

立法會 *Legislative Council*

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by the Administration)

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Panel on Home Affairs

Minutes of special meeting held on Friday, 7 February 2003 at 4:00 pm in the Chamber of the Legislative Council Building

Members Present : Hon Andrew CHENG Kar-foo (Chairman)
Hon IP Kwok-him, JP (Deputy Chairman)
Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Hon NG Leung-sing, JP
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Dr Hon TANG Siu-tong, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Dr Hon LO Wing-lok
Hon WONG Sing-chi

Members Attending : Hon CHAN Yuen-han, JP
Hon Audrey EU Yuet-mee, SC, JP

Members Absent : Hon Andrew WONG Wang-fat, JP
Hon WONG Yung-kan
Hon LAU Wong-fat, GBS, JP
Hon Timothy FOK Tsun-ting, SBS, JP
Hon Henry WU King-cheong, BBS, JP
Hon Albert CHAN Wai-yip
Hon MA Fung-kwok, JP

- Public Officers Attending** :
- Mr Leo KWAN
Deputy Secretary for Home Affairs (1)
 - Mr William TSUI
Acting Principal Assistant Secretary for Home Affairs (7)
 - Mr Stephen WONG
Deputy Solicitor General (General)
Department of Justice
 - Ms Linda SO
Principal Assistant Secretary for Security (C)
 - Mrs DO PANG Wai-yee
Principal Assistant Secretary for Economic Development
and Labour (Labour)
 - Mrs Jennie CHOR
Assistant Commissioner for Labour (Labour Relations)
 - Miss Katherine CHOI
Assistant Secretary for Health, Welfare and Food
(Welfare)³
 - Mr Steve LEE
Principal Education Officer (New Territories)
Education and Manpower Bureau
- Attendance by Invitation** :
- Equal Opportunities Commission
 - Ms Anna WU
Chairperson
 - Miss LAM Siu-wai
Senior Equal Opportunities Officer
 - Hong Kong Human Rights Commission
 - Mr HO Hei-wah
Chairperson
 - Mr TSOI Yiu-cheong
Member

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Mr Aaron NATTRASS
Secretary

Hong Kong Against Racial Discrimination

Ms Vandana RAJWANI
Spokesperson

Unison Hong Kong

Miss Fermi WONG Wai-fun
Chairperson

Ms MOK Miu-ying
Project-in-charge

The Hong Kong Committee on Children's Rights

Miss Billy WONG
Executive Secretary

Against Child Abuse

Mrs Priscilla LUI
Director

The Hong Kong Council of Social Service

Ms KU Yin-kay
Business Director (International and Regional Networking)

Mr Anthony WONG Kin-wai
Chief Officer (International and Regional Networking)

Parent's Association for the Implementation of Right of
Abode of Mainland Children (Hong Kong)

Miss NGAN Siu-lai
Chairman

Mr CHOW Kwok-fai
Vice-Chairman

"Association of Parents Fighting for the Right of Abode in
Hong Kong"

Fr Mella FRANCESCO
Consultant

Ms YUNG King-lan
Vice-President

Hong Kong Confederation of Trade Unions

Mr TAM Chun-yin
Organisation Secretary

Hong Kong Christian Institute

Ms WONG Kin
Project Secretary (Social Issue)

Horizons

Mr Reggie HO
Secretarial Coordinator

Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2)2

Staff in Attendance : Miss Lolita SHEK
Senior Assistant Secretary (2)7

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I. Follow-up discussion on the second report to be prepared by the Hong Kong Special Administrative Region (HKSAR) under the International Covenant on Economic, Social and Cultural Rights (ICESCR)

[LC Paper Nos. CB(2)815/02-03(02) and (03), CB(2)855/02-03(01) to (03), CB(2)864/02-03(01) and (02), CB(2)1070/02-03(01) to (03), CB(2)1101/02-03(01), CB(2)1112/02-03(01), and CB(2)1133/02-03(01) and (02)]

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The Chairman welcomed representatives of deputations and the Administration to the meeting. He explained that the Panel had met with some of the deputations at the meeting on 10 January 2003 to receive their views on the second report to be prepared by HKSAR to the United Nations (UN) under ICESCR and would continue the discussion on the same subject with deputations and the Administration at the current meeting.

Legislation against racial discrimination

2. Ms Emily LAU noted that the Committee on Economic, Social and Cultural Rights (CESCR) of UN had pointed out in paragraph 30 of its concluding observations of HKSAR's initial report under ICESCR that HKSAR's failure to prohibit race discrimination in the private sector constituted a breach of its obligations under Article 2 of the Covenant. The Committee had called upon HKSAR to extend its prohibition of race discrimination into the private sector. Ms LAU asked whether the Administration would mention in the report to be prepared that it would legislate against racial discrimination in Hong Kong as urged by CESCR.

3. Echoing the concern of Ms Emily LAU, Ms Vandana RAJWANI, Spokesperson of Hong Kong Against Racial Discrimination, urged Government to indicate in its second report to be prepared under ICESCR when a decision on the issue would be made and announced. She also pointed out that Government had been inconsistent in formulating its policy based on the results of public consultation. She quoted as an example that Government had readily decided to authorise and regulate soccer betting after public consultation saying that it had the support of the majority of members of the public. However, it had been stalling on the decision to legislate against racial discrimination despite the fact that there had been overwhelming support for legislation from the society, including the business community, as indicated by the results of the public consultation on the subject conducted by Government.

