

Nineteenth Meeting of the Human Rights Forum
13 July 2010 at 3:00 pm
Room 601, 6/F, Central Government Offices, West Wing

Present

<u>Organisation</u>	<u>Name/Post</u>
1. Amnesty International Hong Kong Section	Mr Keith Wong Campaign Manager
2. Equal Opportunities Commission	Mr Ferrick Chu Head, Policy & Research
3. Hong Kong Bar Association	Mr P Y Lo Barrister-at-law
4. Hong Kong Human Rights Monitor	Mr Kwok Hiu-chung Education Officer
5. Hong Kong Unison	Mr Alan Din Project Officer
	Ms Nabela Q. Khalid Executive Officer
6. Office of Emily Lau, Legislative Councillor	Ms Astor Chan Research Officer

Constitutional and Mainland Affairs Bureau

1. Miss Adeline Wong Under Secretary
(Constitutional and Mainland Affairs)
2. Mr Arthur Ho Deputy Secretary
(Chairman) (Constitutional and Mainland Affairs)1
3. Mr Hubert Law Principal Assistant Secretary
(Constitutional and Mainland Affairs)5
4. Mr Frank Tsang Assistant Secretary
(Secretary) (Constitutional and Mainland Affairs)5A

Security Bureau

1. Miss Phidias Tam Assistant Secretary (Security) D1

Introduction

The Chairman welcomed members to the meeting.

An Outline of the topics in the third report of the Hong Kong Special Administrative Region in the light of the International Covenant on Civil and Political Rights (Agenda Item 1)

2. The Chairman said that the Government was preparing for the submission of the third report of the HKSAR in the light of the International Covenant on Civil and Political Rights (ICCPR). In accordance with the established practice, the Government prepared an outline of the report to invite public views, which was issued to the public

for consultation on 3 June 2010 and circulated to members for comments. The consultation period would end on 15 July 2010. The Chairman invited members' views on the outline of the report.

3. A member raised concern that some recent views expressed by Mainland officials might affect the separation of powers between the executive authorities, the legislature and the judiciary of the HKSAR. The Chairman said that the Government would explain in the Common Core Document of the HKSAR report the constitutional, political and legal structure of the HKSAR, and the functions and powers of the executive authorities, the legislature and the judiciary.

Constitutional development and participation in public life
(Article 1 and 25)

4. A member suggested the Government to explain in the coming report the understanding of the Central People's Government and the HKSAR Government in respect of (a) the ultimate aim of constitutional development in Hong Kong; (b) Articles 45 and 68 of the Basic Law in relation to the selection of the CE and forming of the LegCo; (c) the concept of universal suffrage and its application to right to vote and right to be elected; (d) the role of functional constituencies (FCs) in the progressive move towards universal suffrage in the electoral method for forming the Legislative Council (LegCo) in 2020. A member also asked the Government to explain if it had changed its position as stated in the HKSAR's 1999 report in the light of the ICCPR that "functional constituencies are transitional". Another member opined that according to Article 25 of the ICCPR, the right to vote and be elected by universal suffrage should be "without unreasonable restrictions".

5. The Chairman said that the HKSAR Government would report the progress of constitutional development in the HKSAR since the submission of the last report to the passage in June 2010 of the package of proposals for the methods for selecting the Chief Executive and for

forming the LegCo in 2012. The Chairman said that the consistent position of the HKSAR Government was that the existing electoral model for the FCs of the LegCo did not comply with the principles of universality and equality, and had made it clear that when universal suffrage was implemented in Hong Kong, the electoral arrangements must comply with the Basic Law and the principles of universality and equality. As different sectors of the community still had diverse views on how FCs should be dealt with when universal suffrage for the LegCo was implemented, more community discussions were needed before a consensus could be reached on the issue.

6. A member opined that the Government should ensure that elections were conducted openly, fairly and honestly, but the Government seemed to have reduced its promotional expenditures and activities for the 2010 LegCo By-election. The member also said that the Government had not required the incumbent LegCo and District Council (DC) members to temporarily remove their publicity materials at public display spots (e.g. roadside banner spots) to make way for display spots for candidates of the By-election, thus reducing the opportunities for candidates to display their election advertisements. The member questioned if these actions were intended to dampen voters' incentive to vote in the By-election.

7. The Chairman said that the Government conducted the 2010 LegCo By-election in accordance with the law and the established practice. The Government had spent around \$3 million in publicity for the 2010 By-election, which was comparable to the publicity expenditures for previous by-elections. As regards the allocation of roadside banner spots, in view of the concerns raised by some LegCo Members and political parties that the removal arrangement would seriously affect the normal work of incumbent LegCo and DC members, the Government had allowed the incumbent LegCo and DC members to continue using their allocated public display spots during the By-election period, on the condition that such display spots would not be used for the purpose of promoting or prejudicing the candidacy of any candidates in the By-election. Despite

this, the Government had ensured that sufficient public display spots were available to the candidates of the By-election to display their election advertisements.

