

立法會
Legislative Council

LC Paper No. CB(2)2380/02-03
(These minutes have been seen
by the Administration)

Ref : CB2/PL/HA

Panel on Home Affairs

Minutes of meeting
held on Friday, 9 May 2003 at 10:45 am
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 Andrew WONG Wang-fat, JP
Hon WONG Yung-kan
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Timothy FOK Tsun-ting, SBS, JP
Hon Henry WU King-cheong, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon Albert CHAN Wai-yip
Dr Hon LO Wing-lok
Hon WONG Sing-chi
Hon MA Fung-kwok, JP

Members Absent : Hon LAU Wong-fat, GBS, JP
Dr Hon TANG Siu-tong, JP

Public Officers Attending : Item IV
Mrs Angelina CHEUNG
Assistant Director of Home Affairs (4)

Mr MA Kam-ki
Acting Chief Liaison Officer (Building Management)
Home Affairs Department

Mr WONG Hin-nang
Senior Property Service Manager (Service)
Housing Department

Item V

Mr Stephen FISHER, JP
Deputy Secretary for Home Affairs (2)

Mr John DEAN
Principal Assistant Secretary for Home Affairs (7)

Mr Stephen WONG
Deputy Solicitor General (General)
Department of Justice

Attendance by Invitation : Item V

Equal Opportunities Commission

Ms Anna WU Hung-yuk, SBS, JP
Chairperson

Ms Cynthia LAM
Equal Opportunities Officer

Hong Kong Bar Association

Mr Andrew LI
Bar Council Member

Mr Donald LEO
Bar Council Member

Hong Kong Human Rights Commission

Mr TSOI Yiu-cheong
Member

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Mr Aaron NATTRASS
Secretary

Sai Kung District Council

Mr LAM Wing-yin
Vice-Chairman, Community Affairs Committee

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. Confirmation of minutes

[LC Paper No. CB(2)1959/02-03]

The minutes of the meeting held on 11 April 2003 were confirmed.

II. Information paper issued since the last meeting

2. Members noted the following papers issued since the last meeting –

- (a) LC Paper No. CB(2)1925/02-03(01) -- further submission from Mr CHAN Kwan-ming presenting his views on the requirement of a management committee (MC) to provide the owners' corporation (OC) concerned with its income and expenditure accounts and balance sheets; and
- (b) LC Paper No. CB(2)1937/02-03(01) -- paper on "Proposed creation and deletion of directorate posts in the Home Affairs Bureau" provided by the Administration.

III. Items for discussion at the next meeting

[Appendix I to LC Paper No. CB(2)1957/02-03]

3. Members agreed to discuss the following items at the next regular meeting scheduled for Friday, 13 June 2003 at 10:45 am -

- (a) promotion of creative industries and local community economy;
and
- (b) consultancy study on the mode of governance of Hong Kong's public museums and the Hong Kong film archive.

4. On paragraph 3(a) above, members agreed that the Home Affairs Bureau (HAB) should coordinate the attendance of representatives from all the relevant Government Bureaux and departments including the Commerce, Industry and Technology Bureau, the Housing, Planning and Lands Bureau (PLB), the Economic Development and Labour Bureau (EDLB), and the Tourism Commission under EDLB.

5. Ms Cyd HO noted that the proposal for an Exhibition Gallery to showcase the major infrastructure projects and development plans of Hong Kong at the Tamar site in Central had been discussed at the meeting of the Public Works Subcommittee on 7 May 2003, and that the Administration had advised that the Gallery would not be overseen by the Leisure and Cultural Services Department (LCSD). She suggested that since LCSD was responsible for the provision and management of such kind of facilities, HAB should be requested to explain its views on the matter. Members agreed that HAB should be requested to provide a written response.

6. Members also noted that the Panel on Food Safety and Environmental Hygiene would discuss the work plan of Team Clean and the implementation measures at its special meeting on Monday, 19 May 2003 at 4:30 pm. They suggested that HAB should also be invited to brief members on the work plan on the territory-wide cleansing day at the meeting. Members of the Panel on Home Affairs may join the discussion at the meeting if they were interested.

IV. The support of the Home Affairs Department (HAD) in resolving disputes arising from the formation of OCs

[LC Paper No. CB(2)1957/02-03(01)]

7. At the invitation of the Chairman, Assistant Director of Home Affairs (4) (AD of HA (4)) highlighted the salient points in the paper provided by the Administration on the support from HAD in the formation of OCs with particular reference to Tenants Purchase Scheme (TPS) estates.