4. Sharing the views of Ms RAJWANI, Miss Fermi WONG, Chairperson of Unison Hong Kong, echoed that the problem of racial discrimination was very serious in Hong Kong and had been adversely affecting the daily lives of ethnic minorities to a large extent. She urged Government to enact legislation against racial discrimination as soon as possible which was suggested by CESCR and supported by the majority of society.

5. In response to the concerns of Ms Emily LAU and the deputations about legislation against racial discrimination, Deputy Secretary for Home Affairs (1) (DS(HA)1) assured members that the issue would be included in HKSAR's second report to be prepared under ICESCR. As Secretary for Home Affairs (SHA) had advised at the Panel meeting on 15 January 2003, he was actively

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considering the issue. The subject had also been included in the Chief Executive's (CE's) Policy Agenda in the upcoming 18 months. DS(HA)1 added that he was not able to advise when the Administration would take a decision, but it would be taken as soon as possible.

Discrimination on the grounds of sexual orientation

6. Mr Reggie HO, Secretarial Coordinator of Horizons, opined that equal opportunities for homosexual people in Hong Kong relating to work and families under Articles 6, 7 and 10 of ICESCR were not protected by legislation in Hong Kong. He pointed out that discrimination on the grounds of sexual orientation prevailed in many aspects of life. He quoted as an example that sexual minority teenagers were abused by their family members and were not able to obtain the needed assistance from the Social Welfare Department (SWD). Mr HO added that there was also lack of public education on homosexuality and the rights of and restrictions on homosexual people. Many basic social rights of the latter had been undermined in Hong Kong and their individual development had been seriously affected. He urged Government to legislate against discrimination on the grounds of sexual orientation, lower the legal age of consent to homosexual and buggery from 21 to 16, which was the same as that of heterosexual buggery, as well as enhance education on homosexuality among the public and Government officials.

Care of persons with mental illness

7. Mr Michael MAK declared interest as a paid employee of a mental hospital. He informed members that under section 31 of Mental Health Ordinance (Cap. 136), a District Judge or magistrate might make an order authorising the removal of a patient to a mental hospital for the purpose of detention and observation for not more than seven days upon receipt of an application for such an order. He expressed concern that not only might the patients concerned not be able to represent themselves properly, they were also not legally represented in such cases. He asked whether the Equal Opportunities Commission (EOC) and Hong Kong Human Rights Commission had received complaints from patients against such unfair treatment.

8. In response, Ms Anna WU, Chairperson of EOC, informed members that EOC did receive such kind of complaints. Some patients had complained that they were not aware of their right to see the District Judge or magistrate before the latter decided on making the detention order. After negotiation, the Hospital Authority (HA) had agreed to inform the patients concerned directly of their rights commencing September 2001. According to statistics provided by HA, during the period between September and December 2001, applications were made for the detention order of 513 patients. Among these patients, 109 had requested to see the District Judge or magistrate. As a result, the court ruled that the removal of 11 of them to the mental hospital was not necessary.

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Miss Anna WU hoped that HA would maintain and release such kind of statistics which were very useful for reviewing the existing arrangements. She also commented that the discharge of these patients after the seven days of detention might be another cause of complaints. She said that the situations were being reviewed by EOC which would submit a paper and recommendations on legislative amendments on this subject for consultation in about three months' time.

9. Mr HO Hei-wah, Chairperson of Hong Kong Human Rights Commission, advised that the Commission had received a few such complaints. He would provide details of the complaints for members' reference after the meeting.

Foreign domestic helpers

10. Referring to paragraph 15(f) of the concluding observations of CESCR, Mr Aaron NATTRASS, Secretary of Hong Kong Human Rights Monitor, urged Government to repeal the two-week rule imposed upon foreign domestic helpers upon expiration of their contracts which denied them the right to freely seek employment and to protection from discrimination. He opined that Government should not have taken so long to implement the recommendation of CESCR on this issue and should confirm in the second report to be prepared under ICESCR whether it intended to repeal the rule.

Anti-poverty strategies

11. Ms Anna WU explained out that the objective of ICESCR was to promote human rights which were the essential prerequisites for the development of each individual. These were development rights and poverty reduction measures. According to the World Bank, much of the role of government could be viewed as establishing the infrastructure in its broadest sense. She pointed out that there could be a positive relationship between equity and growth. In countries which experienced rapid and sustained growth, a greater number of people had moved out of poverty quickly. Ms WU therefore considered that Government should create a favourable environment for Hong Kong, devise clear social policies and dedicate sufficient resources for the implementation of ICESCR so as to enhance development of individuals and eliminate poverty. She expressed concern that in the current economic downturn, Government had laid down in the 2002-03 budget a target of containing public expenditure at or below 20% of Gross Domestic Product by the year 2006-07. In setting this target, it did not outline the key distributional objectives of public expenditure and how these objectives would best be met within the budget constraints, or how it would assess the welfare impact of public spending in the period leading to 2006-07. It also did not indicate whether and how it had taken into account issues such as the relationship between poverty and social exclusion, or address concerns about

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equity and social justice. Ms Anna WU stressed that any reduction in the volume of public and social programmes would disproportionately affect the vulnerable segments of society, deepening the income gap and deterioration of living standards. She said that EOC welcomed Government establishing more lucid public expenditure priorities, supported by clear social policies, as a central determinant of progress towards sustainable development. EOC would also welcome Government providing disaggregated data, such as on gender and disability, on each of its social programmes to facilitate assessment of these programmes and its efforts in implementing ICESCR.

