

Twentieth Meeting of the Human Rights Forum

14 December 2010 at 3:00 pm

Room 601, 6/F, Central Government Offices, West Wing

Present

<u>Organisation</u>	<u>Name/Post</u>
1. Civil Human Rights Front	Mr Gary FAN Convenor
	Ms LEE Wai-yee Convenor of Human right sub-group
	Ms YEO Wai-wai Officer
2. Equal Opportunities Commission	Mr Ferrick CHU Head, Policy & Research
3. Hong Kong Christian Institute	Mr Andrew SHUM Programme Secretary (Social Concern)
4. Hong Kong Council of Social Service	Miss Hindy KAI Officer
5. Hong Kong Human Rights Monitor	Mr KWOK Hiu-chung Education Officer
6. Office of Emily Lau, Legislative Councillor	Ms Astor CHAN Research Officer
7. Society for Community Organisation	Ms Annie LIN Community Organiser
8. The Society for Truth and Light	Ms Helen FU Assistant General Secretary

Constitutional and Mainland Affairs Bureau

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| 1. Mr Arthur HO
(Chairman) | Deputy Secretary
(Constitutional and Mainland Affairs)1 |
| 2. Ms Christina CHONG | Principal Assistant Secretary
(Constitutional and Mainland Affairs)4 |
| 3. Mr Hubert LAW | Principal Assistant Secretary
(Constitutional and Mainland Affairs)5 |
| 4. Miss Sian LI | Assistant Secretary
(Constitutional and Mainland Affairs)4C |
| 5. Miss LI Wan-in
(Secretary) | Assistant Secretary
(Constitutional and Mainland Affairs)5A |

Education Bureau

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| 1. Mrs Anissa WONG | Senior Education Officer (Education
Commission) |
| 2. Mr CHENG Man-leung | Senior Curriculum Development
Officer (Chinese) |

Food and Health Bureau

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| 1. Mr Kirk YIP | Assistant Secretary for Food and
Health (Health) 4 |
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Labour and Welfare Bureau

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| 1. Mr Ricky CHENG | Assistant Secretary for Labour and
Welfare (Poverty) |
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Introduction

The Chairman welcomed members to the meeting.

Item 1: Second Report of the People's Republic of China under the International Covenant on Economic, Social and Cultural Rights – Part Two: Hong Kong Special Administrative Region (Agenda Item 1)

2. The Chairman informed members that the HKSAR's third report under the International Covenant on Economic, Social and Cultural Rights (ICESCR) has been published by the United Nations (UN). It formed part of the second periodic report of the People's Republic of China under the Covenant. The UN Committee on Economic, Social and Cultural Rights (the Committee) would hold a hearing of China's Report, but the date had yet to be fixed. The Government consulted the Human Rights Forum on the draft outline of the report at the meeting in February 2010. In drafting the Report, the Government had taken into account views expressed by members as well as the Legislative Council (LegCo) and the general public on the broad subject headings and individual topics that were to be covered in the Report. The Chairman invited Mr LAW to briefly introduce the Report.

3. Mr LAW explained that the Report was prepared in accordance with the "harmonized guidelines on reporting under the international human rights treaties" issued by the UN. It consisted of two parts: (i) the **Common Core Document** which provided general factual and statistical information of the HKSAR, and explained the legal framework within which human rights were protected, including the rule of law, the Basic Law and other legal instruments, legal aid services, various statutory bodies concerned and mechanisms for handling complaints and investigations; as well as information on promotion of public awareness of human rights; and (ii) the **treaty-specific document on the ICESCR**, which, following the outline of the Report, responded to the concluding observations of the previous hearing of the Committee held in April 2005, and updated the position in respect of the articles of the ICESCR. The major issues addressed in the Report included the general human rights situation and protection (Articles 1-5); labour and related rights (Articles 6-8); right to social security, protection of family, and an adequate standard of living (Articles 9-11); right to health (Article 12); right to education (Articles 13-14) and right to cultural life, scientific progress and its application (Article 15).