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Assistance for TPS estates

8. Mr WONG Sing-chi remarked that disputes over the formation of OCs in TPS estates were common problems handled by Legislative Council (LegCo) Members. He pointed out that most owners of TPS flats, who used to be tenants of public rental housing, were not psychologically prepared for the change in their status from tenants to owners or for taking up the responsibilities in managing their estates, which used to be performed by the Housing Authority (HA). As a result, there were many problems and disputes arising from the formation and operation of OCs in these estates. He commented that the Administration had not addressed this problem and provided sufficient assistance to increase the awareness of TPS owners of their responsibilities in the management of their estates. He urged the Administration to step up its education and publicity programmes for TPS owners.

9. Echoing the views of Mr WONG Sing-chi, Mr IP Kwok-him pointed out that there were usually a large number of units in a TPS estate creating difficulties in the formation of OC and estate management. He agreed with Mr WONG that the Administration had not provided sufficient assistance to owners. Mr IP opined that HAD should be more proactive in offering more in-depth services to them, such as organizing special programmes to enhance their knowledge and awareness of their rights and responsibilities in building management.

10. In reply, AD of HA (4) advised that the respective District Offices provided the same type of assistance in the formation and operation of OCs of TPS estates and in solving the problems they encountered as in other private buildings. She said that the large number of units in the estates and the fact that most of the TPS owners were not yet psychologically ready for taking up the responsibilities of estate management might account for some of the problems in the formation and operation of OCs in these estates. AD of HA (4) informed members that as at 31 March 2003, 30 OCs had been formed in all TPS estates. HAD and HA had already conducted workshops on building management for the owners of all the 30 estates before formation of OCs. AD of HA (4) assured members that staff of HAD would provide assistance to these OCs including visiting them to identify and helping them to solve any problems they encountered, sharing with them the experience of other OCs and how their problems were overcome. She added that the Administration would consider arranging for special training programmes for TPS owners as suggested by Mr IP Kwok-him.

11. In response to the question from Mr IP Kwok-him about the monitoring on the proper use of maintenance funds of TPS estates which were usually of an enormous amount, AD of HA (4) explained that the use of the funds was

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governed by both the Building Management Ordinance (BMO) (Cap. 344) and the Code of Practice on Building Management and Maintenance issued by Secretary for Home Affairs under section 44(1) of BMO. Under section 20A(2) of BMO and paragraph 1 of the Code of Practice, any supplies, goods or services the value of which exceeded or was likely to exceed \$100,000 or a sum which was equivalent to 20% of the annual budget of the corporation had to be procured by invitation to tender. Under paragraph 8 of the Code of Practice, tenders of a value exceeding \$200,000 or a sum equivalent to 45% of the annual budget of OC should be submitted to OC for approval at a general meeting.

12. Ms Cyd HO remarked that the terms of DMCs of most TPS estates were very favourable to HA. She quoted the exclusive use of certain section of the roads and areas in the estates by HA as an example. She said that to safeguard their own rights, some owners had suggested that the management shares instead of undivided shares held by owners should be counted when voting for a resolution at an owners' general meeting. She considered that such a safeguard was especially important in estates in which the ownership of HA had been sold to private companies.

13. Mr Andrew WONG suggested that in order to encourage owners' participation in building management and to prevent misappropriation of maintenance funds, a poll by all owners should be conducted for approving tenders at an OC meeting. Owners would then be required to shoulder the responsibility of voting and decision making over building management matters and training workshops for owners would then no long be necessary.

Role of HA

14. Mr WONG Sing-chi informed members that HA would be represented at the meetings of owners of TPS estates as one of the owners, and its representatives would join the MCs under the OCs of TPS estates. He pointed out that these HA representatives had always abstained from voting on sensitive or controversial issues on the excuse that they did not wish to influence the decision of the owners. Mr WONG, however, considered that it was the responsibility of the representatives to assist owners in making their own decision by providing for their reference clear advice on the policy and stance of HA over controversial areas in building management.

15. Senior Property Service Manager (Service) (SPSM(S)) replied that as in other private buildings, the power and responsibility of building management in TPS estates vested with the owners. The Administration considered that decisions on building management matters should be left with the owners themselves. Therefore, HA representatives would refrain from commenting or voting on sensitive issues such as selection of contractors. SPSM(S) further explained that the role of HA representatives was to ensure that the operation

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of OCs complied with the provisions of the deeds of mutual covenant (DMCs) of the estates and BMO. They would draw the attention of owners to any non-compliance or acts that might likely result in non-compliance and offer their opinion. If their opinion was not accepted by MCs/OCs, they would request that their opinion be recorded in the minutes of the meetings concerned.

16. Mr WONG Sing-chi maintained his view that HA representatives should express their views on matters related to the operation of OCs. He pointed out that their impartial opinion was essential in safeguarding the proper use of the enormous amount of maintenance funds of TPS estates.

