human rights as provided by the Basic Law and the international covenants on human rights is also a matter of the internal affairs of the SAR. Hence, under Article 18 of the Basic Law, this cannot be implemented entirely through the formulation of a national law by the Central because it comes under the scope of the SAR's autonomy.

The second option, which means transferring the Garrison Law to the legal system of Hong Kong intact and having the Legislative Council of Hong Kong pass it just as a formality, is unacceptable to the Democratic Party.

As the Garrison Law is drafted in the manner and language of mainland Chinese law, the provisions are loosely worded and there are even areas that are unclear and ambiguous. It is far different from our legal system.

Many of the provisions in the draft Garrison Law are only policy directions and no specific restraints are provided. For example, members of the garrison are required to pay attention to courtesy and manners. It is impossible to put such requirement in force. There are also many loopholes in the draft law.

For example, when a case is transferred to the Beijing People's Court for trial, the legal provisions and principles of which place ought to be adopted? This is not specified in the Garrison Law and therefore I think there are still many loopholes that need to be dealt with.

Mr Deputy, we believe that the most appropriate way will be for the legislature of the SAR to legislate on its own to resolve the relationship between the garrison and the SAR.

Before legislating, the Central Government should certainly reach an agreement with the Hong Kong Government on the relationship between the garrison and the SAR so that they can prepare a memorandum which will serve as the guidelines and principles for legislation, and the SAR Government should formulate the relevant law in accordance with these principles. Of course, the Central Government can also exercise the monitoring mechanism provided in Article 17 of the Basic Law. If the law is found to have departed from the principle of the agreement, it can be returned to the legislature of Hong Kong for redrafting.

In conclusion, we think that the Garrison Law must manifest sovereignty and at the same time safeguard the spirit of "a high degree of autonomy". To achieve this, we think that the legislature of Hong Kong should enact our own law in compliance with the request of the Central Government.

I so submit. Thank you, Mr Deputy.

MR YUM SIN-LING (in Cantonese): Mr Deputy, "one country, two systems" is an innovative experiment. Under a new environment, there will be two groups of people, the garrison and the public, who are used to different legal systems. Therefore, the issues relating to the Garrison Law should be subject to very detailed consideration and deliberation. It is beyond doubt that at this stage, the draft law governing the garrison must and should be explained to the Hong Kong people for consultation.

According to Article 20 of the draft, offences committed by members of the garrison shall fall within the jurisdiction of the military. It is only when the members concerned are identified to have committed the offences "not in the course of their duties" that they shall be subject to the jurisdiction of the relevant

law enforcement agencies of the Hong Kong Special Administrative Region (SAR). Recently, not a few people have queried how "not in the course of their duties" is defined. When members of the garrison commit an offence, should the case be first handled by the military or by the police? During the preliminary investigation or arrest, we cannot rule out the possibility of the suspected persons giving false statements, the military personnel misinterpreting the laws of the SAR, or the superiors protecting their subordinates and so on. For the sake of monitoring, verifying and safeguarding the interests of the Hong Kong people, should the garrison and persons concerned break the laws of the SAR, they shall be subject to preliminary investigation by the police. In principle, whether the members of the garrison concerned were in the course of their duties or not, the case should first be handled by the judiciary of the SAR. It shall only be transferred to the military if it is later on judged that this is appropriate. Only in this way can we ensure that the stipulations of the Basic Law are not violated and that the persons concerned are allowed sufficient opportunities to appeal in Hong Kong. This can avoid the situation that the case is referred to the Supreme People's Court of China for trial and once a verdict is passed, there would be no opportunity for appeal even though improper preliminary handling is detected.

In the draft, certain moral principles have been written as laws, for example, "cherish" something and "pay attention to" something and so on. This reminds us of the spirit in the Three Main Rules of Discipline and the Eight Points for Attention of the Chinese People's Liberation Army (PLA) as directed by MAO Zedong years ago. To remind people of these moral principles might have a positive effect, but, this has in a way showed that some of the people responsible for drafting the Garrison Law do not have clear legal concepts. It is of course not a bad idea if these people incorporate some concepts they are not very clear into the law with good intention, hoping that the PLA will do people good turns. But on the other hand, this will make people fear that a blurring concept will develop as to whether "the Party should take precedence over the law" or vice versa. Therefore, wide public consultation is necessary. Besides, there should also be clearer and more stringent legal provisions clearly specifying that when the soldiers concerned were not performing duties on national defence or other duties relating to foreign military matters, they shall be subject to restrictions of the SAR Government. Hence, I support Dr the Honourable Anthony CHEUNG's original motion and the Honourable LEUNG Yiu-chung's amendment. Thank you.

MISS EMILY LAU (in Cantonese): Mr Deputy, I speak in support of Dr the Honourable Anthony CHEUNG's motion and the Honourable LEUNG Yiu-chung's amendment. However, I oppose the Honourable IP Kwok-him's amendment. The Garrison Law was submitted to the Standing Committee of the National People's Congress for consideration last month. However, the Chinese Government has not published the draft law. For a piece of legislation that is closely linked with the people of Hong Kong, we can only learn of its contents through reading newspapers; although the New China News Agency has asserted that the Chinese Government is willing to hear the views of Hong Kong people, it is obvious that the Chinese Government has no sincerity in listening to what Hong Kong people have in mind, given that not even the draft law is officially promulgated.

Mr Deputy, in any event, we still have to pursue the opportunity to express our views. Thus I hope today's debate can bring the discussions to a wider extent, so that Beijing will not be able to turn a deaf ear to the views of Hong Kong people. However, what we can observe is that most of the mass media have kept quiet out of fear as regarding their opinions on the Garrison Law, probably because of the highly sensitive nature of the subject. Therefore, I have worries that expression of views in this regard will continue to be stifled.

According to the draft Garrison Law as published in the newspapers, the criterion of whether or not "in the course of execution of duties" is used to determine if an offence committed by a soldier should be dealt with by the courts of the Hong Kong Special Administrative Region (SAR). However, China has not clearly defined what is meant by "execution of duties". Given the present circumstances and according to our understanding, there is a difference between being on duty and in the course of execution of duties. Take, for example, the case of a soldier having a quarrel with someone and then beating him up while on duty. His duties do not include beating someone up, even though he is on duty. As beating someone up is not an execution of duties, it follows that the case should be dealt with by the courts of Hong Kong. Mr Deputy, if China adopts a wider interpretation of the law, and should there be some black sheep in the People's Liberation Army (PLA) who commit all kinds of outrages whilst they are on duty, then even the courts of Hong Kong will not be able to subject them to discipline. This is what the people of Hong Kong can never accept.

I support the principle of the original motion. Since the Basic Law has

provided that members of the garrison shall abide by the laws of Hong Kong, and since the legal systems of Hong Kong and China are different, members of the PLA should invariably be dealt with by the courts of the SAR if they are found to have breached the laws of the SAR.

Apart from rights of jurisdiction, Mr Deputy, I think we have to find out exactly what the relationship is between the PLA and the SAR Government. For this reason, I support Mr LEUNG Yiu-chung's amendment.

Although both the Basic Law and the Garrison Law have provided that the PLA shall not interfere in the local affairs of the SAR, no subordinate relationship has been defined between the two sides, and in fact there is none whatsoever. However, on the one hand the Garrison Law requires that the SAR should provide the convenience essential to the needs of the PLA and that when any policy or law concerning the garrison is to be drawn up, the PLA has to be consulted, but on the other hand when the PLA is to participate in activities concerning the public interest of the SAR, notifying instead of obtaining consent from the SAR Government is all that is required. As for the so-called "dealing with garrison matters through consultation", it is only a statement in very general terms. What if the consultation does not work out and no consensus can be reached? Who will be the one that has the final say?

Under the principle of "a high degree of autonomy", except for matters of national defence, the SAR Government should have the final say on the acts of the PLA garrison in Hong Kong.

As for the circumstances under which the PLA may be mobilized in Hong Kong, both the Basic Law and the Garrison Law have stipulated that the SAR Government may, when necessary, ask the Central People's Government for assistance from the garrison in the maintenance of public order and in disaster relief. But what exactly does it mean by "when necessary", what is meant by "public order" and what is "disaster relief"? After the "June 4" massacre, a million people took to the streets. Can such activity be counted as undermining public order? I think only with the support of the Legislative Council can the Chief Executive ask the garrison to be deployed.

Article 18 of the Basic Law says that in the event that the Standing Committee of the National People's Congress decides to declare a state of war or, by reason of turmoil within the SAR which endangers national unity or security and is beyond the control of the Government of the SAR, decides that the Region is in a state of emergency, the Central People's Government may issue an order applying the relevant national laws in the Region. However, what role is to be played by the PLA is not specified under these circumstances.

Mr Deputy, what does it mean by "turmoil which endangers national unity and security"? This must be clarified. My view is that the PLA should firmly stick to a principle, and that is no matter under what circumstances, the PLA must not be mobilized without the request of the SAR Government.

Whilst both the Basic Law and the Garrison Law have stated clearly that the garrison shall not interfere in the local affairs of the SAR, how can we be sure that the PLA will not do so? Should interference occur, how will the SAR Government deal with the situation? What is the punishment for those who have broken the law? These are the problems that need to be set straight by legislation, and the SAR Government should have the power to initiate action when interference occurs, and those who have broken the law should be dealt with by the courts of Hong Kong.

Today's debate can only touch upon certain general principles, and I believe that Hong Kong people are still very concerned about many areas regarding the Garrison Law. Let me urge the mass media not to lend a hand in covering up the eyes and ears of Hong Kong people. Instead, they should cover as much as possible all the relevant events so that people are aware of the misgivings in all quarters. It is my hope that the Chinese Government will officially publish the full text of the Garrison Law, so that Hong Kong people will be able to know what it is all about. This is because when first asked about this, the Government also said that it had just received it. I hope that the Chinese Government can let the people of Hong Kong know as soon as possible and, having made full consultation for their views, amend the law accordingly in order that the misgivings and fears of the people of Hong Kong can be minimized. In addition, the Garrison Law should stipulates that the Legislative Council of the SAR has the right to ask the Chinese Government to amend the provisions.

Mr Deputy, with these remarks, I support Dr Anthony CHEUNG's motion and Mr LEUNG Yiu-chung's amendment, and I oppose Mr IP Kwok-him's amendment.

MR LO SUK-CHING (in Cantonese): Mr Deputy, the draft Garrison Law promulgated by China has received wide acceptance by Hong Kong people, who regard it as better than expected. The draft took a long time to prepare. It was formulated after repeated consultations with professionals and the legal sector, and is based on the Chinese laws, the Chinese judicial principles and the Basic Law. Reference was also made to the existing relevant laws governing the British garrison in Hong Kong. Having been under colonial rule for a long time, Hong Kong people have little idea about the concept of "one country, two systems". Some of them do not understand the need for stationing troops in Hong Kong, and have resistance to the People's Liberation Army (PLA). The Garrison Law clearly states the duties, obligations and discipline of the troops, as well as their relationship with the Hong Kong Special Administrative Region (SAR) Government. Undoubtedly, this should allay a lot of worries among the people of Hong Kong. At present, however, there are still differences in opinion as to the jurisdiction over the PLA to be stationed in Hong Kong. The matter should be construed according to provisions in the Basic Law and the spirit of "one country, two systems".

Article 14 of the Basic Law states: "The Central People's Government shall be responsible for the defence of the Hong Kong Special Administrative Region." And Article 19 states: "The Hong Kong Special Administrative Region shall be vested with independent judicial power, including that of final adjudication The courts of the Hong Kong Special Administrative Region shall have no jurisdiction over acts of state such as defence and foreign affairs." The stationing of troops symbolizes the exercise of state sovereignty, while having troops to perform their duties is an act of national defence, an act of state. So, it would not be appropriate for the courts of the SAR to be granted jurisdiction under all circumstances. Nevertheless, to cater to the implementation of "two systems", Article 14 of the Basic Law provides that "in addition to national laws, troops stationed in Hong Kong shall observe laws in the Special Administrative Region". To give due respect to the similarities and differences between the laws and legal systems in Hong Kong and mainland

China, the draft Garrison Law makes a distinction between "on duty" and "not on duty" on the question of jurisdiction.

Regrettably, Governor Chris PATTEN has once again tried to play tricks on the matter. Disregarding China's sovereignty over Hong Kong, he attempted to extend the influence of colonial rule and spread sentiments of uncertainty through documents submitted by the Security Branch to the Legislative Council. As he is a governor sent to Hong Kong by Britain, what he did in fact amounts to interfering in the internal affairs of China. He seems to have forgotten that the Garrison Law is Chinese law, not British law.