4. The Chairman invited members' views on the report.

5. Some members opined that the Report should have covered more topics including income disparity and Gini coefficient, land resumption of the Choi Yuen Village, the exercise of Police power, and the lack of collective bargaining power of workers. In respect of the issue on

income disparity, Mr LAW explained that paragraphs 11.13 to 11.15 of the Report had given an overview of the issues of income disparity and Gini Coefficient of Hong Kong. The Chairman further explained that the hot topics of the day changed as society moved on, and the Report might not have included the latest issues which had yet to fully develop or had not been raised during the consultation of the outline of the Report. He added that if there were specific topics that members considered worthy of an in-depth discussion, such topics might be discussed at a future meeting of the Forum.

6. A member noticed that the number of deaths under Police custody stood consistently at two to three persons each year from 2005 to 2009, while that under the custody of the Correctional Services Department increased sharply from 13 in 2008 to 25 in 2009. The Chairman explained that all such deaths would be examined by the Coroner. The Constitutional and Mainland Affairs Bureau (CMAB) would liaise with the Security Bureau for supplementary information, if any, for members' reference.

7. Some members enquired about the purpose of discussing the Report if the Government was not going to submit a further supplementary report to the Committee on the latest development of various issues and the views received at this stage. The Chairman explained that the Government would discuss the Report with the LegCo Panel on Constitutional Affairs (CA Panel) and relevant stakeholders before attending the hearing by the Committee. The submission of the Report was the beginning, instead of the end, of the reporting cycle to the UN. During the hearing of the UN Committee, non-government organisations (NGOs) from HKSAR would attend and convey their views on HKSAR's Report to Committee members. The Government could provide responses to issues raised by the Committee accordingly.

8. A member commented that not many members of the public were aware of the consultation of the Report's outline, and that the Administration should better reflect the views of the community on the implementation of the ICESCR rather than repeating Government's initiatives. The Chairman explained that the CMAB publicised the consultation of the Report outline through different channels including issuing press release and uploading the Report outline to the internet. The CMAB had also conveyed the views received from the public in full to relevant bureaux and departments for their consideration in preparation of the Report.

9. A member expressed that the Administration should proactively include relevant developments into the Report instead of solely relying on commentators to suggest topics for inclusion. He also asked if human rights training was provided to civil servants for their daily discharge of duties. The Chairman explained that in preparation of the Report, the Administration did not just rely on views received from the public. Relevant bureaux and departments had also initiated relevant topics for inclusion in the Report in the light of the latest developments. Mr CHU elaborated that the Equal Opportunities Commission (EOC) has been providing training to the civil service in collaboration with the Civil Service Training and Development Institute to enhance their sensitivity to equality issues.

10. A member was concerned about the granting of the Disability Allowance and the application of the statutory minimum wage to persons with disabilities. Another member considered that the coverage of the Race Discrimination Ordinance (RDO) was inadequate and asked whether the Administration would review the Ordinance. Mr Ricky CHENG replied that the Labour and Welfare Bureau would closely monitor the operation of the Disability Allowance and the implementation of the statutory minimum wage. The Chairman explained that while the RDO does not contain a specific clause to cover all the functions and powers of the Government, it binds the Government in all areas specified in the Ordinance, including employment, education and provision of services. The CMAB also issued the Administrative Guidelines on Promotion of Racial Equality in April 2010 to promote racial equality and ensure equal access by ethnic minorities to public services. The Chairman pointed out that the enactment process of the RDO had aroused public awareness on racial equality and the EOC had conducted publicity and public education in this regard. These public education and promotional efforts would continue. Mr CHU supplemented that the number of complaints against racial discrimination remained small and that the EOC would continue to work closely with relevant Government bureaux and departments as well as NGOs to promote racial equality and harmony.

11. Upon enquiries of members, the Chairman explained that a total of 16 submissions were received in response to the consultation on the outline of the Report, and their views have been incorporated and addressed in the Report. As to a suggestion from members to upload these submissions to the Internet for public inspection, the Chairman replied that subject to the consent of the parties making the submissions concerned, the CMAB would consider how best to make public the submissions received.

[Post meeting note: The CMAB is seeking consent from parties making the submissions, and will upload the relevant submissions on CMAB's website subject to their consent.]

