Cardinal Joseph Zen Press Conference Wednesday, 19 October 2011

Dear Friends in the Media,

The process of judicial review on the Amended Education Ordinance 2004 has reached the end. The Catholic Diocese has expressed disappointment at the judgment of the Court, but at the same time has expressed the decision of the Diocese to carry on the educational endeavour (within the constraints of that Ordinance).

I take this opportunity to reaffirm that I have never said that we would stop promoting education in the case we lost the case at Court. What I said is that, under the Amended Ordinance, we would have no more, as in the past, the guarantee that we could run the schools according to our vision and mission. Then one day we would face the fact that some of our schools can no more be called Catholic schools and that we may be forced to withdraw from it. To abandon education just because we lost the case was never in our mind and we think that it would not be supported by the parents of our students.

As to the question whether we would consider civil disobedience, my answer is: "In this case, civil disobedience would mean running the schools against the Amended Ordinance. Then, as a result, we would be forced to surrender the schools. Since I said that we have no intention to surrender any school, civil disobedience is out of the question."

Then, what have I to say to our friends in the media who take the trouble to come here this morning?

I am a Salesian of Don Bosco. For many years I had responsibility as Manager of all Salesian schools in Hong Kong, in my capacity as Vice-Provincial and Provincial. Then I have been on the front-line as Supervisor of our Aberdeen Technical School. At the beginning of the 70's, when I took part in the General Assembly of the Salesian Congregation, we spent much time discussing the Catholic vision of education and, what we call, the idea of an Educational Community, which corresponds to the spirit of school-based management. Since the year 2000, I have been busy fighting the Government project of a so-called School-Based Management Ordinance, from its consultation period through the legislating process. Upon my retirement as Bishop of Hong Kong, my successor, Very Reverend John Tong, invited me to stay on in the Diocesan Commission which cares for the Court case, because of its importance.

Now, before putting that important thing among the matters of past history, I have the responsibility and, I hope, the competence (of a Church person working for many years in the voluntary service of education) to address you on it, and, through you, to address the whole society, both the Hong Kong and the international society (that is, the many friends in the world who care for the future of education in Hong Kong). I am going to make a synthetic report on what we actually did in the past 10 years or so, and on why we oppose the Amended Education Ordinance 2004.

I owe this to the many friends who supported our action in these years, especially those who rendered legal service to us on a voluntary basis and those who are ready to share our financial burden. I owe this also to many, specially missionaries, who, in very difficult times, have dedicated their life to education in Hong Kong and have left such precious legacy to us for safe-keeping.

A LITTLE OF RECENT HISTORY

Immediately after the return of Hong Kong to Chinese sovereignty a new chairman of the Education Commission, Mr. Leung Kam Chung, took office and he, without delay, set up a special Commission, which in the year 2000 issued a so-called Consultation Document on school-based management. It was already obvious at that time that the purpose of that project was to limit our right of running schools. Mr. Leung Kam Chung declared publicly that the Government was going to make a revolutionary reform to education in Hong Kong and that one of the three major obstacles in its way was the sponsoring bodies, especially the big ones, so something must be done to get rid of them.

The Consultation Document played on the word "management" and it was an easy game to pass from "management" to "management committee", so from school-based management to School-Based Management Committee. But, school-management has many different levels. The highest level of management in the school, always under a higher supervision of the Government, is the Management Committee. To support a school-based management does not entail a school-based Incorporated Management Committee (IMC).

Actually, Report No. 7, issued by the Education Commission in September 1997 under the chairmanship of Prof. Rosie Young Tse-tse, clearly stated that, to achieve school-based management, it is not necessary to adopt uniformly a new form of

Management Committee. The Hong Kong experience shows that the structure adopted by some traditional school-sponsoring bodies is equally effective to achieve that purpose. But, to enhance school-based management spirit, it was recommended that a School Executive Committee (SEC) be established under the School Management Committee (SMC) to allow for more participation on the part of the stake-holders (this is what has been called "the two-tier structure" of school management). In this way, actually, this Report, which deals with the problem of structure, was the conclusion of the whole process of SMI started in 1991.

Unfortunately, this Report No. 7 was not taken in due consideration, or rather, unceremoniously dismissed, without being put to the test through experimentation.

To say, as the Government tried to have people believe, that the IMC was in continuation with the SMI project, does not correspond to reality. It was something completely new. And to say that the IMC was necessary because the SMI project went too slowly is also unreasonable. By what standard can you say that the schools were too slow in adopting the SMI? A new spirit needs time to be developed. On the part of the Catholic schools, we whole-heartedly accepted the SMI from the very beginning.