In fact, as far as jurisdiction is concerned, what have been proposed in the draft Garrison Law are similar to the current practices of the British garrison. Why has there been no one criticizing these practices under British rule? Why are there fingers pointed at the Chinese troops to be stationed in Hong Kong? In addition, the British forces reserve the right to refer cases for trial from Hong Kong courts to British military or civilian courts if the cases involve off-duty British soldiers stationed in Hong Kong. The future Garrison Law provides that only SAR courts can try such cases. This is meant to avoid the existence, in a disguised manner, of extraterritorial power, the kind of privileges Britain now has in Hong Kong.

Under the current Chinese judicial system, military personnel, whether they are on duty or not, come under the jurisdiction of military courts if they breach the law. Thus, it can be seen that the Garrison Law on the one hand has retained the need for stringent discipline of the military, and on the other hand has protected the autonomy within the jurisdiction of the SAR Government.

While on duty, military personnel discharge their duties towards the state. If they break the law, the case should be dealt with by the state authorities which are accountable to the state and ensure the security of the state and the people. Furthermore, SAR courts do not possess the specialized military knowledge for judgements. Hence, referring the case to a military court can ensure there are vigorous and consistent standards to follow.

Mr Deputy, Hong Kong people are of course concerned about how the Garrison Law will be applied in Hong Kong. They have worries to a certain extent. That is why China should consult Hong Kong people widely and listen

to their ideas in order that the Garrison Law can gain their acceptance. This is particularly needed to avoid certain problems and difficulties that may arise in the application of the Garrison Law. China and Hong Kong need more communication especially on matters of tortious acts so that the Garrison Law can be perfected.

Mr Deputy, with these remarks, I support the Honourable IP Kwok-him's amendment.

MR JAMES TO (in Cantonese): Mr Deputy, I totally agree with the Honourable LO Suk-ching that China has to widely consult the people of Hong Kong on the Garrison Law. Regrettably, as the Honourable Miss Emily LAU has said, the draft law has in fact not been promulgated. Mr President, you have just mentioned it is the responsibility of the Honourable IP Kwok-him to convince all of us that "the recently announced draft law governing the garrison" as mentioned in his amendment is a fact, and it is not for the President to decide whether this statement is true. I think that the Garrison Law has really not been announced and I also believe that the Chinese Government has not yet promulgated the draft law. The only channel for Hong Kong people to obtain the information is through the report of a local newspaper. If the Chinese Government has announced the draft law at a press conference, and of all the newspapers, only one newspaper reports the news, then the responsibility will not be with the Chinese Government.

As Miss Emily LAU has said, recently, many Members' views are not reported because the newspapers are exercising self-suppression. Moreover, it is open to question whether the published draft law in the newspaper is the authentic version. What channels can be used to express our opinions? I hope the Chinese Government can really appreciate that the people of Hong Kong do intend to provide concrete views and I believe the Chinese Government also wishes to listen to our ideas. In fact, as far as we know, the so-called draft Garrison Law as reported in the newspaper is believed to be the authentic version and the Chinese Government has never denied this. If we look into the factors and scopes included in the draft law, it seems that the present practices and the worries of the public have already been taken into account. As what Mr LO

Suk-ching has said in particular, according to Chinese laws, no matter whether members of the People's Liberation Army are on duty or not, they are all subject to trials in the military courts, and it seems that the relevant law is now more relaxed. In view of this, it is therefore not true to say the Chinese Government has not taken all these factors into consideration in drafting this law, but the problem lies in their perspectives and targets of consultation. According to reports, only the views of the Hong Kong delegates to the National People's Congress and the legal profession have been taken into consideration.

Regarding the views of the legal profession, I have asked the Law Society of Hong Kong and the Hong Kong Bar Association. It seems that they have not been formally consulted by the Chinese Government. The Security Panel also hopes to listen to the public's views, so as to reflect them to China through relevant channels. When we wrote to the professional bodies concerned, they all raised the same question, "Can we have a look at the draft law?" We have therefore asked the Hong Kong Government whether we could get a copy of the draft law, but the reply was that although they have received the draft law, they cannot disclose it to us and the public. Why? It is because they are bound by the principles of confidentiality and secrecy and there is nothing they can do to help us. If the professional bodies would like to put forward their views on the draft law, is it possible that they express their views with reference to only one newspaper report? What we can say is only, "Just try your best," or "Let us hope so." In fact, what we are now urging the public is to ask them to put forward their ideas on the basis of the draft Garrison Law as published in the newspaper. Is this a desirable arrangement? In fact, this is not desirable at all. For instance, if we look back at the drafting of the Basic Law by the Chinese Government, the draft went through a process of "three ups and three downs". Although there may be different views on whether the Basic Law is comprehensive and perfect, at least it went through a process of "three ups and three downs", and there was a draft prepared for consultation. All these reflected their sincerity in soliciting people's views. In fact, there are many avenues to solicit views. I therefore hope that the Chinese Government can really produce a draft law for consultation, so that we can offer our ideas to solve any technical problems.

Frankly speaking, Hong Kong may still be under British rule, but most of the Hong Kong people will soon become permanent Chinese residents and compatriots. So why can they not be told about the future laws and ideas to be implemented in Hong Kong? This should be something open and aboveboard,

and all the compatriots will understand that China really wants to consult their opinions. I believe this will enhance their identification with China.

On the other hand, we have also seen many nebulous aspects in the draft law (that is, the so-called draft law as reported in the newspaper), and it is hoped that the Chinese Government will make a clarification. For example, what does it mean by "profit-making operational activities"? What are the "other activities that are incompatible with the duties of members of the garrison"? What does it mean by "the Hong Kong Special Administrative Region (SAR) should provide members of the garrison with the necessary convenience"? For instance, if they need the supply of electricity, do they have to pay the electricity bills? Or is it already enough if we just lay the wires for them? Also, regarding the military judiciary and the garrison fees, detailed explanation is required to allay Hong Kong people's worries. And when members of the garrison fail to pay the relevant compensation for a case which the court has decided, does the local court have the right to freeze and seize their deposits in the bank, so as to ensure that the people of Hong Kong can get the compensation due to them? The Chinese Government should clarify the above points before the people of Hong Kong further express their views.

A Member has just said that the original motion of Dr the Honourable Anthony CHEUNG seems to be a bit tricky, because in accordance with Article 14 of the Basic Law, members of the garrison shall abide by Hong Kong laws, but "abiding by the laws" is one thing and whether cases should be tried by the courts in Hong Kong as is now suggested is another thing. In fact, I agree with some of the views of the Honourable Bruce LIU because we can indeed look at the matter from the point of mutual convenience. For instance, if the General Rule of Civil Law (I assume this can solve the problems relating to extraterritorial matters, including Hong Kong) is applied to judge a case committed in Hong Kong as mentioned by Mr IP Kwok-him, then let me quote an example: if a military vehicle crashes with a civilian car, maybe some skid marks will have to be measured, or we will have to look at the map to see there are any road signs nearby and how many there are. In fact, if the case is to be transferred to the court in China, will we have to take all the evidence to the court in Beijing? What is the meaning of "mutual convenience" then? If common law is applied in the court in Beijing, what will be the result? If the case is tried in the court in Hong Kong, there is nothing for China to worry about because many common law lawyers in Hong Kong can represent the members of the Chinese garrison to defend and fight for their rights. Therefore, I hope the

Chinese Government can really provide an explanation and hold public consultations to solicit the views of the people in Hong Kong.

THE PRESIDENT resumed the Chair.

MRS ELIZABETH WONG: Mr President. I stand to support the original motion as amended by the Honourable LEUNG Yiu-chung. I would like to share with this Chamber some of the views expressed to me on the draft legislation governing the garrison of the People's Liberation Army (PLA) as appeared in the press.

From the feedback I have on the draft law, Hong Kong people, many Hong Kong people, prefer the garrison to be stationed in Shenzhen rather than Hong Kong. Hong Kong people are frightened of the PLA's Hong Kong garrison in Hong Kong because they are frightened of the possibility of a repeat of "June 4" in Hong Kong, the possibility of an inevitable Chinese statement to Hong Kong people.

Also, Hong Kong people have a sense of futility about their comments on the draft law being heard and discussed this afternoon. But there is no fear but fear itself. On the other hand, many people think that to have a piece of law is better than no law at all to govern the discipline of the PLA's Hong Kong garrison.

Mr President, I do not like to repeat, I would not wish to repeat what has been said before me, but I would like also to suggest, because this is one of the feedbacks not mentioned by previous speakers, and that is, many people suggest that the PLA should get to know Hong Kong people by being involved with social projects such as raising money in projects, meaningful charities such as raising money for the handicapped, for overseas floods, for various other unfortunate members of our society, or for any meaningful project in Hong Kong. In this way, they argue, the PLA garrison in Hong Kong will get to know the Hong Kong people, and Hong Kong people will get to know them. And therefore, the PLA will have a human face, will not treat Hong Kong people like enemies. They do not like to have guns aimed at them, so in the end if that

should happen, the PLA might be acceptable to Hong Kong people.

This is a summary of all the feedbacks I have had in the last couple of weeks, Mr President.

PRESIDENT (in Cantonese): I now invite Dr Anthony CHEUNG to speak on the proposed amendments. You have five minutes to speak, Dr CHEUNG.

DR ANTHONY CHEUNG (in Cantonese): Mr President, the Democratic Party does not agree with the amendment of the Honourable IP Kwok-him. It is because firstly, he assumes in the amendment that the Chinese Government has already promulgated the draft Garrison Law. In fact, the draft has never been promulgated in Hong Kong. It has only been disclosed by a newspaper. No one knows whether the text disclosed by the newspaper is the authentic one. This newspaper may even be charged with leaking state secrets for disclosing this text.

Secondly, the amendment of Mr IP assumes that the worries of the Hong Kong people towards the arrangements of the future garrison have already been allayed. That is not the true situation. Actually, we can observe recently from the comments in the press, from the people's opinions expressed through the telephone in radio phone-in programmes and from the discussions in the community that many of the fundamental problems have yet to be solved, in particular the question of jurisdiction concerning criminal acts and civil torts committed by members of the garrison in the course of their duties.

Thirdly, apparently the logic in Mr IP's speech is that all acts carried out by members of the garrison in the course of their duties are acts of state. This is a very superficial interpretation of acts of state and it has also distorted the meaning of acts of state in legislation and the common law system. It is because acts of state do not refer to all the acts of military personnel or acts relating to national defence, but specifically refer to external-related acts under special circumstances, including acts towards foreign governments, foreign organizations and foreign nationals but not towards the local people. I, therefore, think that the logic of the amendment moved by Mr IP has overshadowed the Hong Kong people's concern. In this regard, the Democratic Party cannot agree with it.

Although the Democratic Alliance for the Betterment of Hong Kong (DAB) has earlier on asked the Chinese Government to clarify the two definitions regarding "the carrying out of duties" and "external party", in fact neither the DAB nor Mr IP has really solved the fundamental problem concerning jurisdiction. They are actually evading the facts and are only talking about technical matters.

Earlier on, when discussing the carrying out of duties, I pointed out that not all the acts of military personnel are acts of state. There is one more important point to note. Can the offences, especially criminal offences, committed by servicemen in the course of their duties be tried by the general civil courts? Some people think that offences committed by servicemen should be tried by the military court as the charges and sentences of the military court will be more stringent. This is not the most salient factor of consideration in our discussion about laws. Of course, if the servicemen are in breach of discipline or military discipline in the course of their duties, they naturally have to be tried by the military court. However, if they are in breach of criminal laws in the course of their duties, it should be the civil courts which have the authority to try the cases. Such practice is also applicable in the United Kingdom.

Some people say that the current draft Garrison Law is a continuity of the arrangements of the British garrison in Hong Kong. In my opinion, there are two points to note. First, we are not supposed to retain every single arrangement of the British garrison in Hong Kong, as the past arrangements were made on the basis of Hong Kong's status as a British colony. After July 1997, Hong Kong will no longer be a colony.

Second, the current draft is not a complete replication of the arrangements of the British garrison in Hong Kong. For example, the Commander of the current British garrison stationing in Hong Kong can refer criminal cases involving military personnel in the course of their duties to the courts of Hong Kong for trial. However, under the draft Garrison Law disclosed, this discretion does not exist.

