

**Speech by Secretary for Justice, Ms Elsie Leung, GMB, JP
at the Legislative Council meeting on 8 October 2003**

**Debate on Motion
calling for the Chief Executive to Resign**

Madam President,

I wish to respond to the assertion that there has been “retrogression” in the rule of law and human rights under the administration of the Chief Executive. I have refuted similar assertions in this Council on many previous occasions including at the sitting of 7 November 2001 and 17 January 2003. The most recent occasion was at a motion debate on 14 May 2003. I do not wish to repeat all that I have previously said, but I would add the following additional information.

Rule of Law

2. Recent legal issues that have been the subject of “rule of law” criticism include the conduct of the Immigration Tower case, the harbour reclamation, and Housing Authority rents. On careful analysis, it is clear that the way these issues were handled gives no cause for legal concern.

Immigration Tower case

3. The Immigration Tower case concerns a demonstration, involving 200 protesters, that took place in that building on 22 April 2002. This demonstration impeded the operation of the Immigration Department and other government departments in the building. Given the previous arson attack by demonstrators in the Immigration Tower, my department sought and obtained from the Court of First Instance an interim injunction against three of those involved in the demonstration.

4. The interim injunction does not completely restrain the three individuals from visiting the Immigration Tower. It merely restrains them from gathering in, assembling in or conducting a protest in the building, obstructing the entrances to the building and interfering with the use and occupation of the building by other people.

5. Needless to say, the rights of demonstrators are not unlimited. Other people have rights too, including those visiting or working in government departments. The Department of Justice is entitled to bring proceedings to protect the rights of those other people. It is the independent judiciary that decides whether it is lawful and appropriate to issue an injunction against demonstrators. In this case, the court was persuaded that an interim injunction was lawful and appropriate.

6. An interim injunction is, however, only a temporary measure pending the outcome of the legal proceedings. As in many other cases, my department suggested to the defendants that the proceedings should be settled on agreed terms, including partial payment of costs by the defendants. This offer was made in good faith and with no intention to oppress the defendants. It is regrettable that some have interpreted the offer as being oppressive. There is no basis for regarding the offer as posing any sort of threat, either to the defendants themselves, or to other potential demonstrators. The right to demonstrate in a lawful manner is not being undermined.

7. I am pleased that an agreement has been reached for stopping the proceedings, after the defendants indicated that they would not commit any act that would exceed their constitutional right to demonstrate peacefully, or cause any nuisance or obstruction or interfere with others using the Immigration Tower. There will also be no order as to costs. I disagree with criticisms that the Government has shown weakness in the handling of the case and in not enforcing the law. The case involved civil litigation, not a criminal offence. The purpose of the proceedings was to ensure that there would not be any breach of the peace or interference with the smooth operation of the Immigration Department, and that there would be no obstruction to the users of the Immigration Tower. This has been achieved through the negotiated settlement. It is not uncommon in civil litigation for plaintiffs to forgo the recovery of costs from defendants who have financial difficulties. This is neither a distortion of the law nor a concession to the protesters.

Harbour reclamation

8. I turn now to harbour reclamation. Current work in respect of Phase III of the Central Reclamation has been subject to criticism. Some have alleged that the government is ignoring the judgment delivered by the Court of First Instance in July this year. This is not correct.

9. The judgment related to the Wan Chai North Outline Zoning Plan, not the Central Reclamation. The decision in respect of that Zoning Plan is being fully respected, even though the court's interpretation of the Protection of the Harbour Ordinance is the subject of an appeal by the Town Planning Board. The Central Reclamation Plan was approved by the Chief Executive-in-Council on 17 December 2002, having undergone all necessary procedures under the Town Planning Ordinance. The Plan as it stands is entirely lawful and remains effective until and unless it is set aside by a court order. The Government's decision to proceed with the reclamation work is neither unlawful nor disrespectful to the above judgment. Moreover, pending the outcome of the judicial review, the works carried out in respect of the Central Reclamation are being limited to those that the government believes are in strict accordance with the tests laid down by the court. The tests are that the works must meet a "compelling, overriding and present need"; there must be no viable alternative; and there must be minimum impairment to the Harbour. Pending a ruling by the Court of Final Appeal, the Government is acting in accordance with the Wan Chai North Outline Zoning Plan. By taking steps to comply with the tests as laid down by the court, the Government is demonstrating its respect for the judiciary and its commitment to the rule of law. However, since proceedings have been instituted in respect of the reclamation works, it would not be appropriate for me to say more at this stage.

10. I have responded to most of the issues raised in the article by Mr. Alan Leong, SC, which the Honourable Audrey Eu referred to in her speech. As regards other issues such as the decision not to prosecute Sally Aw and the interpretation of the Basic Law by NPCSC, as mentioned earlier I have given explanations during previous debates of this Council. Mr Leong's article is just one of the many examples of false labelling. When one compares it with what I have just said, one could easily tell which is based on false reasoning and sophistry.