8. A member was concerned about the low level of participation of ethnic minorities in public life. For example, some members of the ethnic minorities were not fully informed of the discussion and issues in question during the public consultation on the two electoral methods for selecting the CE and for forming the LegCo in 2012, and the subsequent discussion on Government's package of proposals. The member believed that the Government should reach out to the ethnic minority communities more proactively and engage them in public consultation and discussions.

9. In response, the Chairman said that the Government recognised that ethnic minorities were an integral part of society and would encourage them to participate in public affairs. For example, the Government had produced leaflets in commonly-used ethnic minority languages to inform ethnic minority communities of important policies and measures, such as those relating to public health. He said that the Government would consider other means, such as cooperation with NGOs and the support service centres for ethnic minorities, to better engage the ethnic minority communities. He also welcomed views from members in this aspect. Mr Chu supplemented that the Equal Opportunities Commission (EOC) had endeavoured to make available its information and publicity materials in ethnic minority languages where appropriate.

Women's participation in public affairs (Articles 2 and 3)

10. A member opined that despite the improvement over the past few years, women's participation in public offices, including Government advisory and statutory bodies, officials appointed under the Political Appointment System and the LegCo remained low. The member also said that the composition of FCs of the LegCo was not conducive to the participation of women.

11. The Chairman responded that the Government encouraged women's participation in public affairs. The Basic Law and the Hong Kong Bill of Rights Ordinance (HKBORO) guaranteed that all persons are equal before the law, whereas the Sex Discrimination Ordinance specifically prohibited discrimination on the ground of sex in areas specified in the Ordinance, including the eligibility to stand for and to vote in elections, and in the appointment to public bodies, public authorities and statutory advisory bodies, etc. As an equal opportunities employer, the Government was committed to eliminating discrimination in employment including sex discrimination. As regards the Political Appointment System, political appointees were appointed under the principle of meritocracy and sex was not a consideration in the selection process. The Chairman added that there were more registered female voters than male voters in FCs, and of the 11 female members of the LegCo, four were returned by FCs. There was no evidence suggesting that FCs posted a disadvantage to women candidates. In addition to the present report, the Government would explain in more details measures to safeguard the rights of women in the HKSAR's third report under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to be submitted later this year.

Torture claimants and asylum seekers (Articles 6 and 7)

12. A member was concerned that maintaining two separate mechanisms for screening torture claims (handled by the Immigration Department) and for determining refugee status (handled by the United Nations High Commissioner for Refugees) was not satisfactory. The member suggested that the Government should put in place a single mechanism for screening both torture claims and refugee claims. The Government should also explain in the coming report the proposed statutory regime for handling torture claims. Another member urged the Government to extend the United Nations' 1951 Convention relating to the Status of Refugees (the Refugee Convention) to the HKSAR.

13. Miss Tam said that in respect of torture claims, the Government had put in place an enhanced screening mechanism last year and planned to introduce legislation for a statutory screening mechanism within the next legislative session. Given Hong Kong's small size, dense population and easy access from different parts of the world, Hong Kong was vulnerable to possible abuses if the Refugee Convention were to be extended to Hong Kong. The Government maintained a firm position regarding the non-application of the Refugees Convention to Hong Kong, and refugee claims should continue to be handled by the United Nations High Commissioner for Refugees. She also noted that the basis and criteria for torture claim screening and refugee status determination were different.

14. A member expressed concern over a case where a Nepalese man was killed by a police constable in March 2009. Although the Coroner's Court had returned a verdict of death by lawful killing in the subsequent inquest, some groups expressed doubts over the credibility of Police's investigation. The member suggested that future cases involving the killing of civilians by members of the disciplined forces should be handled by an independent commission of inquiry to safeguard the independence and credibility of the inquiry. Miss Tam agreed to reflect the suggestion to the Security Bureau (SB) for further deliberation.

Foreign domestic helpers (Article 8)

15. A member expressed concerns over the immigration and other requirements applicable to foreign domestic helpers (FDHs), including the "two-week rule", the "live-in" requirement, the exclusion of FDHs from the Mandatory Provident Fund Scheme, and that the period of stay of FDHs in Hong Kong was not counted as ordinary residence, thus precluding them from acquiring permanent resident status. The member also noted that FDHs were exempted from the Minimum Wage Bill proposed by the Government. Miss Tam explained that the "two-week rule" was introduced in the 1980's to deter unauthorised employment of

FDHs after termination of contract. The Government had reviewed the situation from time to time and considered that the rule was still necessary for maintaining effective immigration control. The Chairman said that the rights and protection of FDHs had been included in the previous reports of the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Economic, Social and Cultural Rights. CMAB would explore with the Labour and Welfare Bureau (LWB) on how best to address the matter in the coming report.