Finally, I would like to briefly respond to what the Honourable Mrs Selina CHOW has mentioned a moment ago. She said that to observe the laws of a place should not necessarily mean that one ought to be tried by the courts of that

place. After thinking it over for a long time, I still do not understand what kind of principle it is and what kind of logic it is. How can this be the view of a Member of the legislature towards law? According to the view of Mrs Selina CHOW, it appears that we can say that we have to observe the Standing Orders of this Council, but this does not necessarily mean that we have to comply with the rulings of the President made according to the Standing Orders when anything happens. This kind of attitude and interpretation is a distortion of the law.

Mr President, I call upon Honourable Members to support my original motion and the Honourable LEUNG Yiu-chung's amendment, as his amendment is totally in line with the spirit of the Basic Law.

SECRETARY FOR SECURITY: This is the second motion debate on the Garrison Law in four months. It reflects the degree of interest and concern on this subject within this Council and in the community more generally. Such intense interest, following the announcement that the draft Garrison Law has been submitted to the Standing Committee of the National People's Congress for examination, is hardly surprising.

The Garrison Law will be an important piece of legislation which sets out the framework for the operation of the People's Liberation Army in the Hong Kong Special Administrative Region (SAR) from 1 July 1997. It governs the legal relationship between the people of Hong Kong, the Hong Kong Special Administrative Region Government and the military. It determines how the commitment in Article 14 of the Basic Law, that in addition to abiding by international laws, members of the garrison shall abide by the laws of the SAR, will be implemented in practice.

The Chinese Government have assured the community that the garrison to be stationed in the SAR will be a high standard, law-abiding model military force. But no one, no one can entirely rule out the possibility that a soldier might break the law or infringe upon the rights of a civilian in Hong Kong. As such, a series of difficult questions will need to be addressed. Who should handle or try the offender? How will the law ensure that justice can be done and be seen to be done? How can we achieve a fine balance between the need to protect the rights of the soldier and those of the civilian? What arrangements will be acceptable to both the military and the community?

At present, a member of the British Forces in Hong Kong will normally be tried in Hong Kong courts if he commits a criminal offence under Hong Kong law. However, under the United Kingdom Forces (Jurisdiction of Colonial Courts) Order 1965, if the alleged offence is against another member of the garrison or is against the property of the United Kingdom Government or other garrison members, or arises out of and in the course of his duty, the case will be dealt with under military jurisdiction. The Commanding Officer of the British Forces may waive military jurisdiction and hand over a case to be dealt with by Hong Kong courts, even where one of the exceptions above applies. He will normally do so if an offence resulted in a serious incident or injury to a civilian or if there is a civilian accomplice.

Using a common example, a British soldier driving a military vehicle on duty and committing the offence of drink driving will be subject to the jurisdiction of the local courts because it is inconceivable that he is acting under the instructions of his commanding officer to be drunk. Therefore the offence does not "arise out of and in the course of his duty", and the case will be tried in Hong Kong courts.

These principles have been firmly in place in our legal system for more than 30 years and regarded as fair, sensible and workable. Their continued application after 1997 are consistent with Articles 14 and 18 of the Basic Law. We believe that under the draft Garrison Law and insofar as criminal cases are concerned, things done by military personnel in the course of their duties should be dealt with by courts martial. It would help reassure the community if the Chinese Government can clarify this key phrase and to define it in law and in practice as narrowly as possible in the same way as at present.

As regards civil cases, members of the British Forces are subject to the jurisdiction of Hong Kong courts when acting in their private capacities. They are also liable for any acts or omissions in the course of their duties and can be sued locally. The British Garrison is vicariously liable for torts committed by military personnel in the course of their employment, although the British Government is immune from suits in Hong Kong courts under the Crown Proceedings Ordinance (Cap. 300). In practice civil claims against the military are normally dealt with by administrative settlement through the Claims Branch of the British Forces. If this fails, the claimant may pursue his case in the

United Kingdom civilian courts in accordance with the United Kingdom Crown Proceedings Act 1947.

Using another example, if a British soldier driving a military lorry on duty crashed into a civilian vehicle because of his negligence, the garrison will attempt to settle the case out of court. Failing that, the civilian may sue the soldier in Hong Kong courts. The military will back him up in the case because a tort was committed in the course of the soldier's duties. If the civilian wants to sue the soldier's employer, that is to say, the British Government, he will have to bring a civil action in the civilian courts in the United Kingdom.

The present arrangements under Cap. 300 can work because the common law system, in particular, the law of tort and the law of contract and the judicial system, are substantially the same in Hong Kong and the United Kingdom. After 1997, where a member of the People's Liberation Army commits a tortious act which arises out of and in the course of duty, it is important that he and the Garrison collectively should both be liable and be subject to the jurisdiction of Hong Kong courts. We believe that this approach is consistent with Articles 8, 14, 18 and 19 of the Basic Law. If the case is to be heard in the Supreme People's Court of the People's Republic of China, which operates under an entirely different legal and judicial system, it cannot be adjudicated in accordance with common law principles as at present.

Nor do we know how the Garrison Law will be applied to Hong Kong. It would be for the Chinese side to explain how this is to be done in a manner consistent with the Basic Law. It is important to ensure that the Garrison Law can be firmly rooted in Hong Kong's legal and judicial system and can be effectively applied locally.

Mr President, I am sure that Honourable Members have noticed that these points sound familiar. They are consistent with what we have said in this Council during the motion debate on 10 July and on other previous occasions. Naturally, Honourable Members could expect us to convey the same points to the Chinese side, including of course the point about the Garrison Law must be consistent with the provisions in Article 14 of the Basic Law governing the PLA's exercise duties and areas other than the defence of the SAR.

We will, of course, also seek to clarify other important points arising from the text of the Garrison Law which they handed over to us through the Joint Liaison Group channel. We have at the same time expressed our wish to continue the very useful informal contacts between experts of both sides on this urgent and important matter.

We are fully aware of the Chinese side's position that the Garrison Law is a matter within China's sovereignty. We have no intention to challenge their right to take final decisions on it. Nevertheless, the task of drafting the Garrison Law is both challenging and difficult. It has to bridge the gap between two entirely different legal and judicial systems. It has to firmly adhere to the principles of "one country, two systems", a high degree of autonomy and other commitments in the Joint Declaration and the Basic Law.

More importantly, it has to be acceptable to the people of Hong Kong. For these reasons, we urge the Chinese side to listen to the views of Hong Kong people on this subject. On our part, we will be failing our responsibilities if we do not offer our assistance to the Chinese side to complete this complicated job. Given the wide experiences in Hong Kong's legal system, our experts have constructive views and ideas which can assist the Chinese side in arriving at a Garrison Law which hopes to remove any worries that the public and foreign investors may have. We hope that the Chinese side can be as transparent as possible in the handling of the matter, and take into the account the different views expressed in finalizing the Garrison Law, so that at the end of the day, Hong Kong will have a widely accepted and supported piece of legislation.

Thank you, Mr President.

MR IP KWOK-HIM's amendment to DR ANTHONY CHEUNG's motion:

"To insert ", as the draft law governing the garrison in the Hong Kong Special Administrative Region (SAR) recently announced by the Chinese Government helps to dispel the misgivings of the people in Hong Kong about arrangements regarding the stationing of armed forces in the territory in the future," after "That"; and to delete "to explain and consult the people of Hong Kong as soon as possible on the draft law governing

the garrison in the Hong Kong Special Administrative Region (SAR); and to listen to the views of the Hong Kong people on the jurisdiction of the courts over the garrison stationed in Hong Kong and revise the draft law to the effect that any contravention of the laws of the SAR by the garrison and related members, irrespective of whether they are on-duty or not, shall be tried by the courts in Hong Kong, so as to ensure that the law governing the garrison is in line with Article 14 of the Basic Law which provided that members of the garrison shall abide by the laws of the SAR" and substitute with "people of Hong Kong to actively put forward their views on the provisions of the draft law so that the law governing the garrison in the SAR will be better formulated".

MR IP KWOK-HIM (in Cantonese): Mr President, I move that Dr Anthony CHEUNG's motion be amended as set out under my name on the Order Paper.

Question on Mr IP Kwok-him's amendment proposed and put.

Voice vote taken.

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

Mr IP Kwok-him and Dr Anthony CHEUNG claimed a division.

PRESIDENT (in Cantonese): Council will now proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the amendment moved by Mr IP Kwok-him be made to Dr Anthony CHEUNG's motion.

Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT (in Cantonese): 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 NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, 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, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the amendment.

THE PRESIDENT announced that there were 26 votes in favour of Mr IP Kwok-him's amendment and 27 votes against it. He therefore declared that the amendment was negated.

MR LEUNG YIU-CHUNG's amendment to DR ANTHONY CHEUNG's motion:

"To insert ", and that troops of the People's Liberation Army stationed in the territory shall obtain the consent of the SAR government before carrying out any other duties except those related to defence and foreign affairs" after "the laws of the SAR"."

MR LEUNG YIU-CHUNG (in Cantonese): Mr President, I move that Dr Anthony CHEUNG's motion be amended as set out under my name on the Order Paper.

Question on Mr LEUNG Yiu-chung's amendment proposed and put.

Voice vote taken.

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

Mr LEUNG Yiu-chung and Mr CHAN Kam-lam claimed a division.

PRESIDENT (in Cantonese): Council will now proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the amendment moved by Mr LEUNG Yiu-chung be made to Dr Anthony CHEUNG's motion.

Will Members please register their presence first by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, 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, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the amendment.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, 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 against the amendment.

THE PRESIDENT announced that there were 23 votes in favour of Mr LEUNG Yiu-chung's amendment and 30 votes against it. He therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Dr Anthony CHEUNG, you are now entitled to reply and you have two minutes and 46 seconds out of your original 15 minutes.

DR ANTHONY CHEUNG (in Cantonese): Mr President, I call upon Honourable Members to vote for my motion later. The spirit of my motion is "Hong Kong law ruling Hong Kong". That means in the Hong Kong Special Administrative Region (SAR) after 1997, if members of the garrison have broken the law of the SAR and while members of the Hong Kong public and people outside the garrison are involved, whether it is criminal or civil, and whether it occurs when they are duty or not, the members of the garrison concerned should first be tried by the courts in the future SAR. According to Article 19 of the Basic Law, the courts of the SAR should be vested with complete jurisdiction to review all cases, with the only exception of "acts of state". However, according to the interpretation of some people, "acts of state" are the same as acts of members of garrison when carrying out their duties. Such interpretation has confused the legal concepts. I call upon my Honourable colleagues, for the sake of fulfilling the obligation of reflecting the opinions of Hong Kong people, to spell out the worries and anxieties of the people in regard to the arrangements of the future garrison and support my motion. Thank you.

Question on the original motion proposed and put.

Voice vote taken.

Mr TSANG Kin-shing claimed a division.

PRESIDENT (in Cantonese): Council will proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that the question I now put to you is: That the motion moved by Dr Anthony CHEUNG as set out on the Order Paper be amended.

Will Members please first register their presence by pressing the top button on the voting units and then proceed to cast their votes by pressing one of the three buttons below?

PRESIDENT (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, 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, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

THE PRESIDENT announced that there were 27 votes in favour of the motion and 26 votes against it. He therefore declared that the motion was carried.

MEMBERS' BILLS

First Reading of Bills

LANDSCAPE ARCHITECTS REGISTRATION BILL

PREVENTION OF CORRUPT AND ILLEGAL PRACTICES AT THE ELECTION OF THE FIRST CHIEF EXECUTIVE OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION BILL

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

Second Reading of Bills

LANDSCAPE ARCHITECTS REGISTRATION BILL

MR EDWARD HO to move the Second Reading of: "A Bill to provide for the registration of professional landscape architects and disciplinary control of the professional activities of registered professional landscape architects, and for related matters."

MR EDWARD HO: Mr President, I rise to move the Second Reading of the Landscape Architects Registration Bill. The purpose of the Bill is to give assurance to the public that those who profess to be professionally qualified landscape architects have indeed received the appropriate training and are competent to practise in Hong Kong. In this respect, the purpose is similar to that of the Architects Registration ordinance and the three separate ordinances for the registration of engineers, planners and surveyors.

As in the other registration ordinances mentioned, I believe that this legislation will serve to enhance and maintain professional standards. Those who are qualified will not be compelled to be registered, but there will be obvious advantages to do so as the titles "Landscape Architect" or "Registered Landscape Architect" shall not be used by any person unless his name is on the register. Nor shall such a person use the initials "RLA" after his name.

In order not to prejudice a landscape architect who is qualified overseas or who is a member of an overseas body or institute of landscape architects, I shall move a Committee stage amendment to make it clear that such a person can describe himself as a landscape architect by reference to membership of an overseas body or institute of landscape architects as long as such description does not imply that he is registered under the Landscape Architects Registration Board (the Board).