Item 2: Report on Public Consultation on Review of the Personal Data (Privacy) Ordinance

12. The Chairman said that the CMAB, with the support of the Office of the Privacy Commissioner for Personal Data (PCPD), had conducted a comprehensive review of the Personal Data (Privacy) Ordinance (PDPO) in 2009 to see whether its existing provisions still afforded adequate protection to personal data in the wake of the developments over the last decade or so. The Government conducted a public consultation from August to November 2009 to gauge public views on the proposals to amend the PDPO. This Forum was consulted on a relevant consultation document in October 2009. Taking into account the views received during the public consultation exercise and the public concerns arising from the incidents involving the transfer of customer personal data by some enterprises to others for direct marketing purposes, the CMAB published on 18 October 2010 the Report on Public Consultation on Review of the PDPO and launched further public discussions on the legislative proposals to strengthen the protection of personal data privacy under the PDPO. Ms CHONG introduced these legislative proposals to members by way of a powerpoint.

13. A member commented that the legislative proposals seemed tilted towards the maintenance of business competitiveness more than the protection of personal data privacy in commercial activities. The Chairman replied that diverse views were received on how the protection of personal data privacy under the PDPO could be strengthened. The Government had to strike a balance taking into account of the aspirations and views of various parties concerned. The present legislative proposals reflected such a balance. The Government had also put forward some new proposals to introduce additional specific requirements on the collection and use of personal data for direct marketing purposes to tighten regulation.

14. A member urged the Government to consider adopting the 'opt-in' mechanism to better protect the use of personal data following the trend of some European countries and asked whether the PCPD was invited to this meeting. The Chairman explained that under the current proposal of the 'opt-out' mechanism, it would be an offence if a data user did not comply with the proposed new requirements and subsequently used the data for direct marketing purposes. This was a big step forward and

should have sufficient deterrent effect. The Government would continue to listen to the views of the community and examine the views received carefully before putting forward legislative proposals. The Chairman said that the PCPD was present in the public forums and the various consultation sessions with stakeholders but, similar to the arrangements for the meeting in October 2009 in which the same subject was discussed, the PCPD was not invited to this Forum. If members wished to have further discussions with the PCPD, the CMAB would be happy to arrange.

15. A member enquired on the proposed exclusion from the definition of “direct marketing” the offering of social services and facilities by social workers to individuals in need of such service and facilities. Ms CHONG explained that the latest proposal suggested exempting the offering of essential social services and facilities by social workers. The definition of “the offering of essential social services” and the scope of such exemption were, however, not yet finalised.

16. A member was concerned that NGOs engaged in direct marketing might employ registered social workers in order to enjoy exemptions under the law. It was also unclear what constituted “essential social services” whose definition could be quite subjective. For example, if a social worker was exempted when, knowing that his client was a homosexual, used the client’s personal data to promote heterosexual messages in the name of doing so for the benefit of his client, this would contradict the human rights concepts all along pursued by NGOs. A member urged the Government to strengthen the professional ethics amongst social workers so that the proposed exemption would not be abused. Data subjects who were disturbed by unwanted social service direct marketing should have a channel to lodge complaints to the PCPD. A member was also concerned that the relatively simple and quick registration procedures to become a charitable organisation might also lead to abuse of the statutory exemption under the PDPO.

17. The Chairman assured members that all organisations using personal data in direct marketing were covered by the PDPO. However, if upon an individual request for the social worker to cease to use his personal data for offering social services or facilities, and the social workers had to cease to do so under the law, this would seriously frustrate the delivery of services by social workers who, in the proper interests of the client and the society at large, should continue to “knock at the door” of the client, sometimes against his wish. The proposed exemption was therefore necessary. A member agreed but was of the view that clear guidelines should be promulgated with reference to the requirements of

international organisations such as the American Psychology Association to provide proper guidance for social workers.

18. A member enquired about the timetable for the review of the PDPO and its proposed legislative amendments. Ms CHONG responded that the Government would analyse the views received during the further public discussions and would prepare the relevant amendment bill as soon as practicable. The Government aimed to table the amendment bill for first reading in the LegCo by July 2011 and the progress thereafter will be subject to the deliberations at the LegCo. At the moment, the Government had not proposed any transitional period for implementation of the new regulation on the use of personal data for direct marketing as companies should have sufficient time to get ready for the new measures during the period of public debate.