17. Sharing the views of Mr WONG Sing-chi, Mr Andrew WONG considered that it was necessary for HA representatives to offer their opinion on certain matters in order to ensure that the decisions of MCs were rational and fair. He shared with members his personal experience on a recent occasion during which his request for distributing free bottles of household bleach to residents in Hin Keng Estate was refused by the OC concerned without detailed explanation. He said that the HA representative in the OC concerned should advise against such an unfair decision. He also suggested that legislative amendment should be introduced to prevent certain individuals from manipulating OCs to achieve their political aims.

18. Mr IP Kwok-him said that he supported the stance of the Administration on the role of HA representatives. He considered that the management of TPS estates should be left to OCs. Mr Albert CHAN suggested that HA should require all its representatives to vote for the appointment of MCs at meetings of owners of TPS estates convened for the purpose of OC formation. As regards other management matters, he shared the views of the Administration and Mr IP Kwok-him that HA representatives should abstain from voting so as not to influence the outcome of voting in view of the large percentage of shares held by HA in these estates. He further remarked that although there was still room for improvement, HA could be regarded as a good landlord in comparison with other private developers who tried to control and exploit owners to their advantages.

19. Responding to the suggestion of Mr Albert CHAN, SPSM(S) assured members that since the launching of the first TPS estate, representatives of HA had been voting for the appointment of MCs in these estates.

20. Mr Albert CHAN further informed members that in some housing estates, only owners committees could be established in accordance with the DMCs concerned. Since these committees were only advisory in nature, they could not assume the full legal powers and responsibilities of OCs. It was therefore still necessary for HA as the landlord to shoulder most of the management responsibilities. Mr CHAN pointed out that on some previous occasions, equal and fair treatment had not been given to candidates of District

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Council (DC) elections in respect of their applications for conducting publicity in these estates. He urged HA to prevent similar incidents from happening in future.

21. SPSM(S) responded that HA had always ensured consistency in the implementation of its policy on publicity activities by candidates for DC elections in all the housing estates under its management. In estates where OCs had been formed, decisions on these matters would be left to the respective OCs. However, Mr Albert CHAN pointed out that the HA policy had not been consistently implemented in some Home Ownership Scheme estates.

Role of HAD

22. Mr Henry WU criticized that HAD was too passive in the provision of assistance to OCs. He opined that HAD should assume a more proactive role and approach OCs regularly to identify potential problems and conflicts in their daily operation and offering them the assistance in need instead of passively offering mediation service after emergence of disputes over building management. Mr WU suggested that HAD might distribute questionnaire to OCs regularly to identify potential areas in which assistance from HAD might be required.

23. AD of HA (4) explained that Liaison Officers (LOs) would attend meetings of OCs upon invitation. They would examine the agenda before the meetings to identify any controversial issues, such as maintenance of public areas, hold discussion with MCs before the meetings, and offer advice as appropriate. She said that in order to improve the service of HAD, regular surveys in the form of questionnaire were conducted with the OCs. She said that the Administration would consider the suggestion of Mr Henry WU for strengthening the surveys in future.

24. Mr Henry WU opined that it would be too passive for LOs to wait for the invitations from OCs in order to visit the latter. He reckoned that with the existing level of staffing, it might not be possible for LOs to pay frequent visits to OCs. He therefore considered that questionnaire survey might be a better approach in identifying and preventing problems in building management.

25. Echoing the view of Mr Henry WU that HAD should adopt a more proactive approach in helping OCs, Mr WONG Yung-kan suggested that HAD staff should attend meetings of OCs at least once a month. He stressed that the fact that individual members of MCs might be required to bear legal liabilities arising from the performance of OC duties might deter owners from serving on MCs. The Government should therefore ensure that sufficient support and assistance would be provided to OCs so as to encourage participation of owners in building management. He also suggested that legislative amendment should be introduced to address the issue of legal liability of individual MC members.

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26. To address the concern of Mr Henry WU and Mr WONG Yung-kan, AD of HA (4) clarified that representatives of HAD could only attend meetings of OCs upon invitation. She supplemented that OCs were usually very willing to invite HAD staff to their meetings.

27. In response to a further suggestion from Mr WONG Yung-kan that HAD should require MC members to attend training workshops mandatory in order to enhance their knowledge of building management, AD of HA (4) explained that the BMO had not provided for such a requirement. She pointed out that MC members had served on MCs voluntarily and it might discourage their participation if there were too much requirements or constraints under the BMO. Instead, HAD had tried to encourage their participation by offering tea gatherings to facilitate exchange of views between OCs, certificate courses, as well as tailor-made workshops covering topics of their interests such as the operation of OCs, procurement of goods and services, and corrupt and illegal practices. Past experience had proved that these training programmes were quite useful and well received by members of MCs.

28. Ms Cyd HO pointed out that the owners' records of the building concerned had to be checked before the meeting for OC formation. She said that it might be difficult for owners to perform such a task without the aid of a computer. She asked whether HAD could provide owners with the required computer software and equipment.