The Bill is not intended to provide the Hong Kong Institute of Landscape Architects (the Institute) with a closed shop. Although membership of the Institute shall be one qualification for a person to be on the register, the Landscape Architects Registration Board shall also have the power to determine such other membership or having received such other training and experience as shall be accepted by the Board as being of a standard not less than that of a member of the Institute.

The Bill provides for registration to be administered by the Board the members of which are appointed by the Council of the Institute, but is independent in its operation from that of the Institute. Provision is made for a government appointee to the Board. The functions and powers of the Board are set out in clauses 7 and 8 of the Bill. Similar to the other registration ordinances I have referred to, I am confident that the composition of the Board will provide the right balance and the necessary degree of self-regulation.

If a registered landscape architect loses, for whatever reason, his qualification for registration, his name may be removed from the register. In the event that a registered professional commits a disciplinary offence, the Bill provides for investigation by an enquiry committee which may result in removal of the professional's name from the register, either permanently or for a specified period. Alternatively, the committee may order some form of reprimand, as a safeguard provision is made for appeal to the Court of Appeal against disciplinary orders.

Finally, as a preparation for the passage of this Bill, the Hong Kong Institute of Landscape Architects has already been incorporated under the Hong Kong Institute of Landscape Architects (Incorporation) Ordinance.

Mr President, I move that the debate be now adjourned.

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).

PREVENTION OF CORRUPT AND ILLEGAL PRACTICES AT THE ELECTION OF THE FIRST CHIEF EXECUTIVE OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION BILL

MR SZETO WAH to move the Second Reading of: "A Bill to provide for the prevention of corrupt and illegal practices at the election of the first Chief Executive of the Hong Kong Special Administrative Region."

MR SZETO WAH (in Cantonese): Mr President, I move the Second Reading of the Prevention of Corrupt and Illegal Practices at the Election of the First Chief Executive of the Hong Kong Special Administrative Region Bill.

The election of the first Chief Executive is the first step to the setting up of the Hong Kong Special Administrative Region (SAR). The Chief Executive is the most important official of the SAR. If we want to have an honest and corruption-free SAR, we have to start with this first step and the election of this most important official.

Corrupt and illegal practices at election is the twin brother of money politics. Money politics will definitely trample on social justice, stifle and undermine the fair competition of a free economy, and affect the prosperity and stability of the future SAR.

Believing that only self-discipline, but not legislation, is needed is the downright thought of rule of man. According to this logic, all laws are superfluous. If everyone has self-discipline, stressing only self-discipline but

renouncing the need for laws, then why should we need the police, courts, judges and prisons?

Everything that we do has to be fair and must be seen to be fair. The feeling of fairness does not come from claiming to have self-discipline; it has to be maintained through upholding just and fair laws — laws that everybody knows and observes. Those who have violated the laws will be prosecuted and punished by the judiciary.

I move this Bill not only to ensure the fairness of the election of the first Chief Executive, but also to make the Hong Kong citizens and the international community feel that the election is fair, and to adhere to the Hong Kong spirit of the rule of law. If those who ordinarily stress maintaining the Hong Kong spirit of the rule of law in the future SAR now object to the Bill, they are the legendary Lord YE who professes his love of dragons but actually fears them. They will not be able to justify themselves and will in fact undermine the rule of law in Hong Kong. A remark once said by ZHAO Ziyang can be quoted to ask them, "What do you fear?"

Some people hold that since there is already the "Code for Members of the Selection Committee", this Bill is not necessary. That is actually an extension of the "rule of man" mentality which emphasizes self-discipline and renounces the need for legislation. I want to point out the loopholes in the Code, and indeed loopholes simply abound. The most significant loopholes are:

Firstly, the Code is only targetted at members of the Selection Committee but not the candidates. That is to say, it is only targetted at those who receive improper advantages, but not those who offer improper advantages.

Secondly, members of the Chairmen's Committee who execute the Code have confused their roles and they have a conflict of interests since some candidates are also members of this Committee.

Thirdly, it lacks clear and definite sanctions. Initially, there were a variety of sanctions, such as disqualification from Selection Committee membership, but even these provisions were struck out when the Code was passed at last.

The election of the Chief Executive is an election by a small coterie of people which is prone to corruption and exchange of advantages. "When the upper beam is not straight, the lower beam tends to slant." If the first most important election of the future SAR is not supervised through legislation, the consequential harm will be endless.

The Bill comprises three main parts:

The first part defines clearly corrupt practices. They are clauses 4, 5, 6 and 7 of the Bill which include definitions of corruption, entertainment and improper influence.

The second part defines illegal practices. They are clauses 10, 11(1) or (2), and 12(1) or (2) which include false statement of withdrawal from election, false statement by a candidate and false claim of support.

The third part are the sanctions against violation of the above clauses.

These clauses are all transplanted from the applicable parts of the current laws governing the elections of the various tiers of councils and boards and the rural committees in Hong Kong. They have been enforced effectively and are familiar to the public, so there should not be any controversy.

Someone have suggested the following reasons to object to the Bill, for example: why is it only targetted at the election of the Chief Executive but not the election of the provisional legislature? Another example: why should a colonial legislature be allowed to pass laws to supervise an election of the SAR? Yet another example: is this Bill able to regulate the present election? These are all makeshift arguments that cannot withstand challenge. If Members have to oppose the Bill, would they please look for more presentable reasons.

Mr President, the first Chief Executive of the SAR will be returned on the 11 December. So long as this Bill is passed and enforced before that day, it can be used as the legal basis to investigate and prosecute people who are suspected of being involved in corrupt and illegal practices.

Mr President, I further move under Standing Order 42(3A) that the Second Reading debate on the Bill shall not be adjourned and that the debate shall

proceed forthwith. The reasons are as follows:

Firstly, the content of the Bill has mostly come from the current Corrupt and Illegal Practices Ordinance, which supervises the elections of the various tiers of councils and boards and the rural committees; it has been enforced effectively and is familiar to the public. I believe that unless there are special reasons, Members of this Council should have no objection to the clauses of the Bill. Therefore, I think that even if the Bill is not passed on to the House Committee for study by a Bills Committee, that will not affect our examination of the Bill. In fact, the Panel on Constitutional Affairs of this Council held a special meeting on 11 November to discuss the Bill. No Member expressed any opinion on the clauses then.

Secondly, the election of the SAR Chief Executive will take place on 11 December, which is only three weeks away from now. The earlier the Bill is passed, the longer the election activities will be supervised, and the time of an absolutely lawless state can thus be shortened. In this way, corrupt and illegal practices can be forewarned and deterred.

Mr President, I move the Second Reading of the Prevention of Corrupt and Illegal Practices at the Election of the First Chief Executive of the Hong Kong Special Administrative Region Bill and I further move that the Second Reading debate on the Bill shall not be adjourned and that the debate shall proceed forthwith.

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

PRESIDENT (in Cantonese): As Mr SZETO Wah has also moved that the Second Reading debate on the Bill shall not be adjourned and shall proceed forthwith, I further propose the question to you and that is: That the Second Reading debate on the Prevention of Corrupt and Illegal Practices at the Election of the First Chief Executive of the Hong Kong Special Administrative Region Bill shall not be adjourned and that the debate shall proceed forthwith.

Question on the Second Reading debate be not adjourned proposed.

PRESIDENT (in Cantonese): Does any Member wish to speak on the question that the debate shall not be adjourned?

MR LEUNG YIU-CHUNG (in Cantonese): Mr President, when discussing whether to support "that the Second Reading debate on the Bill moved by the Honourable SZETO Wah be resumed today", we have to take two issues into account at the same time: firstly, the importance of the Bill; and secondly, the urgency of the Bill.

Mr President, when debating a motion on procedural matters, of course we should not discuss in detail the importance of the Bill and I am not planning to do that. However, Mr President, please allow me to say a few words to show how important the Bill is.

From our past experience in elections, we know that the election process of an election committee is particularly prone to corruption. Moreover, the Chief Executive is the most decisive political figure in the future Hong Kong Special Administrative Region. I therefore believe that nobody would object if we try to ensure that the election of the Chief Executive will be held in an open and fair manner. How can openness, fairness and justice be ensured? Supervision through appropriate legislation is obviously the best way. So when saying how important the Bill is on the face of it, I hope that Members would take this point into consideration.

With respect to the second issue, as is well known to all, the election of the Chief Executive will take place on 11 December, which is only about three weeks away from now. In this regard, there is a pressing need that the Bill should be passed as soon as possible. On the other hand, we have to also ponder if the urgency of the legislation is due to the deliberate act of the mover, or whether the mover is doing this because of some inevitable circumstances. In fact, the code initially proposed by the Chief Executive election group of the Preparatory Committee did include a clause on sanction, but unfortunately the sanction was struck out when the Preparatory Committee officially appointed the Selection Committee last month. And it was not till then

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung, please speak on the motion.

MR LEUNG YIU-CHUNG (in Cantonese): that the public realize the code supervising the election of the Chief Executive exists only in name. As a result, the time for legislation becomes so pressing now. The Preparatory Committee should be held responsible for promulgating the Code too late, and it is not Mr SZETO Wah who has deliberately delayed the time of legislation.

Mr President, in view of the importance of the Bill and that the mover has introduced the Bill in such a hurry under inevitable circumstances, I support the resumption of the Second Reading debate.

Mr President, these are my remarks.

MR LEE CHEUK-YAN (in Cantonese): I am in favour of the resumption of debate, as the *Bible* says, "The sabbath was made for man, and not man for the sabbath". All procedures are there for the public interest. I believe that we should resume the debate as soon as possible today because this is for the sake of very crucial public interest.

Thank you, Mr President.

PRESIDENT (in Cantonese): Technically it is not about a resumption of debate. It is about the question that the debate shall not be adjourned. There is no resumption without an adjournment.

MR SZETO WAH (in Cantonese): As very few people have spoken, there is no need for me to reply. (*Laughter*)

I understand that some Members may find it hard to state their reasons. They will just silently cast their votes against the motion. They dare not tell others why they vote against the motion. For these people, I understand their situation.

Question on the Second Reading debate be not adjourned put.

Voice vote taken.

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

Mr SZETO Wah claimed a division.

PRESIDENT (in Cantonese): Council shall now proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that the question now put to you and that is: That the Second Reading debate on the Prevention of Corrupt and Illegal Practices at the Election of the First Chief Executive of the Hong Kong Special Administrative Region Bill shall not be adjourned and that the debate shall proceed forthwith.

Will Members please register their presence by pressing the top button on the voting unit and then proceed to vote by pressing one of the three buttons below?

PRESIDENT (in Cantonese): 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, Mr Martin LEE, Mr SZETO Wah, Mr LAU Wong-fat, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr CHOY Kan-pui, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr

MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Mr LO Suk-ching voted against the motion.

Dr LEONG Che-hung, Mr Eric LI, Miss Margaret NG and Mr NGAN Kam-chuen abstained.

THE PRESIDENT announced that there were 33 votes in favour of the motion and one vote against it. He therefore declared that the motion was carried.

PRESIDENT (in Cantonese): As the motion moved by Mr SZETO Wah under Standing Order 42(3A) has been agreed, we will now proceed with the Second Reading debate on the Bill forthwith.

Does any Member wish to speak on the Second Reading debate on Mr SZETO Wah's Bill?

MR RONALD ARCULLI: Mr President, the selection and appointment of the first Chief Executive is set out in the decision of the National People's Congress (NPC) of China on 4 April 1990. This decision confirms the position as set out in the Sino-British Joint Declaration and in Annex I to the Joint Declaration. This is not something new. Indeed this totally reflects the draft Basic Law published in February 1989 and the draft decision of the NPC which was annexed to the draft Basic Law that I have just referred to.

The Joint Declaration is an international treaty and the Basic Law will be Hong Kong's constitution from 1 July 1997. No one can have any doubt that the first Chief Executive has to be selected and appointed in accordance with the Joint Declaration and the decision of the NPC. Indeed, this will have to take place some time prior to 1 July 1997 and the selection process is to take place in Hong Kong.

That being said, the appointment of any governor in Hong Kong is a matter of sovereignty for Britain. The appointment of our first Chief Executive is likewise a matter of sovereignty for China. This is the constitutional position. I suspect that the Basic Law Drafting Committee accepted this position, and that is why I believe its members concurred with the 1989 draft Basic Law and the relevant draft decision of the NPC. It is not a matter for this legislature.