Liberty of movement (Article 12)

16. A member said that the Government should explain in the coming report the justifications for maintaining the residency requirements under various social security schemes, given that the Court had recently ruled that the one-year-continuous-residence requirement under the Comprehensive Social Security Assistance scheme violated Article 31 of the Basic Law and Articles 8(2) of the Hong Kong Bill of Rights concerning the freedom to travel / liberty of movement. The Chairman agreed to relay the comment to the LWB for consideration.

17. Another member suggested that the Government should explain the situation faced by certain pan-democrat legislators who were still unable to return to the Mainland of China. The member also noted that the Macao SAR Government had refused entry of certain members of the pan-democratic camp into Macao and asked the HKSAR Government to respond in the coming report. The Chairman said that the Government would consider how best to respond to these issues in the coming report. As the Macao SAR maintained its immigration control in accordance with the laws of the Macao SAR, the HKSAR Government was not in a position to respond to the issues.

Interception of Communications and Surveillance Ordinance (Article 17)

18. A member noted that the Commissioner on Interception of Communications and Surveillance had in his recent report raised a number of concerns and made a number of recommendations with respect to the compliance of law enforcement agencies with the Interception of Communications and Surveillance Ordinance (ICSO). The member suggested that the Government include in the coming report the implementation of the ICSO and the Government's response to the Commissioner's concerns and recommendations. Miss Tam said that the ICSO provided the legal basis for the authorisation regime of interception of communications and covert surveillance conducted by public officers. Stringent safeguards were imposed at all stages of the regime, such as the fulfilment of the proportionality and necessity tests and prior authorisation from panel judges or designated senior officers of the law enforcement agencies. The issue would be addressed in the report.

Political advertising (Article 19)

19. A member was concerned that the ban on political advertising on broadcast media would affect the freedom of political expression and asked the Government to explain in the coming report how the freedom of political speech was facilitated in Hong Kong. Another member asked the Government to explain the measures to ensure the editorial independence of Radio Television Hong Kong, and the Government's position regarding development of digital radio broadcasting and opening up of airwaves to facilitate community participation in broadcasting.

20. The Chairman said that the Government fully recognised the right to freedom of expression and the right to hold opinions without interference. These rights were guaranteed by the Basic Law and the HKBORO. The Government noted the concerns of some members of the community over the prohibition on political advertising but the consideration behind was to avoid the more affluent organisations or

individuals from having undue advantage in promoting their political position through the media. The Chairman would reflect the views of members to the Commerce and Economic Development Bureau for consideration.

Freedom of expression and of assembly (Articles 19 and 21)

21. Some members were concerned that a recent incident involving the removal of exhibits at a public venue by authorities might indicate that the rights of peaceful assembly and of freedom of expression were not fully respected. In that incident, the authorities had removed the exhibits in accordance with the Places of Public Entertainment Ordinance, which normally regulated public places of entertainment, instead of the Public Order Ordinance, which regulated public assemblies. A member was concerned that the Government was adopting alternative means to suppress public assemblies or public processions. Another member asked the Government to fulfil its positive duty to enable lawful assemblies or processions.

22. In response, the Chairman said that the freedom of peaceful assembly was guaranteed by the Basic Law and the HKBORO. However, these rights have to be balanced against the need to maintain, among others, public order, public safety and the protection of rights and freedom of others. The Government would explain its position in the coming report.

Rights of ethnic minorities and sexual minorities (Article 26 and 27)

23. A member expressed concern that the Race Discrimination Ordinance (RDO) did not cover all government functions, such as enforcement actions by the Police or other disciplined forces, and that the definition of “race” did not include “nationality”. The member was concerned that discriminatory practices based on nationality might become more prevalent, given recent media reports that certain members of ethnic

minority communities had been refused services by some banks because of their nationality.

24. The Chairman said that the RDO bound the Government in a wide range of areas specified in the RDO, including provision of services, employment, education, etc. He added that the RDO represented a major step forward in promoting racial equality and the Government would continue to review its effectiveness in the light of operational experience. The Government had also drawn up the Administrative Guidelines on Promotion of Racial Equality to provide guidance to relevant bureaux, departments and public authorities to ensure racial equality and equal access to public services in key public service areas. Relevant bureaux, departments and public authorities had also drawn up checklists of measures under the Guidelines. Mr Chu said that the EOC had also been actively engaging the Police, the Correctional Services Department and other disciplined forces to provide relevant training to its frontline staff and supervisors.