29. In reply, AD of HA (4) advised that HAD would issue exemption certificates for the convenors to obtain a free copy of owners' records from the Land Registry for the purpose of convening owners meetings for OC formation. She explained that very often, management companies would assist owners to convene such meetings. The former usually developed their own database for checking owners' records and would provide the necessary assistance to owners in this respect. She said that the Administration would consider the suggestion of Ms Cyd HO and assist the owners in need in getting access to computer equipment.

Proposed amendments to BMO

30. Mr Albert HO opined that many problems and disputes arising from building management could be prevented by introducing amendments to BMO. He commented that BMO should be improved in many areas such as the removal of terms and conditions in DMCs that were unfair to owners. He noted that the introduction of the Building Management (Amendment) Bill to LegCo had been delayed. He urged the Administration to expedite the review of BMO and introduce the Bill as soon as possible.

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31. AD of HA (4) informed members that the Administration had originally planned to introduce the Bill to LegCo in June 2003. She explained that there had been a slight delay because the Administration would like to conduct an extensive public consultation on the proposals. AD of HA (4) advised that the Bill would be introduced in the 2003-04 legislative session.

32. Ms Cyd HO said that she welcomed the conduct of public consultation on the proposed amendments to BMO. However, she pointed out that in many disputes between owners and MCs, the former had complained that the latter could not represent their interests. She therefore suggested that during the consultation exercise, not only MCs but also owners should be consulted. Ms Emily LAU commented that if the Bill was to be introduced to LegCo in 2003-04, it might not be possible for the scrutiny of the Bill to be completed before end of the session given the numerous areas to be covered in and the complexity of the Bill. The Administration noted the views of Ms HO and Ms LAU.

33. Mr Albert HO considered that staff of HAD should monitor the operation of OCs to ensure compliance with BMO. Once any non-compliance was detected, they should inform the OCs concerned immediately and suggested remedies. He commended on the improvement of the performance of LOs in this regard. He further pointed out that under the existing laws of Hong Kong, HAD was not empowered to monitor the operation of OCs. Mr HO suggested that legislative amendment should be introduced to authorize HAD to monitor the operation of OCs and investigate into complaints and possible non-compliance with the provisions of relevant legislation. For cases involving obvious non-compliance, HAD might then inform the OCs concerned of the non-compliance after investigation and require them to take the necessary remedial actions. For other cases, HAD might submit its investigation reports to the relevant authorities to facilitate the formulation of judgement.

34. In response, AD of HA (4) assured members that representatives of HAD would attend OC meetings on invitation and notify the OCs concerned once possible non-compliance with BMO or other relevant legislation was detected. The staff would share with OCs their experience in handling these kinds of problems and offer them the appropriate advice. She added that as some OCs had employed their own lawyers, they might also obtain legal advice from the latter.

Mediation of building management disputes

35. Mr Albert HO suggested that many disputes over building management, which were neighbourhood disputes, might best be resolved through mediation instead of resorting to legal proceedings. He considered that HAD should establish a statutory mediation mechanism and provide the mediators.

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36. In reply, AD of HA (4) informed members that HAD had launched a pilot scheme on mediation in resolving building management disputes in mid 2002 in which the Hong Kong Mediation Council and Hong Kong Mediation Centre had agreed to provide voluntary mediation services. Eight cases had been selected for inclusion in the pilot scheme. Among them, only four could go ahead eventually as the parties in dispute of the other four cases refused to participate in mediation despite persuasion. Out of these four cases, one case involving dispute between owners and the mutual aid committee over the interpretation of certain provisions of DMC relating to apportionment of maintenance and repair expenses and one case involving dispute between two owners over the amount of compensation for damage caused by the burst of a flush pipe had been successfully resolved.

37. AD of HA (4) added that the two organizations had agreed to undertake a total of ten dispute cases under the trial scheme and an assessment on the effectiveness of the scheme would be made afterwards. She pointed out that difficulties had been encountered in persuading the parties in dispute to participate in mediation, probably because it was a new service of which they had little knowledge. Therefore, HAD would conduct workshops to enhance owners' knowledge in this respect. Assessment would be made as to whether it was suitable to apply this new technique to resolve building management disputes. Reference would also be made to the mediation of labour and other disputes so as to further improve the service.

38. Mr Albert HO commented that if two out of four cases could be resolved, the success rate of the mediation service provided in the pilot scheme could be considered quite high and that the pilot scheme should continue. He added that the success rate would be higher if a statutory mediation mechanism was established.

39. Mr Andrew WONG said that mediation might be a good solution but might not be successful in resolving all kinds of disputes over building management. He quoted the disputes in Saddle Ridge Garden over the formation of OC as an example. He pointed out that there were loopholes in the existing legislation which might give rise to disputes and could only be dealt with through legislative amendments. He said that he did not mind the slight delay in the introduction of the Building Management (Amendment) Bill since BMO should be reviewed thoroughly. Mr WONG pointed out that he had all along maintained that BMO should not be amended in a piecemeal manner and the Bill should be comprehensive to cover all the necessary amendments to plug all the loopholes. AD of HA (4) noted his views.