As we all know, the selection process has begun. I therefore ask, is it fair to ask this Council to pass a law that may call into question the actions of anyone involved in this process? Mr President, the Liberal Party has always jealously guarded against passing any legislation that has or may have retrospective effect. This Bill, if passed, does exactly that. This point, whilst important, clearly takes second place to the constitutional position. For these reasons, the Liberal Party will vote against the Bill.

Before I conclude, Members may find it interesting to examine Article XXVI.6 of the Royal Instructions which prohibits the Governor from assenting to any Bill, the provisions of which shall appear inconsistent with obligations imposed upon Britain by this treaty. Perhaps the Secretary for Constitutional Affairs would consider and deal with this point in his address.

Thank you, Mr President.

MRS ELIZABETH WONG: Mr President, I support this draft Bill because in my opinion, anti-corruption activities, like justice, must be done and must be seen to be done. Now, far be it for me to criticize anyone in particular or to suggest any innuendo. I suggest, however, that without a piece of legislation in Hong Kong, Hong Kong people will not be provided with a basic protection against corruption of its leadership at the highest level.

If the image of an individual is tarnished, it will not only bring shame to the individual or his or her family, but it will bring shame to the whole of Hong Kong. If the British Governor is corrupt, then the shame is on the British people. If the Hong Kong leadership is corrupt, then the shame, in my opinion, falls on Hong Kong people.

Let it not be said that Hong Kong people are corrupt. Hong Kong

people hate corruption, and therefore to have a piece of legislation like this will give us the signal that we will have a clean future and a bright future.

MR IP KWOK-HIM (in Cantonese): Mr President, the Member's Bill moved by the Honourable SZETO Wah seeks to monitor the current election of the first Chief Executive of the Hong Kong Special Administrative Region (SAR). From the specific contents of the provisions, it can be seen that they are similar to those monitoring the three-tier elections in Hong Kong. In the past, the relevant provisions have worked effectively, and they are also accepted by the people of Hong Kong. The Democratic Alliance for the Betterment of Hong Kong (DAB) shares the view that elections in Hong Kong should be conducted in accordance with the principle of being fair and just and they should be under sound monitoring, so as to preserve Hong Kong's consistent image of being an honest place. For the present election of the first Chief Executive of the SAR, the SAR Preparatory Committee appointed by the National People's Congress of the People's Republic of China is in charge of all the work for the election to be carried out according to the procedures set down in the Basic Law. Therefore, the responsibility of monitoring in specific details should be for the Preparatory Committee to take up.

In the *Chapter on Zi Lu in The Analects of Confucius*, Confucius says: "When terms are not properly defined, then one's words will not be consistent. If one's words are not consistent, then he will not accomplish anything." Today, standing in the legislative chamber of a British colony and exercising the powers granted by the Royal Instructions, Mr SZETO Wah seeks to enact laws according to the legislative procedures of a British legislative assembly to monitor the election activities which come under the sovereignty of the Chinese Government. Such being the case, I wonder if it can be regarded as "having terms properly defined and words consistent"? Hong Kong is an international city where hundreds of thousands of foreigners have come and lived. According to this reasoning, will it be necessary to draw up election legislation for the election of the President of the United States for the American citizens residing in Hong Kong? Similarly, will Mr SZETO Wah find it necessary to enact legislation for the more than a hundred thousand Philippine citizens in Hong Kong to monitor the election of the Philippine President? If the reasoning goes on along this line, Hong Kong will soon become famous as an "international election police".

Mr President, it is well-known that the Chief Executive is the leading figure

at the highest level of the SAR after the sovereignty of Hong Kong is reverted, and the entire SAR Chief Executive election will be conducted according to the Basic Law. It is the internal affairs of the Chinese Government. Mr Nicholas NG, Secretary for Constitutional Affairs, has time and again expressed that the selection of the first Chief Executive is to be arranged, organized, planned and monitored by the Government of the People's Republic of China. The Hong Kong Government has no right to take an interest in it. A few days ago, the Preparatory Committee has drawn up a code of practice in nine points for the prevention of corrupt practices in the election. Over the past month or so, the candidates for the Chief Executive post have been participating in various kinds of election campaign activities. They have faced the public and have placed themselves under the supervision of the Hong Kong people. Through wide coverage by the mass media of the entire process of the election from the time when nomination took place until it came up with the candidates, both the transparency of the election and its acceptance by members of the public of the candidates have been enhanced.

Mr President, on the above-mentioned grounds, the DAB will oppose the Member's Bill introduced by Mr SZETO Wah. These are my remarks.

MISS EMILY LAU (in Cantonese): Mr President, for all these months, I have been saying that the entire process of the so-called selection of the Chief Executive is a farce, and that the Chief Executive is in fact appointed by a supreme order. I have always held that the Chinese Government has already appointed TUNG Chee-hwa by a supreme order. For this reason, I do not believe the so-called selection to be held next month is a true selection.

As a matter of principle, if it is proposed that certain legislation has to be enacted to monitor this election, it really amounts to raising its status. I do not know whether the Democratic Party has meant to raise its status. Is it not necessary for the Democratic Party to explain why it feels that such is still deemed to be an election and therefore certain legislation is required to monitor it? I do not share the same view. This is because we have seen, when the Preparatory Committee was first formed, how JIANG Zemin shook hands with

TUNG Chee-hwa, and then how subsequently pro-China businessmen came out one by one and indicated their support of him by name. Over all these months, the people of Hong Kong have seen clearly that he is the one appointed by a supreme order of the Chinese Government. The selection that is to be made by the Selection Committee which consists of 400 people is merely for staging a show or a farce. It can never convince people.

I think that the selection cannot even be called an election by a small coterie of people. Rather, it is in fact decided only by Beijing. Therefore, no matter how we stretch our imagination, we will never be able to call it an election or a selection. In the nomination ceremony held on 15 November, the whole truth already came out. On that occasion, TUNG Chee-hwa got more than 200 votes for his nomination. So, he has won the game already. I had thought that only one person would come out in the nomination, as I am most pessimistic of it. However, others would not think likewise, and they figured that there would be more than one person to come out in the nomination, for a nice little show has to be staged. But why do they need a show? It is because in this way, it can be said that Hong Kong has made the first step towards democracy. Both the 1991 election and the 1995 election according to Chris PATTEN's political reform package could not be said to be democratic, and as there was no democracy in the past, it follows that this is truly the first step towards democracy. Therefore, there has to be a selection. However, we all agree that before 11 December when the selection is to be held, the Chinese Government has already spelt out which person it has appointed by a supreme order. There were those who were daydreaming and thought that YANG Ti-liang would have a chance to come close. It was not until the result was announced did they learn that he lost by a great margin.

Mr President, I utterly disbelieve that there will be anything like an election or a selection. Therefore, if we try to regulate by legislation something that cannot be called an election, I really do not know what we are trying to regulate. However, should there be any election, we would be in support of the principle of regulation by legislation. We are also democrats, and we will support this general principle of the democrats. Therefore, I will support,

reluctantly though, the Honourable SZETO Wah's Bill. I believe all of us know that it simply is not an election. So even if this Bill is passed (I believe it will not be passed because we have so many "shoeshine boys" and "shoeshine girls" here), can it be called an election? What on earth is there to be regulated? Let us not deceive ourselves!

Thank you, Mr President.

DR YEUNG SUM (in Cantonese): Mr President, I find the speech delivered by the Honourable Miss Emily LAU very strange, because it seems that she is looking at the Hong Kong society while standing aloof on the clouds. She seems to feel that this election by a small number of people has never occurred. It is, of course, an election even though it is not a democratic one. The Chief Executive is not to be appointed but will be elected. Nevertheless, it is an election by a small coterie to be held behind closed doors. It is also an undemocratic election by clandestine operation. There are somehow 400 people in the electorate. But we can see that vote trading has been rampant amongst these 400 people. Some suggested to a candidate when he was visiting certain organizations that they would vote for him if they were appointed to the Executive Council. In view of these activities, this is not a democratic election, but we cannot say that it is not a kind of election. We also believe that corrupt and illegal practices are apt to occur in elections by a small coterie as previous examples have told us that a lot of corrupt and illegal practices have occurred in such elections. So I support the Honourable SZETO Wah's Bill and hope that this election by a small coterie will become cleaner after the passage of this Bill. Nevertheless, this is still an undemocratic election by a small coterie. On this point, our view is totally in line with Miss Emily LAU.

In fact, the Preparatory Committee has already drawn up a set of code for members of the Selection Committee against corrupt practices. But everybody knows that this set of guidelines does not have any legal effect. More ridiculously, the punitive provisions have been deleted subsequently from the code by the Preparatory Committee. So basically the code has no legal effect.

It does not contain any punitive provision either. The general public feel that if the election is an honest one, the elected person, no matter who he is, will have a higher degree of credibility. But if there are blatant activities of vote trading and no monitoring is in place, then even the principle of an honest election cannot be upheld.

A moment ago, a Member queried how a piece of colonial legislation could monitor an election held by the Chinese Government. But I would like to point out that we are under the principle of "one country, two systems", and the existing laws of Hong Kong will remain effective provided that they conform with the Basic Law. We are not applying the Chinese laws now. Nor are we trying to regulate Chinese affairs by means of Hong Kong laws. This election is being held in Hong Kong and the Chief Executive will play a very important role in the Hong Kong Special Administrative Region in the future. So the selection process of the Chief Executive should be governed by legislation. As the principle of "one country, two systems" will be implemented and as all Hong Kong laws before 1997 will remain effective if they do not contravene the Basic Law, why is it impossible to monitor through legislation this election by a small number of people in which corrupt and illegal practices are apt to occur? Regarding the argument that this is a piece of colonial legislation and should not be accepted, I would like to remind Members that they are all elected to this Council in accordance with the colonial legislation. Furthermore, Hong Kong is a British colony and this is still an unchanged reality.

I hope Members will do their best for the enactment of this piece of legislation before this election by a small number of people is to take place so as to monitor it and to ensure an honest election even though it is not a democratic one.

Thank you, Mr President.

MR BRUCE LIU (in Cantonese): Mr President, I speak on behalf of the Hong Kong Association for Democracy and People's Livelihood (ADPL). In the process of establishing the Hong Kong Special Administrative Region (SAR), how the first Chief Executive will be elected is of paramount importance. The

first Chief Executive must enjoy extensive acceptability by the people of Hong Kong so as to boost the people's confidence in Hong Kong's return to China and the establishment of the SAR. The drawing up of the electoral Code for the election of the first Chief Executive and the setting up of a fair and just regulatory mechanism for monitoring the whole electoral process in order to have a corruption-free election is the fundamental principle to enhance the credibility and acceptability of the Chief Executive and the key to a smooth transition.

Although the Preparatory Committee, well before the forming of the Selection Committee, has promulgated the Code for Members of the Selection Committee for the first Government of the SAR of the People's Republic of China (PRC) with a view to regulating conduct and behaviour of Members of the Selection Committee at the election of the Chief Executive, it will, however, not effectively monitor any possible corrupt and illegal practices that may occur in the election of the first Chief Executive because the Code does not contain any punitive provisions for corrupt and illegal practices and there is a lack of independence and authority in this regulatory system. This is regrettable indeed.

At present, there is already a comprehensive electoral regulatory system put in place in Hong Kong and the Preparatory Committee can take reference from our existing electoral regulatory system to formulate a regulatory system for the Chief Executive election which will conform with the expectation of the Hong Kong people and will be trusted and accepted.

The Bill proposed by the Honourable SZETO Wah today is for the Hong Kong Legislative Council to monitor through legislation the election of the first SAR Chief Executive to be held in Hong Kong, and it would seem to be a sound regulatory mechanism. In view of the effectiveness of the Prevention of Bribery Ordinance in Hong Kong, there is nothing objectionable to have a Bill which is drafted by adopting this Ordinance. It should be an electoral regulatory mechanism worthy of our consideration and reference. Having said that, the ADPL is of the opinion that there are three things inappropriate for this Council to take legal initiative in regulating the election of the Chief Executive of the SAR at the present stage. These are as follows:

Firstly, it is inappropriate for a legislative body under British colonial rule to take legislative initiative to monitor the electoral activities in the SAR of the PRC.