12. Sharing a similar concern about the impact of budget cuts, Ms Cyd HO considered that Government should include in the second report to be prepared the reduction in the standard payment rate under the Comprehensive Social Security Assistance (CSSA) Scheme for families of three persons or more by 10% to 20% in 1999 and a possible further reduction of 11.1% in the next financial year. She said that Government should explain how the reduction had been arrived at and its impact on the standard of living of the CSSA recipients.

13. Echoing the views of Ms Cyd HO, Ms KU Yin-kay, Business Director (International and Regional Networking) of the Hong Kong Council of Social Service, agreed that Government should explain the reduction in CSSA in the report to be prepared. She informed members that according to the calculations of the Hong Kong Council of Social Service, the adjustment in the standard payment rate should be smaller than the 11.1% proposed by Government. She was also supportive of the views of Ms Anna WU on anti-poverty strategies and suggested that a special commission should be established for that purpose.

14. Ms Emily LAU said that she was supportive of the suggestion of Ms Anna WU that Government should provide more information on the estimates of expenditure and social policies. She suggested EOC to provide more information on the areas that needed to be taken into consideration in assessing the impact of Government budget on its social programmes and different groups in society, and whether an official poverty line should be established to safeguard people's right to an adequate standard of living. Such information might be circulated to all Members so as to facilitate their discussion at the motion debate on the 2003-04 budget to be sponsored by Dr YEUNG Sum at the Council Meeting on 26 February 2003. The Administration might also be requested to provide information in these areas.

(Post-meeting note: The additional information provided by EOC was circulated for members' reference vide LC Paper No. CB(2)1239/02-03(02) on 28 February 2003.)

15. The Chairman requested the Administration to adopt the suggestion of Ms Anna WU and see to the welfare impact of the budget and provide disaggregated data on each of its social programmes to the relevant Panels for

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Adm reference. DS(HA)1 undertook to refer the request to the relevant bureaux and departments for consideration.

Permanent residence and split families

16. Referring to the letter of 17 May 2002 from the Chairperson of CESCR to the Permanent Representative of the Peoples' Republic of China (PRC) to UN, both Ms Cyd HO and Ms Emily LAU pointed out that CESCR had expressed its concern about the hardship arising from the HKSAR polices on permanent residence and split families and urged HKSAR to undertake immediate measures for a just and humane solution to the problem of abode-seekers and to ensure that families would remain united. They enquired about the progress in this issue. In reply, DS(HA)1 said that the issue would be included in the report to be prepared under ICESCR.

17. Referring to the same letter from the Chairperson of CESCR, Mr LAW yuk-kai, Director of Hong Kong Human Rights Monitor, informed members that the Central People's Government (CPG) had responded to it but had not yet published its reply. He urged HKSAR Government to release the reply to the public and adopt the recommendations of CESCR to make just and humane arrangements to solve the problem of abode-seekers and split families, instead of imposing more restrictions on the human rights in Hong Kong such as implementing the proposed population policy.

18. Both Mr CHOW Kwok-fai, Vice-Chairman of Parent's Association for the Implementation of Right of Abode of Mainland Children (Hong Kong), and Ms YUNG King-lan, Vice-President of "Association of Parents Fighting for the Right of Abode in Hong Kong", urged Government to relax its policy on permanent residence and grant the right of abode (ROA) to children born to people of Hong Kong in the Mainland. Ms YUNG King-lan commented that the interpretation of Article 24 of the Basic Law (BL) on 26 June 1999 by the Standing Committee of the National People's Congress and the judgment of the Court of Final Appeal (CFA) on 10 January 2002 were unfair to these Mainland children and their families. She urged that out of humanitarian reasons, HKSAR Government should grant ROA to the eight thousand or more Mainland children who had applied for a judicial review of HKSAR Government's decision on their residential status before the CFA judgment on 10 January 2002. Other eligible children in Mainland should also be granted ROA in Hong Kong to enable reunion of split families.

19. Fr Mella FRANCESCO, Consultant of "Association of Parents Fighting for the Right of Abode in Hong Kong", pointed out that the human rights conditions in Hong Kong had been deteriorating with the interpretation of BL 24 and the recent proposed legislation for the implementation of BL 23. He remarked that the enforcement authorities had taken unreasonable action to expatriate ROA claimants who had lost their cases in court by breaking into

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residential premises. He expressed concern that Government might abuse the proposed legislation under BL 23 and make similar arrests in future. He also considered such action a waste of resources and urged Government to make arrangements for these claimants to come and settle in Hong Kong legally. Fr FRANCESCO informed members that the Secretary for Security had promised the year before to liaise with CPG on such an arrangement after the interpretation of BL 24. He urged the Administration to report the progress to the public and review its policy on permanent residence. He also requested the political parties concerned which had promised to meet and discuss this issue to update him of the action taken. Lastly, he appealed to the media for wider coverage of the ROA issue so as to increase public awareness.