Provision of professional assistance

40. Sharing the views of some members that additional assistance should be provided to OCs, Ms Emily LAU considered that HAD should offer

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independent professional advice on building management matters such as legal, accounting and financial management to OCs. She stressed that the advice provided by the professionals should be impartial and independent of the influence of any MC members, similar to the services provided by the LegCo Secretariat to LegCo Members, so as to facilitate owners to make an informed decision. She asked whether these services could be obtained at the Building Management Resource Centres (BMRCs) under HAD.

41. In reply, AD of HA (4) explained that under BMO, decisions on certain matters had to be made by owners at OC meetings with a specified quorum so as to prevent domination by a few owners. Staff of HAD would offer appropriate advice whenever necessary. However, as HAD staff were not qualified legal professionals, there might be matters on which OCs would need to seek legal advice. She said that while some OCs would hire their own lawyers, some might seek assistance from the professional volunteers in BMRCs.

42. AD of HA (4) informed members that volunteer experts from seven professional organizations provided free professional services and training at BMRCs, covering various aspects of building management, including legal, accounting, surveying, engineering and management. The experts on duty at the BMRCs would meet with owners on appointments. In the past few years, legal advice was sought in over 90% of the appointments.

43. In response to a further question from Ms Emily LAU on the provisions in BMO governing the hiring of lawyers by OCs, AD of HA (4) clarified that BMO did not require OCs to employ their own lawyers. However, if they decided to do so, they had to comply with the procedural requirements regarding procurement of supplies, goods and services mentioned in paragraph 11 above. She stressed that the lawyers employed by OCs should be responsible to the latter instead of any individual MC members or owners.

44. Mr Albert HO expressed dissatisfaction that the deployment of a Senior Government Counsel (SGC) from the Department of Justice (DoJ) to HAD to provide legal advice on building management to staff there had been discontinued recently. He expressed concern that without a Government Counsel stationed in the department, HAD staff would not be able to obtain legal advice promptly which was crucial in enabling them to identify non-compliance with BMO and offer appropriate advice to OCs. AD of HA (4) said the Administration was of the view that creating the SGC post in DoJ would ensure better support and back up services for and supervision of the SGC. In addition to benefitting from the wide range of services provided by DoJ, HAD would benefit from the dedicated service of the SGC on building management.

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Instrument for appointing a proxy

45. Mr WONG Sing-chi informed members that at a meeting of owners for OC formation, many owners who were not able to attend the meeting would appoint proxies to vote on their behalf so that there would be a quorum for the meeting and a resolution could be passed by owners of the required percentage of shares for OC formation. However, many owners had commented on the absence of a prescribed form or clear guidelines for the instrument to appoint a proxy. Mr WONG suggested that the agenda of the meeting concerned should be attached to the instrument so that there would be a clear indication on the matter/agenda item on which the proxy to be appointed would vote on behalf of the owner concerned.

46. AD of HA (4) replied that similar concern had been raised by owners at private buildings. She clarified that the description of the instrument in BMO was very simple without a prescribed form. Therefore, instruments in different formats would be accepted as long as they could serve the purpose for the conduct of the meeting and voting. AD of HA (4) further advised that after discussion with DoJ, HAD had provided a sample proxy form in the booklet "How to form an OC and achieve effective building management" for reference of owners. However, it was not a mandatory requirement that the form had to be used for appointing proxies.

47. AD of HA (4) added that the Subcommittee on review of the Building Management Ordinance under the Panel had deliberated this issue but considered that including a prescribed form for the instrument in BMO would impose an extra restriction on owners and OCs. She said that this issue would be covered in the public consultation exercise and would be further reviewed in the light of the public views received. Mr IP Kwok-him said that while he agreed that clear guidelines should be provided on the instrument, he considered that owners should be not required to follow a prescribed format for the instrument.

Way forward

Clerk 48. To conclude, the Chairman requested the Administration to consider the views expressed by members and introduce further improvements to BMO and the assistance provided to OCs accordingly. He also requested the Clerk to refer the concerns and suggestions of members to the Subcommittee on review of Building Management Ordinance for consideration.

LegCo Secretariat 49. Ms Emily LAU suggested and members agreed that LegCo Secretariat should prepare a list of the issues identified in the complaint cases relating to the operation of OCs and other building management problems handled or received by LegCo Members for reference of members and the Administration.