The Hong Kong Legislative Council is a legislative body under British sovereignty and the election of the Chief Executive of the SAR is an electoral activity held in Hong Kong by the PRC. In the legislative aspect, the two sovereign states should not interfere with the domestic affairs of each other unless there is a signed agreement or consent between them to that effect. Should Mr SZETO's Member's Bill be passed by this Council, it will mean that the Bill is passed by the legislative body under British colonial rule. The passage of this Bill without the consent of the PRC would mean a direct challenge to the sovereignty and legislative initiative of the PRC. The ADPL is of the opinion that it would be more appropriate if an independent monitoring mechanism can be set up for the actual and effective monitoring of the Chief Executive election by the Preparatory Committee as it has the monitoring powers itself. Although this Council has the right and obligation to make proposals, including critical views on the Code for the Members of the Selection Committee, to the Preparatory Committee, the initiative to form a regulatory mechanism rests with the Preparatory Committee rather than this Legislative Council. As regards the question whether the Code as laid down by the Preparatory Committee is desirable or not is a matter of the PRC's responsibility and legislative powers.

Secondly, inappropriate timing of the legislation.

As the selection of the Chief Executive will be held on 11 December while the First and Second Readings of the Bill will be gone through today and its Third Reading will not be through until next Wednesday, 27 November, it will bring unnecessary chaos to the Chief Executive election by formulating new electoral rules for the Members of the Selection Committee towards the end of the election, no matter how desirable this Bill may be and even without considering the problem of legislative initiative.

Thirdly, inappropriate legislative procedures.

The ADPL is of the opinion that the legislative process of this Bill is too hasty. The First, Second and Third Readings of the Bill will have to be completed in a week and the Bill has not been subject to detailed scrutiny, which should include consideration of its applicability and validity, by a Bills Committee. So the ADPL thinks that it is inappropriate to pass such a controversial Bill in such a hasty legislative timetable.

In order to ensure the credibility and acceptability of the electoral process of the Chief Executive and to avoid any possible corrupt and illegal practices committed by individual Members of the Selection Committee which will smear the image of the whole election, the ADPL would like to urge all Members of the Selection Committee to strictly abide by the Code for the Selection Committee Members so as to avoid any corrupt practices and elect a Chief Executive who can enjoy both credibility and acceptability by the general public.

I so submit.

MR LEE CHEUK-YAN (in Cantonese): Mr President, the purpose of the Honourable SZETO Wah's motion today is to regulate this election by a small number of people.

As I pointed out last week, this election of the Chief Executive is the "rigged horse race of the century". Mr SZETO Wah's proposal is aimed to regulate the jockeys, trainers and stables so that they will not "foul the play" or "fix the horses". However, if the banker desires to "fix the horses", then there is nothing that we can regulate. Although there is nothing we can regulate by means of a Bill if the banker is "rigging the horse race", we can still seek a little justice in the most wrongful system. If Members of this Council do not even fight for a little justice in this most wrongful system, then we will be even more disappointed, and this will also disappoint the people of Hong Kong.

Although this "rigged horse race of the century" still remains a "fixed horse racing" in the end, it can be considered a little justice achieved if we can prevent the jockeys, trainers and stables from "fixing the horses".

Thank you, Mr President.

MR LEE WING-TAT (in Cantonese): Mr President, I support the resumption of

debate on the Second Reading of the Bill.

Members of the Selection Committee and candidates for the Chief Executive post have been campaigning for about a month. From news reports, we know it is likely that a number of cases may contravene the current Corrupt and Illegal Practices Ordinance. The first example is the reported abalone meal hosted by Mr Peter WOO, with news reporters as his guests, in which Mr WOO discussed his aspirations as a candidate for the post of Chief Executive. Of course, the heads or senior staff of the media may not be among those who will vote. However, is the meal some kind of advantage under the Corrupt and Illegal Practices Ordinance? I am not sure if the advantage may influence the result of voting or the entire news coverage.

Secondly, it has been reported that a candidate donated \$100,000 to a civil service group, which has a member in the Selection Committee. Will this amount to a corrupt or illegal act? Some candidates have also donated one million or two million dollars to the Committee for the Celebration of the Return of Hong Kong to China, which certainly includes a number of Selection Committee members.

A third example is that according to newspaper reports (in fact the *South China Morning Post* has named the relevant person), when a candidate visited the Heung Yee Kuk, a Kuk member told the newspaper that if selected, that candidate would consider appointing a representative of the Heung Yee Kuk to join the Executive Council. Is that an obvious political deal rendering the selection unfair?

Fourthly, I would like to respond to the question of whether mutual support given to each other among groups or political parties will constitute corrupt and illegal practices or an "advantage" in the exchange of advantages. SHIU Sin-por, deputy secretary-general of the Preparatory Committee, blew his top on one occasion when he said that the media had asked silly questions. He said it was very common for political parties to give each other support, and that it stood to reason for political parties to gather Selection Committee members in their camps to devise strategies for mutual support.

I think this view is open to question. The main difference is that, in past

elections, mutual support among political parties or groups were mostly given under the names of individuals or by mobilizing their members to give the support needed. Basically, a major difference is that no matter how vast the number of members is, they cannot comprise the majority of the voters. In direct elections, political parties or unions with a membership of 20 000 or 100 000 cannot have any significant advantage among a voter population of one million or two million, vast as these political parties or unions may seem. The current position is that after joining hands these groups can have almost 150 to 200 Selection Committee members. If they do render support to each other, the election is no election at all. The election of the Chief Executive or the provisional legislature will be fraught with exchanges of political advantages, which can actually determine the voting results.

Mr President, the four above cases apart, I was disappointed with the Honourable Bruce LIU's speech. I paid a lot of attention to the speech. Mr LIU initially talked about the guidelines of the Preparatory Committee. He said they have no effect, and the present Hong Kong laws are working well. However, he then gave three grounds. First, he questioned whether the legislature of a British colony could do things that interfere with the acts or activities under Chinese rule. This point was indeed already clarified by Mr MA, the Legal Adviser of this Council, at a previous meeting, which the Honourable Bruce LIU attended. The Legal Adviser said basically the jurisdiction of a legislature is not limited by geographical boundaries. For example, agreements on international aviation, international trade or shipping activities may be passed by a legislature but may regulate the trade, merchant vessels or shipping activities relating to the people of another country. I do not understand why Mr LIU raised this point again today.

Second, Mr Bruce LIU said the legislation is too hasty and is therefore inappropriate. The Bill is indeed hurried, in view of the pressure of time, but we are not proposing a Third Reading for it next Wednesday. Did Mr Bruce LIU attend our Party group meeting yesterday so that he knew what we were doing? We did not have such a proposal. We have never harboured the idea of having the Bill read for a Third time and passed next Wednesday. We were hoping to resume the Second Reading debate. Under the Standing Orders, there will be at least two weeks for amendments. If Mr LIU agrees, we can put the Bill off for a short while to allow more time for it. Talking of haste, the processing of the Bill is not being rushed as quickly as the Western Harbour Crossing Bill passed in 1994, which was a significant legislation that had to be

enacted in three or four weeks.

While I agree with what the Honourable Miss Emily LAU has said that this is not an election but a selection, it would be a dereliction of duty on our part in that we fail to stop corrupt and illegal practices under a most unfair selection mechanism because the Hong Kong Legislative Council chooses to ignore such a gravely irregular arrangement. So, I think the Bill is a very important one. I support a resumption of the Second Reading debate.

Thank you, Mr President.

DR LEONG CHE-HUNG: Mr President, in about three weeks' time, Hong Kong will make history in that for the first time we would have someone who is considered an elected person rather than a British appointee designated to head our government machinery. While there are vast, diversified and even contrasting views over the election process, I am sure none would object the need of upholding such an election in a fair, open and just manner.

By the same token, none will object that such an election, no matter in what form, should be free from corruption or illegal practices. It is under this enshrined principle that few would not support the setting up of rules and regulations to govern any election process, be it for the Special Administrative Region Chief Executive, provisional legislature or office bearers of any public institution, against corruption and illegal practices.

Yet, Mr President, the Bill moved today before us has posed a major query on its impossibility during this transitional period. I am in full support of similar legislation being installed for the HKSAR after 1 July 1997, so as to ensure a clean governance in Hong Kong. Yet, we have to accept the fact that the election of the first Chief Executive is by the Selection Committee, which is a body legally set up by the Preparatory Committee established by the National People's Congress of China. There is no doubt that such election relates greatly to our future, our benefits and our future direction. Yet, does it make sense for Hong Kong legislation to govern the activities of a body which is not under the ambit of Hong Kong legislation? More, even if such legislation is passed, could it simply be not enforceable?

Mr President, I entirely understand your ruling that anything under the sun

can be discussed in this Council as long as they do not have any legislative effect. And since no Bill can be law without the assent of the Governor, you have also ruled that the discussion proceedings of any Bill within this Council is in order. Whilst I respect your ruling, I have great reservation over the wide base of discussion of this Council. Is it proper for us to discuss and deal with the issues not falling under the ambit of the Hong Kong legislature? Take into consideration that we may well be discussing a Bill that is not even enforceable.

Mr President, instead, I sincerely hope that the members of the history-making Selection Committee would abide by its regulations in electing our Chief Executive (Designate). I also hope that the Chief Executive candidates would fully uphold the highest requirement of Hong Kong people, for any act or suggestion or foul play would not be accepted.

For those reasons, Mr President, whilst I fully endorse and accept the spirit of an uncorrupt election, I could not support the mood.

MR MARTIN LEE (in Cantonese): Mr President, originally I did not intend to speak. However, after listening to several Members stating their opinions, I cannot hold back any longer.

We must understand that this election will definitely create problems. What I would like to discuss with Members now is the legal issue. While Hong Kong is still under British rule, the Chinese Government wants to hold an election for the first Chief Executive in Hong Kong prior to 1 July 1997. This already creates a problem of the sovereignty of the two countries being in conflict with each another. Since the election is to be held by the Chinese Government in Hong Kong under British rule, the problem has nothing to do with the Legislative Council. I am by no means objecting to this decision. The fact that there will be a Chief Executive election is of course better than no election at all. Even if the election is restricted to a small number of people, it is better than appointment. Actually there are people who say that appointment is not such a bad idea, because if the wrong man is appointed, we can always blame it on Beijing, on the one who is responsible for the appointment. As the case now stands, if the elected person is no good, the Chinese Government can instead turn blame it on the Hong Kong people. They could say the 400 people

are all Hong Kong people. It is your fault, not ours! However, as Chairman of the Democratic Party, although I feel that this election is not truly democratic, it is better than no election at all. Four hundred people are better than four people; and four people are better than one person.

But now the problem arises. How are we going to deal with it? I would like to consider the legal issue with Members. The election is to be held on 11 December. I am sure we have seen the decoration of the election hall on television. I have not been there myself, but I know that it is decorated just like the Great Hall of the People. While the Hong Kong Police Force is responsible for keeping order outside, who in fact is enforcing the law inside? Some Members feel that we should on no account step over the line. It is a matter for the Preparatory Committee and a matter of the sovereignty of China. Speaking of China's sovereignty, I could not help but shudder. Since the Honourable SZETO Wah is now seen to be violating China's sovereignty, I do not know what more charges he will face in the future. He will have to get a barrister, but I will not be able to help him. Since I am now speaking in support of him, I would probably be sitting next to him on the defendants' bench.

Mr President, if matters of sovereignty are involved, the Hong Kong Police Force would not be able to enter the election hall. This means that it would be a matter for the Preparatory Committee. Our colleagues from the Hong Kong Association for Democracy and People's Livelihood (ADPL) said that they would ensure that order would be kept. But what if order is not kept? What if they get into a fight? We have seen fights in the Taiwanese parliament. What if someone forces the others to elect him by threatening them with a knife? What is to be done if someone commits criminal offences of threat, starts a fight or even commits murder? I am so glad that the Attorney General is sitting here. I was afraid he might leave and not come back. Who is going to deal with that? The whole thing would certainly be recorded by the television stations. Who is going to prosecute the offenders? Should he be handed over to the Chinese Government? He might be sentenced to death. I would like to ask the Attorney General who he thinks should deal with such criminal offences. We must understand that such cases cannot be handed over to the Chinese Government, since they happen in Hong Kong. The election hall is not like Kowloon Walled City, which the British Government could not interfere with. The election hall is in Hong Kong and falls under British jurisdiction. If the above-mentioned offences committed in the election hall should be dealt with by

Hong Kong courts, why should the same thing not apply to any corrupt practices which take place there? Of course they should be dealt with by Hong Kong courts too. What is this talk about sovereignty anyway? I find this really infantile.

The Honourable Bruce LIU even talked about the legislature taking precedence. Actually I am in favour of the legislature taking precedence, but now it is the executive which takes precedence. If he says the wrong thing, I fear he might not get elected to the provisional legislature. By criticizing him now, I am in fact doing him a favour. This is not an internal affair of China. An election held in Hong Kong under British rule before 1997 must be governed by Hong Kong laws. Unfortunately, however, Hong Kong laws cannot apply in this case. That is why Mr SZETO Wah has moved this Bill in order to provide for such regulation.