20. At the request of the Chairman, DS(HA)1 informed members that CPG had responded to the letter from CESCR. The Administration undertook to consult the relevant authorities and would revert to the Panel whether the content of the reply could be released. Both the Chairman and Ms Cyd HO, however, queried the reasons for not publishing the reply letter. The Chairman considered that HKSAR Government should at least release information on the content of the reply to the public.

21. Mr LAW Yuk-kai remarked that it was a normal practice for a state party to publish information provided to UN. The refusal of HKSAR Government to release the reply letter would be a retrograde. He urged Government to release the information since the subject was a matter of concern of many people in Hong Kong. Echoing the views of Mr LAW Yuk-kai, Mr CHOW Kwok-fai considered that Government should release the reply letter and confirm whether it would relax its policy on ROA.

(Post-meeting note: The letter provided by the Administration was circulated vide LC Paper No. CB(2)1465/02-03(01) on 12 March 2003.)

22. On the issue of ROA, Principal Assistant Secretary for Security (C) (PAS(S)C) advised that the stance of Government had been very clear and that it would handle all ROA cases in accordance with the law and the judgment of CFA. For individual cases with exceptional humanitarian or compassionate considerations, the Director of Immigration would consider exercising his discretionary power to allow a person to stay in Hong Kong under the Immigration Ordinance (Cap. 115). PAS(S)C added that since the delivery of the CFA judgment, HKSAR Government had appealed to the ROA claimants who had lost their cases in court to return to the Mainland and eligible persons should apply through the One-way Permit (OWP) and Two-way Permit (TWP) schemes to settle with or visit their family members in Hong Kong. At the same time, HKSAR Government had raised with the CPG the possibility of allowing more Mainland children to come to HK to take care of their aged parents. The Mainland authorities were studying the issue. PAS(S)C stressed that since the OWP scheme was operated by the Mainland authorities in

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accordance with the laws and regulations in the Mainland, any changes to the OWP scheme were ultimately for them to decide. As the Administration had made clear to the public and ROA claimants, it could not guarantee that the Mainland authorities would ultimately agree to any such changes.

23. Mr CHOW Kwok-fai expressed dissatisfaction towards the response from the Administration. He opined that besides BL 24, Government should also ensure that other legislation such as BL 39, which stipulated that the various international human rights treaties should be implemented in Hong Kong, should be complied with. He further pointed out that the intrusion by the enforcement authorities into residential premises during the arrests of ROA claimants had contravened BL 29 which stipulated that arbitrary or unlawful intrusion into a resident's home should be prohibited. He criticised Government as not intending to adopt the recommendations of CESCR and solve the problem of the abode seekers. He appealed to the Panel and political parties for assistance in this respect.

24. In response to the appeal for assistance to ROA claimants from deputations, the Chairman informed members that LegCo Members belonging to the democratic camp had issued a letter to the Chief Secretary for Administration jointly and would meet with the latter to discuss the issue of ROA shortly.

25. Ms YUNG King-ian commented that HKSAR Government had tried to shift the responsibility to the Mainland authorities on the issue of ROA. She informed members that the latter had already clarified in its response to the enquiry from Ms CHOY So-yuk that the OWP scheme did not and would not be revised to cover adult Mainland children to people in Hong Kong. HKSAR Government therefore should not ask these ROA claimants to return to the Mainland and apply for OWP there. Since HKSAR Government had not rejected their applications for ROA at the very beginning, many of these claimants had stayed in Hong Kong for several years and had loosened their tie with their family members and friends in the Mainland. Forcing them to return to the Mainland after the delivery of the CFA judgment on 10 January 2002 had created problems of adaptation for these claimants as well as hardship for their parents since there was no one to take care of them.

26. Fr Mella FRANCESCO urged Government to follow-up on the meeting with Mainland's Bureau of Exit-Entry Administration on 29 January 2002 more actively so as to provide a humane solution to the problem as soon as possible. Echoing the comment of Ms YUNG King-ian, Fr FRANCESCO said that HKSAR and Mainland Governments had shifted the responsibility to each other. He informed members that at least 200 children in Fujian had not been able to obtain TWPs to visit their families in Hong Kong in the recent years. In response to the enquiry from their parents, HKSAR Government claimed that their applications had been rejected by the Mainland Government while the

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latter said that the former had refused the entry of these applicants. He urged HKSAR Government to clarify why these applications for TWP had been rejected.

27. Sharing the concern of Ms YUNG King-ian and Fr Mella FRANCESCO, Mr HO Hei-wah pointed out that even those Mainland children who were eligible for ROA had experienced difficulties with their applications for OWP. In some of these cases handled by the Hong Kong Human Rights Commission, the applications had been processed for five to six years but the outcome was still not yet known. In some other cases, the Mainland authorities had indicated that the Mainland Government had not granted TWPs to the applicants on the ground that they were on the blacklist for refusal of entry to Hong Kong provided by HKSAR Government.