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V. Monitoring mechanism for the implementation of international human rights treaties in the Hong Kong Special Administrative Region (HKSAR)

[LC Paper Nos. CB(2)1957/02-03(02) to (03), CB(2)1999/02-03(01) to (02), and CB(2)2044/02-03(01)]

50. The Chairman welcomed representatives of deputations and the Administration to the meeting. At the invitation of the Chairman, five deputations presented their views on the monitoring mechanism for the implementation of international human rights treaties in HKSAR as summarized in paragraphs 51 to 56 below.

Equal Opportunities Commission (EOC)

51. Ms Anna WU, Chairperson of EOC, presented the views of the Commission as follows -

- (a) the HKSAR Government should follow the good practice of other countries such as Norway, Canada and New Zealand, and release the draft reports prepared under the various human rights treaties for public consultation before submission to the United Nations (UN);
- (b) the Government should also follow the good practice of Norway and report annually to LegCo the progress of the implementation of human rights treaties in HKSAR;
- (c) the Government should adopt a more proactive and advanced approach in its discussion of human rights issues with the public and non-government organizations (NGOs), which would help reduce criticisms from the latter, as well as the possibility of contravention of human rights treaties; and
- (d) additional resources spent on the public consultation and reporting procedures recommended above would not be an unproductive expenditure but a good investment.

Hong Kong Bar Association

[LC Paper No. CB(2)2044/02-03(01)]

52. Mr Andrew LI, Bar Council Member of Hong Kong Bar Association, introduced to members the views of the Association included in its submission as follows -

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- (a) the Association was in support of the establishment of an independent human rights commission (HRC);
- (b) the Government had presented a flawed argument that a HRC was not needed since there existed already adequate measures to protect human rights in Hong Kong. However, its attempt to seek the interpretation of the Basic Law (BL) by the Standing Committee of the National People's Congress in 1999 had seriously affected the rule of law in HKSAR. A HRC was therefore necessary to safeguard human rights in HKSAR;
- (c) the HRC might help promote the culture for the respect of human rights in HKSAR;
- (d) at an international level, the functions of a HRC should include assisting with the preparation of international treaties, urging HKSAR to ratify the treaties and to incorporate them into domestic law, submitting independent reports to international treaty monitoring bodies (TMBs), and interacting with other international bodies on human rights;
- (e) on a local level, the HRC could influence legislators and administrators, operate at the judicial stage on a uniquely versatile way, investigate into allegations of human rights abuses independently, and appeal to a broad spectrum of society, making human rights a concept which was attractive to all members of society;
- (f) HKSAR should follow the good practice of nine countries in the Asia Pacific region and establish a HRC; and
- (g) the UK government had established a joint committee to consider the need for a HRC. After two years of study, the joint committee published its report concluding that the case for establishing a HRC was compelling. The report also tackled many of the arguments previously put forward by the British Government, which were also adopted by the HKSAR Government.

(Post-meeting note: The submission from Hong Kong Bar Association was issued vide LC Paper No. CB(2)2044/02-03(01) on 12 May 2003.)

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Hong Kong Human Rights Commission
[LC Paper No. CB(2)1957/02-03(02)]

53. Mr CHOY Yiu-cheong, Member of Hong Kong Human Rights Commission, highlighted the views of the Commission in its submission as follows -

- (a) the Commission strongly requested for the establishment of a statutory HRC to safeguard human rights in the HKSAR;
- (b) the HKSAR Government had both domestic and international obligations to establish a HRC. BL had stipulated that international human rights treaties should remain in force in HKSAR and these treaties obliged State Parties to uphold and protect human rights through competent judicial, administrative or legislative system. Due to inadequacy of the legislative and monitoring system, the establishment of a HRC had become more essential in HKSAR;
- (c) although many human rights related organizations had already been established in HKSAR, they had their specific limitations which reflected the need for a HRC;
- (d) the narrow scope of application of the Bill of Rights which applied to the public sector only, the absence of comprehensive and all-round legislation against discrimination and the absence of domestic legislation on the International Covenant on Economic, Social and Cultural Rights all called for the establishment of a HRC;
- (e) NGOs and community groups should be consulted on the formation of HRC which should be composed of members from diverse backgrounds with particular interests, expertise or experience in the field of human rights. The appointment of members should be effected by an official act to enable a stable mandate;
- (f) HRC should be allocated adequate funding to ensure its independence;
- (g) HRC should have the powers to receive complaints, investigate proactively, conciliate, adjudicate, provide legal advice, legal aid, institute legal proceedings, issue enforcement notices and court orders, monitor both the public and the private sphere, review all Government policies, and make binding recommendations. It should also monitor the implementation of international human

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rights treaties in HKSAR and promote public education on human rights; and

- (h) as steps taken towards the establishment of HRC, the Government should strengthen the existing enforcement mechanisms in the area of human rights, amend the Bill of Rights to cover the private sector as well, and set up a statutory body to handle all cases related to violations of the Bill of Rights.