19. At a member's request, Ms CHONG explained the three proposals relating to minors. The Chairman supplemented that the CMAB consulted the Children's Rights Forum on the legislative proposals earlier and received positive feedback. The children representatives were generally supportive of the legislative proposals relating to minors under the PDPO.

20. A member asked why criminal investigation and prosecution powers were not granted to the PCPD and whether the impartiality of the decision to prosecute under the PDPO would be compromised for cases involving the Government. The Octopus incident was cited as an example. Ms CHONG reassured members that the Octopus incident was investigated thoroughly by the PCPD and the Monetary Authority. The PCPD had also issued a new Guidance Note on the Collection and Use of Personal Data in Direct Marketing, providing practical guidelines to help data users to comply with the requirements under the PDPO. The Chairman further explained that vesting criminal investigation and prosecution powers in a single body would lead to inadequate checks and balances. Under the Basic Law, criminal prosecutions were vested with the Department of Justice. The protection of personal data privacy might not be a strong enough justification for the prerogative of initiating criminal prosecution to be vested in the same body which handled enforcement work.

21. A member agreed that the power to award compensation to aggrieved data subjects should not be granted to the PCPD lest it possessed excessive power, but reiterated the importance of a more convenient and less costly mechanism (similar to the Equal Opportunities Tribunal proposed by the EOC) for aggrieved data subjects to seek redress.

A member also asked whether the PCPD had the power to mediate disputes brought to its attention. Mr CHU explained that the EOC did not have statutory power to order monetary compensations. It could only foster a mutual agreement between parties, and the compensation therein might or might not be monetary. Such an agreement was, however, binding on both parties and pursuable in court. The Chairman clarified that the EOC had yet to formulate a concrete proposal on the Equal Opportunities Tribunal as it was still collecting views in the community. The Government did not support the proposal for the PCPD to be empowered to award monetary compensation to aggrieved data subjects because it would be undesirable to vest in a single authority both the enforcement and punitive functions. Nevertheless, aggrieved data subjects could seek redress from the court with the proposed legal assistance to be provided by the PCPD, which might include the granting of legal aid and arrangements for legal representatives in court.

22. A member was concerned that there might be a legal vacuum whereby the PCPD could carry out mediation between the data user and the data subject but such power was not prescribed in the law. The Chairman explained that the overarching objective was to cease the wrongdoing of a data user as soon as possible to protect the privacy of the personal data in question. The PCPD had the power to issue an Enforcement Notice (EN) (failing to observe an EN would constitute a criminal offence) or request the data user to provide an undertaking. The Government had proposed to make certain serious contraventions offences, and to provide assistance to the aggrieved data subjects within the legal parameters of the PCPD. The Chairman assured members that the PCPD would have sufficient resources to carry out its functions properly and provide assistance to aggrieved data subjects where appropriate.

23. The Chairman thanked members for their views and invited members to submit their further views, if any, to the CMAB before 31 December 2010.

Any other business

Arrangements of future meetings

24. A member suggested adding “confirmation of notes of last meeting” as a standing item to the agenda of future Forum meetings so that members could have reference to what had been discussed at previous meetings. The Chairman replied that the notes of all previous meetings of the Forum were available on the CMAB’s website, and that the notes of

the last meeting in July 2010 had been issued to members for reference in August 2010. He would consider the suggestion for future meetings.

25. A member suggested that members of the Forum should have the opportunity to raise items which they wished to discuss at upcoming meetings, while some issues of concerns, such as human rights education, should be a standing item of the Forum. The Chairman explained that members' views on the issues they wish to discuss at future meetings were always welcomed, and as a practice he has been seeking members' input in previous meetings. Without receiving any concrete suggestions, the discussion items were focused on the latest developments under CMAB's human rights portfolio, such as the preparation and submission of HKSAR's reports under the UN human rights treaties and the public consultation on the review of the PDPO. We would continue to consider issues raised by members to be deliberated in future meetings.

**Constitutional and Mainland Affairs Bureau
January 2011**