28. In response to the concern of the deputations on the OWP and TWP schemes, PAS(S)C assured members that the HKSAR Government had no blacklist of ROA claimants. She said that many ROA claimants who had voluntarily returned to the Mainland had applied and been issued with TWPs in accordance with the law to visit their families in Hong Kong. She informed members that the Mainland authorities had introduced a number of improvement measures to facilitate family reunion over the years. From April 2002, the Mainland authorities started issuing multiple exit endorsements under the TWP Scheme to Mainland residents with spouses in Hong Kong. Under this new arrangement, holders of multiple TWPs could stay in Hong Kong as a visitor for up to three months. During this 3-month period, the visitor could make multiple trips between Hong Kong and the Mainland so long as he or she met normal immigration requirements. This provided Mainland residents greater flexibility to better suit their needs. There was no limit on the number of times that these spouses might apply each year. From January 2003, Mainland children under the age of 18 might also apply for multiple TWPs. In addition, the Mainland authorities had announced that eligible dependent children under the age of 18 applying to join their parents in Hong Kong would be issued OWPs within one year. PAS(S)C added that in many cases referred to the HKSAR Government by non-government organisations (NGOs), the applicants concerned successfully obtained OWPs or TWP to come to Hong Kong.

29. Mr HO Hei-wah, however, pointed out that in cases where there were problems with the identity documents of the applicants, both Governments had not been willing to help. As a result, these cases had dragged on for a long time without any outcome. As regards cases in which TWPs had not been approved, both Mr HO Hei-wah and Fr Mella FRANCESCO queried what assistance HKSAR Government had rendered for the applicants concerned. Mr HO was not convinced that there was not a blacklist for refusal of entry. He suspected that those who had breached the immigration laws had been put on the list.

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30. In response to the question from Mr Albert HO whether Government had refused the entry of some ROA claimants because of their criminal records in Hong Kong, PAS(S)C reiterated that HKSAR Government had no blacklist of ROA claimants. She informed members that the Government maintained a list of immigration offenders who were involved in illegal employment, prostitution and other offences in Hong Kong. She stressed that these lists of immigration offenders had nothing to do with actions to seek ROA in Hong Kong. Fr Mella FRANCESCO expressed strong objection to the association of ROA claimants with illegal workers and sex workers hinted by the Administration. In response to Fr Mella FRANCESCO's allegation, PAS(S)C reiterated her earlier statement.

31. Mr CHOW Kwok-fai pointed out that after the delivery of the CFA judgment, adult Mainland children would no longer be eligible to apply for settlement in Hong Kong under the OWP Scheme. He asked what assistance HKSAR Government had rendered to them and whether it would implement the international human rights treaties to review its policy on permanent residence.

32. Both the Chairman and Ms Emily LAU suggested the deputations to refer the relevant cases with names and particulars of the Mainland residents concerned to the Complaints Division of the Legislative Council (LegCo) Secretariat for follow-up.

Protection of children and juveniles

33. Referring to the Hong Kong Juvenile Homes Report 2001 of the Hong Kong Human Rights Monitor, Mr Albert HO expressed concern on the availability of legal representation for children involved in court cases which might result in their detention in correctional/residential homes. He pointed out that according to a report in the late 1990's, in most of these cases, the children involved were not legally represented. He enquired whether there were updated statistics in this respect and whether the situation had been improved.

34. Mr LAW Yuk-kai responded that statistics on the legal representation of children in court cases were not available. He informed members that counsels from the Legal Aid Department were provided to children involved in court cases such as divorce cases. However, he expressed reservation on the effectiveness of such legal representation as the office responsible for arranging such service was very small.

35. Mrs Priscilla LUI, Director of Against Child Abuse, opined that independent legal representation should be provided to not only children involved in court cases but also those involved in Protection of Children and Juveniles (Places of Refuge) Order cases. She explained that in these cases,

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counselling service would normally be provided by social workers to the children involved. The court would also consider whether it was necessary for them to be represented independently. Mrs LUI pointed out that unfortunately, legal representation was not available in all cases even though it was desperately needed by the children involved. She then quoted as an example a case in which a girl who was sexually abused by her father had neither a social worker nor a counsel to turn to for advice when she was consulted by the judge about her choice of place of refuge. She urged Government to ensure that legal representation would be provided to the children involved in all these cases.

36. In response to the concerns of members and deputations about the availability of legal representation to children in court cases, Assistant Secretary for Health, Welfare and Food (Welfare)³ (AS(HWF)W3) informed members that Government acknowledged the need of children for legal representation in care or protection proceedings. It had secured resources to put in place arrangements to provide the service in question to the children involved in such proceedings. AS(HWF)W3 informed members that the Health, Welfare and Food Bureau was liaising with the relevant parties to work out the implementation details.

37. Mr Albert HO also expressed concern about the treatment of children in correctional/residential homes. He said that he came across cases in which children were inhumanely put in isolated detention in these homes which led to the suicide of the child involved in one of these cases. The Administration had promised to review the operation of the homes. He asked whether improvements had been introduced.