If I were a candidate myself, I would not be afraid of being regulated by the law. On the contrary, I would whole-heartedly welcome it, because I am not as rich as the others. It would be best that everyone is regulated. I wonder why the reporters did not ask the candidates whether they support Mr SZETO Wah's Bill. Do they support it? They do not. What are they thinking about? I dare not say, lest the President would remove me from the sitting. Among the 400 of them, I believe many are against regulation. I wonder what they are afraid of. Actually that should be the best arrangement. It would be best that the process is open and regulated. Everyone should be regulated by the law. Only when the election is conducted in this open manner can the one elected feel proud.

Mr Bruce LIU from the ADPL said that the legislation is too rash. True, the timing is a bit hasty and so is the legislative process. However, the Code from the Preparatory Committee are of no use, and he has admitted to that too. It is better to have the law than nothing at all. Do we want a "lawless" election? Even the election of a village chief in the New Territories is governed by the law. But when the Chief Executive is being elected, suddenly so many people are opposing regulation by the law. Mr President, the more speeches I heard today, the more perplexed I have become. I wonder if this is the same world I was born into. People are using pretty words. They say there is a need for regulation, a need to do something, but

Dr the Honourable LEONG Che-hung, I have put up with you for the third time, but now I have to criticize you in public. As the President's Deputy, you chair the meeting during the President's absence. Your job is to ensure that this Council

PRESIDENT (in Cantonese): Mr Martin LEE, please speak to the Chair.

MR MARTIN LEE (in Cantonese): I beg your pardon, Mr President, you are still sitting here. As the President's Deputy of this Council, he must uphold Members' right to speak, including the right to discuss all sorts of matters, especially when they are entirely consistent with the Standing Orders. Why can we not discuss them? Mr President, your Deputy has made such remarks for the third time

DR LEONG CHE-HUNG: Mr President, a point of order please. I was expressing my personal opinion. I was in no way stalling Members from expressing their views.

PRESIDENT (in Cantonese): Mr Martin LEE, please continue.

MR MARTIN LEE (in Cantonese): Mr President, both the President and his Deputy are elected by Members. They might, if they wish, choose not to be the President or the Deputy. The Deputy may speak. Whatever he says is none of my business. If his opinion is the opposite of mine, that is not a problem either. If anyone should prevent him from speaking, I would certainly object. What excuse do we have for not allowing him to speak? However, if his speech touches on the ambit or the scope of discussion of this Council, I have to make it my business and take him to task. I hope that after hearing my criticism, as the President's Deputy of this Council, Dr LEONG Che-hung will in future refrain from using such excuses on similar questions. It does not matter if he objects, he has the right to do so. Nor does it matter if his arguments are unreasonable,

since that is his right too. But if he keeps saying we should not discuss this and we should not discuss that, while the Standing Orders permit it, I will have to take him to task. I hope the Deputy will not repeat this error. Committing an error is no big deal, as long as one rectifies it.

In the light of the above reasons, I do not think Members have given any good arguments to object to the Honourable SZETO Wah's Member's Bill. We are always harping on a "better tomorrow" for Hong Kong. But what if after the Chief Executive has been elected, rumours go around saying that he has paid money to somebody? It would be a disgrace to us. What should we say to foreign journalists? When they ask the Attorney General, he can only say he cannot prosecute, because the Bill moved by Mr SZETO Wah failed to pass the Legislative Council. We all know that an offence has been committed, and we can see it on television, but how do we prosecute? Is this not a big joke?

Mr President, the four Members from the ADPL and Dr LEONG Che-hung have expressed sympathy and said they support the Bill in spirit. I hope that after hearing my speech (unless they think I am talking nonsense), they will not just say they support the Bill but press the button to vote against it.

Thank you, Mr President.

MR LEUNG YIU-CHUNG (in Cantonese): Mr President, I shall not oppose the Honourable SZETO Wah's Bill. In fact, I should not do so because not only is this Bill addressing the present election, but it will also be applicable to future elections. Therefore, in terms of its significance, it needs to be there.

However, the fact that I do not oppose Mr SZETO Wah's Bill does not mean that I accept the present form of election. In fact, Mr President, you ruled last week that when I described the election of the Chief Executive of the Hong Kong Special Administrative Region (SAR), I insulted Members of this Council by quoting the saying "Foul grass grows out of a foul ditch". However, when I said "foul"

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung, please speak on the motion.

MR LEUNG YIU-CHUNG (in Cantonese): In fact, when I said "Foul grass grows out of a foul ditch", I referred to the way the SAR Chief Executive is elected.

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung, are you raising a point of order?

MR LEUNG YIU-CHUNG (in Cantonese): Mr President, I am stating the reason why I support Mr SZETO Wah's Bill.

PRESIDENT (in Cantonese): Please continue.

MR LEUNG YIU-CHUNG (in Cantonese): Therefore, I think this election of the Chief Executive of the SAR is a completely unacceptable election. Unfortunately, the Chinese Government insists on this matter and affirms the significance of it. However, this act of insisting and affirmation has excluded the direct participation of the people of Hong Kong, thereby producing an election by a small number of people. Many Members have also spoken on this a moment ago, and it is not difficult for us to imagine the consequences of such kind of election, as there is absolutely no way we can be sure that the election will be fair, just and reasonable. Therefore, having the Bill is better than none at all.

As a matter of fact, it is really beyond my understanding as to why the Honourable Bruce LIU from the Hong Kong Association for Democracy and People's Livelihood put forth a large number of reasons, as though he was saying that this piece of legislation should not be enacted. The existing Legislative Council will have to carry on with enacting laws for the period of time to come, and that will have a bearing not only on the community today, but also on the community after 1997. So, are we saying that all these laws should not be

discussed and passed in this Council? That is just impossible.

As a matter of fact, the election of the Chief Executive of the SAR and the people of Hong Kong are closely linked. Just as Dr the Honourable YEUNG Sum has said, it is not something we look at while standing aloof on the clouds. Rather, it actually exists and it affects all the people of Hong Kong. So why do we not try to introduce checks and balances, instead of just letting them do whatever they like? In my view, if we really want to protect the interests of Hong Kong people, we must never accept this.

Mr President, let me reiterate our stand. We absolutely will not oppose Mr SZETO Wah's Bill, but we absolutely do not accept this form of election. We absolutely oppose this form of election.

Mr President, these are my remarks.

MR ALBERT HO (in Cantonese): First of all, I would like to respond to the arguments raised by the Honourable IP Kwok-him. At the outset, he said in his speech that the current three tiers of elections are subject to regulations laid down by the Prevention of Bribery Ordinance. He implied that it is appropriate to impose regulation on elections. But he added that as the first Chief Executive will be elected by the Selection Committee and the election is arranged by the Preparatory Committee, the powers of monitoring rest with them. Whether or not his argument holds water will be analyzed later. But Members have to consider one point: What impression will such an election give to the people of Hong Kong? Does it mean that the election of the first Chief Executive is above the laws of Hong Kong and above the laws which are designed for monitoring elections and considered ought to be implemented in an appropriate way? If the election of the first Chief Executive gives people an impression that it is above the laws, how much confidence would people have in the principle of "one country, two systems" and the rule of law in future?

Secondly, Mr IP Kwok-him said that this colonial legislative body does not have any powers to legislate for monitoring the election of the Chief Executive of the Hong Kong Special Administrative Region (SAR). His argument is quite close to the Honourable Bruce LIU's. In other words, this is the internal affairs of China and a matter concerning the sovereignty of China. I have often heard of such an argument and find it very objectionable. They often

alienate the colonial legislation totally from the system of the SAR or the policies which will be implemented in the future. If they are so resistant to the word "colonial" or anything that is connected with colonialism, why are they sitting in the Council of this colony? Should the Council of the colony be closed down earlier as 1997 is approaching? Should we just sit back and do nothing because too much criticisms and too much proposals would mean an unsuitable interference or influence over the system and policies after 1997?

More importantly, Mr President, whose leader will this Chief Executive be? Undoubtedly this Chief Executive will be appointed by China. This is the fact. But is he not the Chief Executive of the Hong Kong people? Is he not going to be accountable to the Hong Kong people? Is he not going to be responsible for the affairs of Hong Kong? I raise these questions because Mr IP Kwok-him's illustration is shocking to me. He compared the election of the Chief Executive of the SAR to the elections of their own presidents by the Filipinos and the Americans residing in Hong Kong. He further raised a question on why we do not legislate in order to monitor the voting activities of the Americans in Hong Kong. In his eyes, is the SAR Chief Executive to the people of Hong Kong the same as the President of the United States, a leader from the outside having no relationship with Hong Kong people? Such an analogy is shocking to me.

Mr President, in our opinion, the Chinese Government certainly has a constitutional power to appoint the Chief Executive. However, this Chief Executive will be responsible for the governing of Hong Kong and is playing an important role in the well-being of millions of Hong Kong people and he is the leader of Hong Kong people. If Hong Kong people have no say on how he or she is elected and have no right to legislate for monitoring his election in order to ensure a healthy, legitimate and corruption-free election, what sort of system are we having? Is this Chief Executive still the leader of Hong Kong people?

Of course, I quite understand the arguments of Miss Emily LAU. She questioned whether legislation by this Council for the monitoring of this election would give people an impression that we have accepted this method of election. In fact, many Members have, in their speeches, made it clear that our support to this piece of legislation does not mean that we are endorsing this undemocratic election in which only a small number of people can take part. We are not trying to enhance its acceptability either. We have the least intention to do so. In fact, fairness is in the heart of the people. Everybody can see what sort of an election it is. I think the Honourable LEE Cheuk-yan has made a good point:

We still have to uphold the principle regardless of the absurdity, unreasonableness and unfairness of the system. And this principle will not only be applicable to the first election but also applicable to elections in the future. Under this principle, the election of the Chief Executive should be monitored in order to avoid corrupt practices and conflict of interests. This is the main purpose of our support to this Bill.

Mr President, in fact, what we are facing now is whether this is a piece of good legislation. Do we prefer to have this legislation or not? We all know that we are in an unfavourable situation in enacting this legislation because time is running out and we have to scrutinize the Bill in a short span of time. But this is a situation which we do not want to see. There are two main reasons attributable to this situation. Firstly, neither the Selection Committee nor the Preparatory Committee are willing to discharge their duties by formulating a sound monitoring system. Since they fail to do it, we cannot but take up the job. Secondly, as they are unwilling to do it, we have to decide whether we should do it. Although time is running out, yet we still have time to do so if we start doing it now. As we think that it is better to have this piece of legislation than none at all and we still have time to legislate, what excuse do we have to cast a dissenting vote?

So I think the arguments raised by Mr Bruce LIU of the Association for Democracy and People's Livelihood (ADPL) do not hold water. The reason why we have this pressing situation and why this Council have to legislate on this issue is because the Selection Committee has shirked its responsibilities and the Preparatory Committee has failed to discharge its duties. In fact, the ADPL should condemn these two bodies severely instead of doing nothing under such circumstances. As we are legislators elected by the people, we should do our best to fight for a more reasonable and fairer monitoring system.

Finally, Mr President, as the Chinese saying goes, "Genuine gold can stand the test of fire." If the candidates for the Chief Executive are clean and will not accept or offer bribes, why are they afraid of being monitored? In fact, they should take the initiative to accept monitoring instead of using all kinds of pretexts to avoid or resist it.

As the votes of Members from the ADPL will play a decisive role, I hope they will ponder over the issue carefully so that their political stance will not be queried by the Hong Kong people after this vote.

Thank you, Mr President.

DR JOHN TSE (in Cantonese): Mr President, I would like to make a few points briefly in response.

First, the Honourable IP Kwok-him talked about perfect justification in legislation and he also said something about Hong Kong legislating to regulate elections in the United States or the Philippines. The Honourable Albert HO has already discussed that and I will not dwell on it here. Nonetheless, Mr IP Kwok-him's speech was totally illogical and even incoherent. We are talking about applying the Hong Kong laws in Hong Kong. What is wrong with that? Actually, we are talking about "one country, two systems"; I repeat, we are talking about "two systems".