54. Mr CHOY Yiu-cheong added that at a recent meeting between the Deputy Secretary for Home Affairs (2) (DS(HA)2) and NGOs, the former had admitted that HKSAR at the moment could not fully comply with the Paris Principles which emphasized the significant role that institutions at the national level could play in promoting and protecting human rights and fundamental freedom, and in developing and enhancing public awareness of those rights and freedom. Mr CHOY pointed out that the HKSAR Government therefore had the responsibility of establishing a HRC.

Hong Kong Human Rights Monitor

55. Mr LAW Yuk-kai, Director of Hong Kong Human Rights Monitor, informed members of the views of the organization as follows -

- (a) under the various international human rights treaties, the HKSAR Government had the responsibility to ensure that a mechanism was in place to safeguard human rights in HKSAR;
- (b) the fact that the rule of law and independence of the judicial system in HKSAR had repeatedly been undermined by both the HKSAR and the Central Governments in the recent years, and the narrow scope of application of the Bill of Rights had reflected that there was not an effective mechanism to safeguard human rights in HKSAR;
- (c) existing organizations relating to human rights in HKSAR had their own specific limitations and could not satisfy the requirement of the Paris Principles as an independent HRC. These organizations had also been subjected to undue influence from the HKSAR Government recently which might affect their independence and create difficulties for them to monitor the work of the Government; and
- (d) to protect human rights, an appeal mechanism should be introduced to HKSAR under which a HKSAR resident might appeal directly to the relevant UN TMBs for assistance in case of infringements of human rights.

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Sai Kung District Council (SKDC)

56. Mr LAM Wing-yin, Vice-Chairman, Community Affairs Committee of SKDC, informed members that similar to the views expressed by other deputations, the Community Affairs Committee considered that a HRC should be established in HKSAR. HKSAR should not lag behind some less developed countries in which a HRC had already been set up. An open HRC would also facilitate the operation of the Government.

57. Members noted the written submission from Mr YEUNG Wai-sing, member of Eastern DC [LC Paper No. CB(2)1999/02-03(01)], and the paper provided by the Administration [LC Paper No. CB(2)1957/02-03(03)] giving details of the existing monitoring mechanisms for the implementation of applicable international human rights treaties in HKSAR. Members also noted that the Administration had indicated in its paper that it was not convinced of the need for but had no objection in principle to providing annual reports to LegCo on the implementation of the applicable treaties as proposed by members and deputations at the meeting on 11 April 2003. However it considered that doing so would place new demands on HAB's resources, which were primarily in place to service its reporting obligations under the UN treaties. It would therefore need to examine the implications of accepting these additional tasks. The Administration undertook to advise the Panel of its conclusions shortly.

Adm

(Post-meeting note : The response from the Administration was circulated vide LC Paper Nos. CB(2)2164/02-03(01) and CB(2)2240/02-03(01) on 22 and 28 May 2003.)

Discussion

Culture of human rights

58. Ms Emily LAU said that she shared the view of Mr Andrew LI, Bar Council Members of Hong Kong Bar Association, that it was possible to develop a culture for the respect of human rights. She sought the views of other deputations whether there was such a culture in Hong Kong or in the Chinese society and how it could be promoted.

59. In reply, Mr CHOY Yiu-cheong, Member of Hong Kong Human Rights Commission, said that since the culture in Hong Kong was very diversified, it was difficult to ascertain whether there was a culture of human rights in Hong Kong. However, he pointed out that the rights of all members of society, whether they were the majority or the minority, should be upheld and protected, no matter there was such a culture or not. He reiterated that a HRC should be

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established and one of its functions was to promote education on and the culture of human rights.

60. Echoing the views of Mr CHOY Yiu-cheong, Ms Anna WU, Chairperson of EOC, remarked that the promotion of human rights had not been widely discussed by the public at present. As the rights of the minorities might easily be ignored by the majority members of society, the Government should undertake to ensure that equal rights were enjoyed by all members of society and adopt a proactive approach in upholding human rights.

Establishment of HRC

61. Mr Albert HO noted from the submissions from some of the deputations that most places with a HRC in place were democratic and advanced countries. Yet they had chosen to establish HRCs in order to ensure that the rights of the minority or vulnerable groups of society would not be ignored or infringed. He enquired about the reasons for the HKSAR Government refusing to follow the good practice of the other jurisdictions to publish the draft reports under various human rights treaties for public consultation and establish a HRC. Mr HO asked whether the Government's belief that upholding human rights was in contrary with its governance, or the lack of resources was the main reason behind the Government position.