38. Sharing the concern of Mr Albert HO, Mr LAW Yuk-kai opined that the Administration should report on whether improvements had been introduced with reference to the recommendations proposed in the report of the Hong Kong Human Rights Monitor in 2001.

39. To address the concern of members and deputations about the management and operation of correctional/residential homes under SWD, AS(HWF)W3 advised that a review had been conducted by the Management Services Agency in 1998-99 with the aim of improving the management and operation of the homes. Taking into account the recommendations of the review together with those of the report of the Hong Kong Human Rights Monitor in 2001, the Administration had implemented measures, including the following, to enhance service quality -

- (a) under SWD's recently promulgated Service Quality Standards, residents were informed of their right to complain, access to information and protection from abuse, etc. through regular dormitory meetings with residents, briefing session upon their admission and displaying notices throughout the homes;

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- (b) the education service had been strengthened through the provision of additional two Education Officer and five Assistant Education Officer posts;
- (c) the environment of some of the homes had also been improved with the installation of air-conditioners; and
- (d) the girls' remand section of the Begonia Road Juvenile Home merged with the Ma Tau Wai Girls' Home in May 2001 to maximise the deployment of staff resources and improve services.

AS(HWF)W3 added that SWD would continue to review and assess the service provided in the homes.

40. To protect the rights of children, Mrs Priscilla LUI suggested that a children commission should be established to monitor the implementation of the provisions of ICESCR relating to the rights of children under 18, to assess the impact of Government policies and to formulate comprehensive policy on children. She pointed out that this request had been put forth by NGOs but the Administration had not responded so far. She also urged that the recent increase in traumatic homicide and suicide cases with parents killing their children and themselves should be properly and immediately addressed. Government should establish a mechanism to review the deaths of the children involved in these cases so as to make recommendations to prevent similar tragedies and death of children in future. To prevent further increase in child abuse cases, she also recommended mandatory treatment for victims, families and abusers in domestic violent cases.

41. On the suggestion of Mrs Priscilla LUI that a mechanism be established to review the death of children in abuse cases, Mr Albert HO opined that the subject might be dealt with by the conduct of death inquest. In response to the concerns of deputations about the prevention of child abuse in Hong Kong, AS(HWF)W3 said that Government had been concerned about the issue and had stepped up efforts to provide services to the parties concerned and for the prevention of child abuse. She informed members that the following measures had been implemented to enhance the effectiveness and efficiency of family and child protection services-

- (a) the Family and Child Protective Services Units (FCPSUs) of SWD, which used to be responsible only for handling child abuse and battered spouse cases, had been restructured through amalgamation with the former Child Custody Services Units since 25 March 2002, to form five regional-based specialised units. They provided integrated services for families with problems of child abuse, child custody and spouse battering. The restructuring

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of FCPSUs had facilitated the pooling of manpower, knowledge, skills and expertise required in working with abused children, families suffering from spouse battering, and children witnessing/distressed by spouse battering and marital breakdown of parents;

- (b) with the creation of two additional clinical psychologist posts and the setting up of a specialised team of clinical psychologists handling domestic violence cases, FCPSUs had, in collaboration with the clinical psychologists, enhanced treatment of victims, batterers and children witnessing domestic violence through group work services besides casework intervention;
- (c) there had been increasing services for male batterers. Apart from the groups or hotlines for men provided by FCPSUs and NGOs, an additional men's hotline had been set up by the Po Leung Kuk since November 2002, and counselling groups for male batterers would also be organised;
- (d) with the support of a grant from the Lotteries Fund, tertiary institutions had been invited to submit proposals before 21 February 2003 to carry out a study on child abuse and spouse battering. The study would help enrich understanding of family violence in Hong Kong and facilitate formulation of strategies relating to prevention and intervention. The feasibility and implications of adopting mandatory treatment on perpetrators in Hong Kong would also be examined; and
- (e) Government noted the proposals from different parties as regards the Domestic Violence Ordinance (Cap. 189). The Administration would consider reviewing the Ordinance if necessary.

Age of criminal responsibility

42. Referring to paragraph 24 of the concluding observations of CESCR, Mr Aaron NATTRASS urged Government to implement the recommendation of CESCR to amend the laws of Hong Kong to raise the age of criminal responsibility so as to ensure the rights of the child under Article 10 of the Covenant. He requested Government to clarify its intention in this respect in the second report to be prepared. Sharing the view of Mr Aaron NATTRASS, Ms KU Yin-kay suggested that the age of criminal responsibility should be raised from 7 to 10.

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Right to education

43. Miss Fermi WONG pointed out that ethnic minorities' right to education had been seriously affected by racial discrimination. She informed members that Unison Hong Kong had handled many complaint cases in which children of ethnic minorities, even though they were born or obtained ROA in Hong Kong, were unable to find school places. Miss WONG commented that their right to education was denied or neglected by HKSAR Government who should explain how, under the present education system, it could help these children to merge into the mainstream society.

44. In response, Principal Education Officer (New Territories) (PEO(NT)) explained that one of the objectives of the education policy was to assist children of ethnic minorities to merge into the mainstream society. Special courses were offered to them and assistance was provided by Government to schools which in turn provided support to these students. He said that in addition to the 40 international schools, there were more than 70 schools which offered places to these students. Among these, 9 schools have admitted a greater number of these students. PEO(NT) advised that school places were still available for such students at present and additional classes would be operated for them, if necessary.