Mr IP Kwok-him also mentioned that the acceptability of the candidates for the post of Chief Executive among the public has recently increased. This is actually a facade. In fact, this whole election is nothing but a facade. The 6 million people in Hong Kong cannot vote but only the 400 members of the Selection Committee are entitled to vote. Everyone knows that corruption can easily take place in such an election by a small circle. How can we boost the general acceptability of this so-called election? I think that only through the prevention of corruption Bill as moved by the Honourable SZETO Wah today can its acceptability be boosted.

Lastly, I would like to ask: What is so bad and what is so wrong about our desire for an honest election? We want a fair, just and open election. Why are they so afraid of being monitored? I support a fair, just and legal election.

I so submit.

MR TSANG KIN-SHING (in Cantonese): Mr President, first of all I would like to respond to the comment made by the Honourable LEE Cheuk-yan. He referred to this election as a case of "rigged horse race". Actually, horse rigging at the racecourse is no big deal, since it would not affect all the 6 million Hong Kong people. Only the punters, jockeys, stables and horse owners would suffer. This "rigged horse race", however, would affect the future lives of 6 million Hong Kong people and the development of the future political system. So it is not really appropriate to compare this election to a "rigged horse race", as 6

million people would be directly affected in this case.

I think that the Honourable SZETO Wah is a bit "quixotic" in proposing this Bill today because while we oppose this election, we have no means of stopping it. Since Hong Kong's success is based on an honest society free of corruption and on the rule of law, we hope to deal with a bunch of "race-fixers" and bring them to justice through legislation. Why do I say that Mr SZETO Wah is "quixotic"? It is because this Bill is bound to be negated. So many people are involved in horse rigging, including over 30 Members of this Council. Why would they support legislation to regulate them? If the Bill is put to the vote on 11 December, the outcome might be somewhat different. A few more people might vote for it. At the end of this debate, we will see from the voting record that those who have decided to participate in the horse rigging are certain to vote against it. By introducing this Bill, Mr SZETO Wah is merely showing the public the mentality and behaviour of the "race-fixers" who have made clandestine deals among themselves. At present, it is very difficult to legislate to prevent these people from horse rigging and making deals. But this "rigged horse race" would directly affect the 6 million Hong Kong people.

I wish Mr SZETO Wah good luck. I wish the six million Hong Kong people good luck. And I hope that "fixed horse racing" will be controlled by legislation.

Thank you, Mr President.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Mr President, in the process of setting up the Hong Kong Special Administrative Region (SAR) and the forming of the SAR Government, it can be said that the selection of the first Chief Executive is the most important link. Hong Kong people expect the Chief Executive to have outstanding leadership and great foresight, and to be honest and righteous, and to be able to lead Hong Kong to march proudly into the 21st century. Therefore, it is just natural for the public and the Legislative Council Members to pay close attention to the process of the selection of the first Chief Executive. It is actually of the utmost importance that the selection process is kept open, corruption-free and transparent, because this is the crux of whether the Chief Executive and the SAR can win the trust of the public or not. The expectation of Hong Kong citizens in this aspect is very clear and we have also reminded China of this many times.

Despite that, whether the Hong Kong Government should interfere in the supervision of the selection process is yet another issue. The method for the selection of the Chief Executive is stipulated in the Basic Law and the decision adopted by the National People's Congress on 4 April 1990. It is the duty of the Chinese Government and the Preparatory Committee to enforce such stipulations. Therefore, the guarantee of an open and corruption-free election process and the credibility and acceptability of the elected candidate should all be the duty of those who are responsible for the selection work. In view of this, the Chinese officials have openly reminded all the members of the Selection Committee that they must abide strictly by the guidelines adopted by the Preparatory Committee in order to ensure that the selection is carried out in an absolutely fair way.

At last, I would like to say a few words about the selection of the Chief Executives of the future terms to come. The method for the selection of the Chief Executive is stipulated in Annex I of the Basic Law, and it is clearly prescribed that the law of electing the Chief Executive shall be enacted by the SAR with the principles of democracy and openness. Appropriate rules and regulations will thus be established step by step, but this will be the duty of the SAR Government.

PRESIDENT (in Cantonese): Mr Martin LEE, do you wish to speak?

MR MARTIN LEE (in Cantonese): I would like the Secretary for Constitutional Affairs to elucidate a point he made in his speech. In my speech I asked: In the event of an evident criminal offence during the election, is the Hong Kong Government in no position to interfere or is it not in the least willing to interfere?

PRESIDENT (in Cantonese): Secretary for Constitutional Affairs, are you willing to clarify?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Mr President, after conferring with the Attorney General, our conclusion is that if anything happens in Hong Kong that breaches the laws in effect, the relevant authorities of the Hong Kong Government will of course deal with it in accordance with the laws in effect.

PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong, do you have a point of order?

MR CHEUNG MAN-KWONG (in Cantonese): May I follow up the Honourable Martin LEE's question and ask the Government?

PRESIDENT (in Cantonese): Mr Martin LEE interposed to seek elucidation.

MR CHEUNG MAN-KWONG (in Cantonese): May I also seek elucidation for a point in the Government's speech?

PRESIDENT (in Cantonese): That will turn it into a debate. If you seek elucidation for an explanation in the reply again, this will go on forever. You may ask your question at the next sitting.

MR CHEUNG MAN-KWONG (in Cantonese): Thank you, Mr President.

MR SZETO WAH (in Cantonese): Mr President, although the Honourable IP Kwok-him's speech was short, it contained a lot of brilliant remarks. He said that the legislation referred to in my Bill proved effective in past elections and he has also admitted that it is effective. But why is it that the relevant legislation cannot take effect in the election of the first Chief Executive of the Hong Kong

Special Administrative Region (SAR)? It is not because that it is no longer effective but because it is prevented by some people from becoming effective. Is it true that corrupt practices in the past will not be regarded as corrupt in this election? Is it because illegal practices in the three tiers of councils and boards will be regarded as legal in this election? He said that the regulatory role should be played by the Preparatory Committee. We really hope this would be the case. But if it fails to do so, let us take up the role!

He raised an even more brilliant point by comparing this election to the presidential elections of the United States and the Philippines in which the Americans and the Filipinos residing in Hong Kong will take part. In fact, elections in the United States and in the Philippines are governed by their own laws. Now we are not electing the president of the United States nor the president of the Philippines. We are electing the first Chief Executive of the SAR. This is a matter for the Hong Kong people and the realization of "a high degree of autonomy". Mr QIAN Qichen said that the Chief Executive to be elected should be acceptable to the people of Hong Kong. How to be acceptable? To be acceptable, the election must be conducted in an honest and fair way.

The Honourable Bruce LIU, just now I saw on the Cable Television channel some footage of you several years ago and this morning. In particular, you said this morning that had you lost the election, you would not have joined the election of the provisional legislature. But since you won it, so you are now joining. If we go by this logic, I think you would not have opposed but would have supported my Bill if the four of you had not submitted your application forms for the provisional legislature election this morning, or if the provisional legislature election had already been held and all of you had lost the election.

You said this is not the right time to put forth this Bill because it is near the end of the election. But as you have participated in an election before, you should know that the closer it is to the end of the election, the higher the likelihood of corrupt and illegal practices as people are more anxious about the results. And monitoring should be strengthened more at this time!

PRESIDENT (in Cantonese): Mr SZETO Wah, please speak to the Chair.

MR SZETO WAH (in Cantonese): You also said that the legislative procedures and methods are not quite right. Then how come you did not cast a dissenting vote against my motion that the Second Reading debate be not adjourned? Why did you cast an assenting vote? I hope you have not been videotaped so that what you said just now would not be replayed some years later.

PRESIDENT (in Cantonese): Mr SZETO Wah, please speak to the Chair, not to Mr Bruce LIU.

MR SZETO WAH (in Cantonese): You also mentioned that if we, in the capacity of Members of this colonial Legislative Council, are

PRESIDENT (in Cantonese): Could you replace the word "you" with "he"?

MR SZETO WAH (in Cantonese): to regulate the election of the Chief Executive by legislation, it would be an interference with the internal affairs of China and a challenge to the sovereignty of China. Such an allegation is an exaggeration! In fact, you are challenging your own conscience and the conscience of the Hong Kong people! How could we challenge the sovereignty of China?

You commented that this Bill

PRESIDENT (in Cantonese): Mr SZETO Wah, please do not speak to Mr Bruce LIU, speak to the Chair.

MR SZETO WAH (in Cantonese): I am not speaking to him, I am just looking at my script. *(Laughter)*

PRESIDENT (in Cantonese): Could you change the word "you" in your script to "he"?

MR SZETO WAH (in Cantonese): is merely a piece of colonial legislation, how can it regulate the People's Republic of China and the Chief Executive of the SAR of the People's Republic of China? In fact, there are only good or bad laws, and laws which would uphold social justice or trample on social justice. Even if the laws are enacted under the colonial system, they could still be good laws; even if the laws are passed by a government holding high a banner for the people, they could still be laws which suppress the people!

According to the Basic Law, our current laws, which are enacted by a colonial legislative body, will remain effective provided that they do not contravene the Basic Law. I believe most of our laws will remain effective. So, in the future SAR, there will be plenty of colonial laws. Will you abide by these laws then? Here, "you" does not mean "he". (*Laughter*) If you want to oppose this Bill, you ought to point out which part of it has contravened the Basic Law, and you ought not try to cover up any corrupt or illegal practices in the name of anti-colonialism.

Dr the Honourable LEONG Che-hung, you said that this Bill has to wait

PRESIDENT (in Cantonese): Mr SZETO Wah, please do not speak to a Member, please speak to the Chair. You can use the word "he" or "him".

MR SZETO WAH (in Cantonese): A moment ago, Dr LEONG said that this piece of legislation can only be passed on 1 July. I want to tell him a story from *Zhuang Zi*. When Zhuang Zi was walking on a road, he saw a track left by a vehicle. In the track, there was some water and a fish. The water was drying up and the fish was dying. The fish asked Zhuang Zi to save it. Zhuang Zi asked the fish where it came from and the fish said that it came from the West River. Zhuang Zi told the fish that he was traveling to the West River and he would bring some water there and pour it into the track to save it. I would like to dedicate this story to Dr LEONG and let him ponder over it.

Some people have also asked us why this Bill only targets at the election

of the Chief Executive but not the provisional legislature election. In fact this question is superfluous!

Everybody knows that we oppose the provisional legislature and the Democratic Party's stance is firm and clear. We are of the opinion that the formation of the provisional legislature is against the Sino-British Joint Declaration and the Basic Law and there is no legal basis for its election and its formation is therefore illegal. Under such circumstances, why would we try to regulate by legislation any corrupt and illegal practices that would occur in the provisional legislature election? In fact, those who have raised this question should propose a Bill to regulate the provisional legislature themselves. Why would he himself not propose a Bill to regulate it? He would not propose a Bill for that purpose but has raised such a question. We are not as foolish as falling into his trap: to accept his advice and be made to recognize the provisional legislature indirectly! Today no one raises such a question. However, someone raised such a question at the special meeting of the Constitutional Affairs Panel. In fact, such a challenge or trick is all too poor!

I really do not understand why some oppose this Bill. Is it because "a man with a hare-lip shuns the bowl with a broken brim"? I do not know whether the President would regard this remark as insulting? Are they followers of HUA Guofeng's school of thought, that is the "Fan Shi Pai"? Will they oppose anything which is supported by the enemies, and support anything which is opposed by the enemies? Would those corrupt and illegal practices in the colonial era be regarded as honest and legal acts in the SAR?

Had China been willing to shoulder the responsibility and had there been a set of clear and stringent laws to regulate this election, I would not have made such a superfluous move. At the same time, I would salute it.

Mr President, these are my remarks.

Question on the Second Reading of the Bill put.

Mr TSANG Kin-shing and Mr CHAN Wing-Chan claimed a division.

PRESIDENT (in Cantonese): Council shall now proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that Mr SZETO's Bill be read the Second time.

Would Members please register their presence by pressing the top button on the voting unit and then proceed to vote by choosing one of the buttons below.

PRESIDENT (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, 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, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, 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 against the motion.

Miss Margaret NG abstained.

THE PRESIDENT announced that there were 23 votes in favour of the motion and 30 votes against it. He therefore declared that the motion was negatived.

PRESIDENT (in Cantonese): As the Second Reading of the Prevention of Corrupt and Illegal Practice as the Election of the First Chief Executive of the Hong Kong Special Administrative Region Bill has not been agreed, no further proceedings will therefore be taken on the Bill.

ADJOURNMENT AND NEXT SITTING

PRESIDENT (in Cantonese): In accordance with Standing Orders, I now adjourn the Council until 2.30 pm on Thursday, 21 November 1996.

Adjourned accordingly at Eight o'clock.