Housing Authority Rents

11. The rent payable for public rental housing is another issue that has raised concern on rule of law grounds. In a judgment delivered in July this year, the Court of First Instance found that the Housing Authority is under a duty to review rent regularly and, when doing so, to abide by the median rent-to-income ratio of 10% set by section 16(1A)(b) of the Housing Ordinance. Because of the profound impact of that judgment, and in the light of legal advice, the Housing Authority has appealed against the judgment.

12. If the judgment were immediately implemented, but is reversed on appeal, the Housing Authority might be unable to recover the full amount of the rents that it is entitled to, but had not charged as a result of the judgment. On the other hand, if the judgment is not immediately implemented but is upheld on appeal, the tenants will be fully compensated for the rent they have overpaid.

13. In the light of these considerations, the Housing Authority applied to the Court of First Instance for a stay of execution of the judgment. After hearing both parties, the court agreed to the stay, with the Housing Authority undertaking to carry out a review of rent levels according to past practice. The effect of the stay is that the Housing Authority is not obliged to comply with the judgment at this stage.

14. The Housing Authority's current policy of charging the rents that were payable before the court's judgment is therefore strictly in accordance with the court's decision to order the stay of execution. Allegations that the Housing Authority is showing contempt for the court's judgment completely overlooks the fact that the court itself has ordered the stay of execution.

Human Rights

15. Turning to human rights, I do not accept that there has been "retrogression" since Reunification.

Article 23

16. There has been much rhetoric about the adverse effect that the Article 23 Bill would have had on human rights. However, as the government repeatedly emphasized, in most respects it would have liberalised the current law. The irony is that the withdrawal of the Bill will prolong the existence of colonial laws on national security that are, in some respects, draconian. I have already explained in detail, in a motion debate on 25 June 2003, how the National Security (Legislative Provisions) Bill would strike a balance between the protection of national security and safeguarding human rights. I will not repeat that explanation here.

17. The other significance of the Article 23 experience is the extent and

nature of the public debate on the human rights issues involved. No one who followed that debate would doubt that press freedom, and the freedoms of assembly, of procession and of demonstration are fully respected in Hong Kong.

Human rights treaties

18. Those freedoms, important though they are, represent only a small portion of the human rights that are covered by the six human rights treaties that apply to Hong Kong. Before Reunification, some people feared that Hong Kong would cease to report to the UN treaty-monitoring bodies in respect of those treaties. Those fears proved groundless. There has been no “retrogression” in that respect.

19. The Hong Kong SARG continues to submit reports, via the Central People’s Government, and to attend hearings before the relevant bodies. Our efforts in helping to maintain a dialogue at the international level in respect of our compliance with human rights obligations have always been noted with appreciation by those bodies.

20. The concluding comments issued after the hearings on our reports contain many positive comments in respect of progress made in respect of human rights. It is true that they also contain subjects of concern. But this was the case before Reunification, and is the case for reports on all other jurisdictions. The reports do not indicate any “regression” in human rights. On the contrary, the Vice-Chairman of the UN Human Rights Committee, Mr Justice Bhagwati, stated (during a visit to Hong Kong in 2001) that “The human rights situation in Hong Kong is much more satisfactory than many parts of the world I have visited”.

21. One area where a lack of progress was noted by two UN Committees was in respect of legislation against racial discrimination. However, earlier this year, the government announced that it proposed to introduce such legislation. Subject to the approval of this Council, therefore, progress is expected in this area.

A vibrant society

22. Progress on human rights is assessed not only by judging what the Government has done but also by observing the civil society we live in. In Hong Kong, people are continually expressing their opinions on public affairs in public hearings in this Council, on radio phone-in programmes, and through the print media. They are regularly on the streets exercising their constitutionally protected freedoms of expression, assembly, procession and demonstration. All is done without any undue interference from the authorities.

23. A flourishing publication industry and media also bear witness to human rights progress in Hong Kong. Our bookstores and newspaper kiosks are filled with all sorts of publications, from the purely entertaining to those critical of Government. Hong Kong people are free to seek, receive and impart information and ideas of all kinds, save where restriction is necessary for the protection of another legitimate interest, for example, to prevent child pornography.

Litigation

24. Another test for the government's human rights record is the extent to which those with a human rights complaint can seek an effective remedy. The Legal Aid Ordinance helps to ensure that individuals can seek legal redress from the courts if rights guaranteed by the Hong Kong Bill of Rights Ordinance are infringed. Remedies not only can, but are, sought from the courts. Issues that have been brought before and analysed by the Court of Final Appeal include Hong Kong residents' liberty and security of the person, the right to freedom to travel, the right to participate in public life, freedom of expression, and rights in respect of the family. The Equal Opportunities Commission has assisted and funded litigation against the Government and other private parties in accordance with provisions of the three anti-discrimination Ordinances. That it will continue to do so is evident from a current case alleging disability discrimination in relation to building entrance design.

Conclusion

25. Madam President, human rights are constitutionally entrenched in Hong Kong. Remedies are available in our courts for violations of those rights.

Six UN treaty-monitoring bodies oversee our human rights record and have made positive comments. Human rights are well protected in Hong Kong, and are fully enjoyed by members of the community. The assertion that there has been “retrogression” in respect of human rights since Reunification is without foundation.

26. I urge all members to vote against the motion.