45. Miss Fermi WONG, however, pointed out that the education policy had created difficulties for ethnic minorities in enjoying their right to education. The 70 or more schools mentioned by PEO(NT) only accepted students who spoke Cantonese. In fact, only 3 schools were willing to offer places to non-Cantonese speaking students. There was, therefore, a lack of choice of schools for ethnic minorities. Government also had not provided sufficient resources for the schools concerned to enable them to offer special assistance to students of ethnic minorities, such as offering special classes or tuition sessions for them. Miss WONG also commented that the language policy had also hampered the development of ethnic minorities who were required to sit for the same Chinese language examination with Chinese students. Although these students might choose to study French as an alternative, the language did not, in general, increase their competency in job finding after school. The gist of the problem was, therefore, the education policy which should be reviewed. Both the Chairman and Ms Emily LAU suggested Unison Hong Kong to refer relevant complaint cases to the Complaints Division of LegCo Secretariat for follow-up.

Implementation of ICESCR

46. Mr Albert HO sought the views of Ms Anna WU whether Government should take affirmative action in implementing programmes proactively to enable the disadvantaged groups in society to enjoy equal rights. In response, Ms Anna WU informed members that affirmation action was not mandatory under the existing legislation. It was therefore up to individual Government

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departments to consider the implementation of affirmative programmes. In this regard, the Commissioner for Rehabilitation had recently recommended Government departments to adopt policies under which the accord of employment priority to disabled persons would be specified as one of the conditions for the provision of subsidies to NGOs. Ms WU suggested that this policy might also be extended to the award of contracts for outsourcing services and tenders for goods and services in Government departments. In the award of these contracts, favourable consideration should be given as an encouragement to companies/organisations which accorded employment priority to disabled persons. She added that a similar licensing condition could also be imposed in the issue of licences.

(Post-meeting note: The paper on affirmation action and special measures provided by EOC was issued vide LC Paper No. CB(2)1239/02-03(01) on 28 February 2003.)

47. Ms Cyd HO considered that the Administration should provide supplementary information on the impact of budget cuts on the implementation of ICESCR. She pointed out that the Administration was considering downgrading the post of the heads of the various statutory organisations involved in the protection of human rights such as EOC from level 8 in the Directorate pay scale to level 6. She commented that this was tantamount to a reduction in the power of the organisations and would create difficulties for them to implement ICESCR and monitor relevant Government policies and programmes.

48. Ms Anna WU informed members that in the past two years, the morale of staff of EOC had been affected by the rumour that EOC would be reorganised to become a unit of HKSAR Government. Sharing a similar concern, Mr LAW Yuk-kai echoed that after 1997, HKSAR Government had been trying to exert undue influence on these statutory organisations, such as refusing to renew the contract of those heads of organisations who had been fighting hard to protect human rights. He opined that the existence of these organisations was extremely important for the protection of human rights especially in places like HKSAR where the government was not elected democratically. He urged HKSAR Government to explain its action in the second report to be prepared.

Public consultation

49. Ms Vandana RAJWANI requested that NGOs should be given the opportunity to comment on the draft report and that their comments should be incorporated into the second report under ICESCR before the latter was submitted to UN.

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50. DS(HA)1 responded that the second report under ICESCR was a report of HKSAR Government. He explained that the Administration would consult the public and NGOs on the outline of the report. This was a very advanced arrangement among other state parties and had been praised by UN. Moreover, all the submissions received would be forwarded to UN by HKSAR Government. DS(HA)1 added that NGOs were also welcome to forward their comments to CESCER directly so that the Committee would receive comments from all parties concerned before the hearing of the report from HKSAR. He said that this was a very balanced arrangement and further consultation on the draft report would not be conducted.

Submission of report

51. Ms Cyd HO asked whether Government would submit its second report under ICESCR on time. She quoted HKSAR's initial report under Convention on the Rights of the Child as an example to illustrate that there had been delays in the submission of HKSAR's reports under international human rights treaties because they had to be submitted as part of China's reports but CPG had not submitted its reports on time. Ms Cyd HO considered that HKSAR Government should establish a mechanism to ensure the timely submission of its reports to UN.

52. Echoing the views of Ms Cyd HO, Ms Emily LAU pointed out that HKSAR was due to submit its second report under the International Convention on the Elimination of All Forms of Racial Discrimination by January 2003. However, it had not commenced the preparation for the report because CPG had not called for HKSAR Government's contribution to China's report, of which the report from HKSAR Government would form a part. Ms Emily LAU further noted that in the last paragraph of its concluding observations, CESCER had requested HKSAR to submit by 30 June 2003 information on its progress in implementing the Committee's recommendations on the prohibition of racial discrimination as well as its full second report in accordance with the prescribed dates of submissions. She hoped that the second report under ICESCR would be submitted on time.