62. Responding to the concerns raised by members and deputations, DS(HA)2 assured members that the Government acknowledged the need for a monitoring mechanism on the implementation of human rights treaties in HKSAR under which the Government submitted reports to UN TMBs under the treaties that applied to HKSAR. The Government also recognized the main purpose of the mechanism as improving the human rights conditions in HKSAR. DS(HA)2 pointed out that despite the fact that human rights conditions in HKSAR were quite satisfactory, the Government still considered that such a mechanism was required so as to ensure that the rights of all members of society were protected at all times. He stressed that the reporting process conducted by the HKSAR Government had complied with the requirements prescribed by the Human Rights Committee in the UN Manual on Human Rights Reporting.

63. As regards the request for the establishment of a HRC, DS(HA)2 clarified that none of the international human rights treaties which applied to HKSAR had required their State Parties to establish a central monitoring body for human rights. He explained that the Government had attached great importance to the Paris Principles. It would examine thoroughly the role and functions of the recommended national institution in the light of local situations so as to determine the suitability for establishing such an institution in HKSAR.

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64. Mr CHOY Yiu-cheong said that he was very disappointed at the response from the Administration. He pointed out that the Administration had already taken a very long time to consider the issue but still had not arrived at a decision yet. He requested that to increase transparency and allow for the participation of LegCo and the public in the process, the Administration should provide a timetable giving details on the issues that had been examined in the past and those that would be studied in future, as well as the target date for the completion of the study.

65. Ms Emily LAU invited views from the deputations on the need for a HRC in HKSAR and whether it was necessary to set up a committee under LegCo to examine the issue.

66. Mr LAW Yuk-kai, Director of Hong Kong Human Rights Monitor, reiterated the need for a mechanism to ensure human rights through the establishment of a HRC. He considered that all the existing statutory organizations relating to human rights in HKSAR could not serve the purpose of the HRC specified in the Paris Principles. Therefore, the Government should restructure or reform these organizations and, in particular, ensure that statutory powers were granted to them.

67. On the functions of HRC, Mr LAW Yuk-kai suggested that the commission should be empowered to introduce bills, propose litigation, and set up long term plans with Government for the promotion of human rights. He proposed that the Government should inform the public how the representativeness and independence of the commission could be achieved and safeguarded.

68. Mr LAW Yuk-kai further suggested that a research could be conducted on the human rights stipulated in the various human rights treaties and how they could be safeguarded effectively, as well as the organizations suitable for monitoring the implementation of the treaties in HKSAR. He added that as the Administration had recognized the importance of the Paris Principles, the LegCo might follow up with the Government with a view to setting up a timetable for the implementation of the Principles in Hong Kong. Mr CHOY Yiu-cheong supported the suggestion of Mr LAW Yuk-kai.

69. In reviewing the need for a HRC, Ms Anna WU commented that consideration might be given to the issues that remained to be addressed by the HKSAR Government. She quoted as examples the lack of legislation against racial discrimination and the inadequate provision of litigation cost for cases involving human rights issues. Ms WU suggested that all these issues had to be taken into account in considering the establishment of HRC and an annual reporting system on human rights development.

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70. Noting that some deputations had suggested that the proposed HRC should be empowered to introduce bills, Ms Cyd HO requested deputations to provide more detailed comments in writing on this aspect after the meeting.

Appointment of members to HRC

71. Ms Cyd HO opined that statutory power, resources and personnel would be crucial to the successful operation of the HRC. It was therefore very important to ensure that the interests of different sectors of society would be duly represented in the commission. She suggested that in considering the appointment procedure for members of HRC, reference might be made to that for judicial officers under which the Judicial Officers Recommendation Commission composed of representatives from professional organizations was set up for the nomination of candidates for the appointments. Judicial Officers were appointed by the Chief Executive on the recommendations of the Commission. Ms HO invited views from the deputations on the appointment procedure.

72. Echoing the views of Ms Cyd HO, Mr CHOY Yiu-cheong stressed that it was important to ensure the representativeness of members of HRC. He proposed that organizations relating to human rights in HKSAR might nominate candidates for HRC. Public consultation might be conducted and LegCo might also receive public views on the nominations at its meetings.

73. Ms Anna WU said that she agreed with Ms Cyd HO that the appointment procedure for judicial officers was objective and independent and might be adopted for the appointment of HRC members. She suggested that reference might also be made to the practices in other jurisdictions where nomination mechanisms were established for appointments to HRCs. Apart from the appointment procedure, Ms WU suggested that it might also be necessary to establish a procedure for the termination of the appointments. She added that there was an increasing demand for organizations relating to human rights in HKSAR to increase their transparency and EOC had gladly accepted this challenge. She considered that it was equally important to ensure the transparency of the HRC.

Way forward

RLSD

74. The Chairman suggested and members agreed that to facilitate further discussion of the issue, the Research and Library Services Division of LegCo Secretariat should be requested to conduct a research study on the establishment of HRCs as well as the monitoring mechanism in the implementation of human rights treaties in other places.

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VI. Any other business

75. There being no other business, the meeting ended at 1:05 pm.

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Legislative Council Secretariat
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