25. The Chairman added that legislation aside, it was also important to promote the awareness of the public, including employers, on racial equality and cultural diversity. He asked members to reflect to the Government any areas for improvement based on feedback from the ethnic minority communities.

26. A member supported the proposal by the EOC to set up an Equal Opportunities Tribunal to establish an independent body to handle alleged cases of discrimination under the existing discrimination ordinances. The Chairman said that the EOC had revisited the proposal recently. The EOC believed that the community had yet to have a thorough understanding of the proposal and would initiate discussion with stakeholders with a view to gathering wider community support. The Government would continue to liaise with the EOC on the proposal and study the recommendation after EOC's further deliberation with the community.

27. A member considered that the Government should introduce legislation and other measures to protect the rights of sexual minorities. The Chairman said that there were diverse views in the community on the introduction of legislation on discrimination on ground of sexual orientation. The Government had introduced legislative amendments to extend the scope of protection provided under the previous Domestic Violence Ordinance, which came into effect on 1 January 2010, to cover same-sex cohabitants in addition to heterosexual cohabitants in an intimate relationship. In addition, the Government had been promoting equal opportunities on grounds of sexual orientation or gender identity through various publicity and educational measures and cooperation with relevant NGOs. The Government also provided funding support to community projects that promoted equal opportunities on grounds of sexual orientation or gender identity.

Recruitment of ethnic minorities into the civil service (Article 27)

28. A member pointed out that ethnic minorities found it difficult to enter the civil service because of the Chinese language proficiency requirements in place. For example, for degree or professional posts, applicants were required to pass the Use of Chinese paper in the Common Recruitment Examination. For non-degree posts, while the Government generally recognised the GCSE Chinese qualification, some departments (e.g. the Police) had imposed additional requirements on written Chinese language abilities of applicants. The member suggested that the Government put in place positive measures to facilitate the recruitment of ethnic minorities into the civil service.

29. The Chairman responded that the Government had to maintain an appropriate level of Chinese language proficiency in the civil service to meet the operational needs in serving the general public, the majority of which were Chinese. On the other hand, the Government recognised that more opportunities should be available for ethnic minorities to join the civil service, as their knowledge of ethnic minority

languages and culture could be an advantage in certain posts involving direct contact with ethnic minorities. The Civil Service Bureau (CSB) had asked bureaux and departments concerned to review whether their language proficiency requirements were commensurate with actual operational needs, and whether suitable adjustment could be made as necessary. He said that the CMAB would continue to follow up with the CSB on the progress of the review.

30. A member asked the Government to explain in the coming report the trainings provided to law enforcement officers to enhance their understanding on the RDO and their sensitivity to the needs of ethnic minorities. Another member said that the Government should review the complaint handling mechanisms against law enforcement agencies, especially the Police, as some ethnic minorities felt intimidated by the complaints procedures which were perceived as complex and not user-friendly. The member also suggested that the Police make available the internal Police General Orders to the public so that members of ethnic minority communities would be better informed of their own rights and the duties and powers of police officers.

31. Mr Chu said that the training provided by the EOC to disciplined forces aimed to raise their awareness of cultural diversity and sensitivity. Miss Tam said that apart from the complaint channels of law enforcement agencies (such as the Complaints Against Police Office), there were also other avenues for complaints against the agencies, such as the Ombudsman. She said that the Police General Orders were available to LegCo members but not published in full in the public domain, as doing so might compromise the effectiveness of the Police's enforcement actions. She agreed to reflect within the SB members' suggestion regarding making available to the public those parts of the Police General Orders which were less sensitive from a law enforcement point of view.

32. In response to a members' enquiry, the Chairman said that the Government had recently completed drafting of the HKSAR's report under

the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights. The two reports would be submitted to the United Nations as part of China's reports under the respective treaties. When either report was received and published by the United Nations, the HKSAR Government would make available the part on Hong Kong to the public.

33. In concluding, the Chairman thanked members' views and invited members to submit their further views in writing.

Any other business

United Nations Convention on the Elimination of All Forms of Discrimination against Women

34 The Chairman reminded members that the LWB had commenced a public consultation on the outline of the HKSAR's third report under the CEDAW on 14 June 2010. The consultation period would end on 31 July 2010. The outline was available at the website of the LWB. The LWB would also discuss the outline with the LegCo Panel on Constitutional Affairs on 19 July 2010 and interested organisation could join that session. Interested members could also submit their views directly to the LWB.

Constitutional and Mainland Affairs Bureau
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