53. In response to the concerns of Ms Cyd HO and Ms Emily LAU, DS(HA)1 explained that HKSAR Government would initiate the drafting process of the reports under the international human rights treaties when CPG called for its contribution to China's metropolitan report, of which the reports of HKSAR formed a part. HKSAR was not, and could not be, a State Party to the international human rights treaties because it was not a sovereign state and the treaties applied to it by extension of China's ratifications. There was therefore no question of HKSAR Government submitting reports in its own right. DS(HA)1 said that the Chair of the UN Committee on the Elimination of Racial Discrimination (CERD) during their recent visit to Hong Kong, advised

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that CERD would not accept direct reports from HKSAR. He added that he anticipated that CPG would submit its initial report under ICESCR on time in June 2003 and the report from HKSAR would form part of the China report.

54. Ms Cyd HO, however, considered that as human right issues were involved, the submission of the reports should not be treated as a diplomatic issue. Both Ms Cyd HO and Ms Emily LAU maintained the view that HKSAR Government should negotiate with CPG to make arrangements under which HKSAR should be able to submit its reports to UN directly if the China reports would not be submitted on time. Ms Cyd HO requested that the Administration should inform the Panel of the action it had taken, if any, in this respect.

55. In reply, DS(HA)1 said that he saw no grounds for changing the existing reporting arrangement. He further clarified that if the hearing of the second report of HKSAR under ICESCR was held closer to June 2003, it would not be necessary for HKSAR to submit supplementary information. He anticipated that since this was China's initial report, the hearings would be held close to June 2003.

Monitoring of the implementation of ICESCR

56. Ms Emily LAU pointed out that although CESCR had urged HKSAR to establish a national human rights institution with a broad mandate for the promotion of economic, social and cultural rights, HKSAR Government had not adopted the recommendation and had not indicated its intention to establish such an institution. She commented that at present, there was not an effective mechanism to monitor the implementation of ICESCR in Hong Kong since the progress of Government efforts in this respect was discussed only once every five years when HKSAR prepared its report to UN. She invited suggestions from the deputations how the implementation of ICESCR could be better monitored in Hong Kong without a human rights commission.

57. Mr LAW Yuk-kai, Mr Aaron NATTRASS, Mr CHOW Kwok-fai, Ms Anna WU and Ms Vandana RAJWANI all agreed with Ms Emily LAU that in the long term, a human rights commission should be established to monitor the implementation of ICESCR effectively. Mr LAW Yuk-kai, Mr TSOI Yiu-cheong, Member of Hong Kong Human Rights Commission, and Ms Anna WU suggested that meanwhile, progress of the implementation of the Covenant should be reviewed at least once a year.

58. Mr Aaron NATTRASS remarked that a human rights commission might help ensure that Government would adopt and implement the recommendations of CESCR so that the future reports submitted by HKSAR under the Covenant would address the concerns raised by CESCR directly and reflect progress in the implementation of ICESCR instead of incorporating the dissenting views of NGOs.

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59. Both Mr LAW Yuk-kai and Ms KU Yin-kay suggested that LegCo might cooperate with NGOs in monitoring the implementation of the Covenant. Mr LAW Yuk-kai recommended that a subcommittee might be established under the Panel on Home Affairs for this purpose and request Government to report the progress annually.

60. Mr TSOI Yiu-cheong considered that HKSAR Government should respond to the concluding observations of CESCR in its reports to UN and release details of the response to the public. He suggested that the relevant LegCo Panels should discuss and monitor the implementation of the relevant provisions of ICESCR at least once a year and assess the Government budget and relevant policies in the light of these provisions.

61. Mr HO Hei-wah suggested that LegCo should take the following actions to monitor the implementation of ICESCR –

- (a) introduce legislation to ensure the implementation of ICESCR and BL 39. It might also set the priority for the implementation of the relevant provisions;
- (b) review legislation on the provision of legal aid to safeguard human rights;
- (c) study and draw reference to the experience of other countries which had introduced legislation to safeguard human rights;
- (d) promote education on ICESCR among members of the public and the advisory and statutory boards and committees. Reference might be made to the experience of UN in this respect; and
- (e) ensure that sufficient Government resources would be allocated towards the implementation of ICESCR.

62. Ms Emily LAU suggested and members agreed that the issue on the establishment of a monitoring mechanism for the implementation of ICESCR and other international human rights treaties should be included in the list of outstanding items for discussion. Ms LAU also suggested that public consultation might be conducted if necessary.

Clerk

Way forward

63. In response to the concerns and suggestions raised by members and deputations on the implementation of ICESCR, DS(HA)1 said that the Administration would include and respond to all relevant comments in the

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second report to be prepared. He would also reflect them to relevant Government bureaux and departments for consideration. He stressed that Government would not wait till the end of the reporting period to address these concerns but had all along been tackling some of the issues. Progress had been made in some areas and would be reflected in the report. Areas where continued Government efforts would be required would also be mentioned in the report. DS(HA)1 also clarified that some of the programmes included in CE's Policy Agenda covering the 18 months following January 2003 might be implemented earlier before the end of the 18 months' period.

64. To conclude, the Chairman thanked deputations and the Administration for their participation in the discussion on the second report to be prepared under ICESCR. He requested the Administration to consider the views and suggestions made by members and deputations.

II. Any other business

65. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 2
Legislative Council Secretariat
9 April 2003