Instead, we have to say that the new proposal of IMC destroyed a structure which proved to be very effective for a long time. It took away our long-possessed right of running schools. It destroyed the good cooperation between the Government and us, the school-sponsoring bodies, who are the main partners of the Government in providing education.

But everybody knows that we find ourselves in a new situation, with a new Government, and with a completely new ideology behind Government decisions. The Government takes away the right of running schools from the school-sponsoring bodies, calling it decentralization, but, actually, it is decentralization of schools from the school-sponsoring bodies, to then centralize the schools under the absolute power of the Government.

The good people in the Church and in the society are always reluctant to believe in any so-called "conspiracy theory." Only after the events in 2003 did they wake up, but it was too late for the matter we are dealing with at this moment. Through a clever packaging and a strenuous advertising campaign, the Government succeeded in misleading the people and the draft of the Amended Ordinance, proposed in 2002, was swiftly passed in 2004 by the Legislative Council. The effort of the

school-sponsoring bodies and of some legislators succeeded only in obtaining a period of tolerance before the law comes into effect in 2010. Later this deadline was postponed to 2012.

The Hong Kong Diocese, having noticed that the Amended Ordinance had even breached the Basic Law, saw as a possibility an eventual judicial review. After careful consideration, it decided to bring the case to the court. You all know, how we failed in the Court of First Instance and also in the Court of Appeal. Given the importance of the matter, we decided to push the case to the Final Appeal. Unfortunately, even there, we failed to have a positive outcome.

We respect the authority of the Courts. We bear the legal effects of their judgments. We do not have to agree, however, that we were wrong in our demand. Mr. Justice Bokhary has invited us to put everything behind ourselves, once for ever. I agree. That is why I hope this is the last time I have to speak out. I must leave a record in history of our unchanged belief that the Amended Ordinance has seriously damaged our right of running schools and is against what is being granted in the Basic Law. I am deeply grieved by the loss of our right which is also the loss of one of the most precious features of Hong Kong life.

1. THE AMENDED EDUCATION ORDINANCE 2004 HAS SERIOUSLY DAMAGED OUR RIGHT OF RUNNING SCHOOLS

Actually, even the Judge of the Court of First Instance recognized that the amendments to the Ordinance made a "material change" in education policy. I think this is what the above mentioned Government official called a "revolutionary change". To pass from the right to nominate all the managers of the school to the right to be entitled only to nominate a portion of them is a radical change.

The Judges insist that we have still the possibility of nominating up to 60% of the managers, that the Ordinance says that the sponsoring bodies may present a draft of School Constitution which, once approved, must be respected by the IMC, and that the sponsoring bodies can supervise the operations of the IMC.

All this sounds good, but what are the guarantees? Where are the mechanisms to ensure the above said respect on the part of the IMC for the Constitution and the supervision by the school-sponsoring bodies on school operation?

A.

We have to point out that, according to our previous practice, it was the religious organizations as school-sponsoring bodies which run the schools and exercised autonomy over them. In future, autonomy will be exercised by the IMC of each school. That is to say, we, the sponsoring bodies, simply will not be running schools any more. It will be the individual IMC of each school that runs the school. (We can help the Government to start a school, but, once the IMC is set up, we can no longer run it. As I have sometimes said, it is like giving birth to a child and then immediately giving it away.)

Even though we can nominate up to 60% of the managers, in the Management Committee they are supposed to act according to their own view and there is no guarantee that they will always agree with the mind of the sponsoring body.

B.

It is true that we can present the draft of a School Constitution, but it needs the approval of the Government. Once the IMC is in function, it can request some modifications to the said Constitution and the Government has the power to approve them.

After all, the vision and mission in running schools, once put into writing, becomes a dead letter. The real spirit is living in the persons. People outside a community of belief cannot easily discern whether a concrete proposal is in agreement with the stated vision and mission of the school.

C.

The fact that the school-sponsoring bodies can nominate up to 60% of the managers is not a sufficient guarantee that the IMC will respect the Constitution. People with direct experience in education know very well that, in educational matters, you cannot solve problems just by the majority voting down the minority. In education, consensus is paramount. If one person with strong opposition to our vision and mission in running schools happens to become a member of the IMC, this person can create havoc. (For example, when teacher-manager or parent-manager push for more national education in the school). In such a case, the 60% managers may not be able to defend the School Constitution. Then the school-sponsoring body will have no mechanism to intervene and the whole problem will have to be dealt with by the Government.

It is true that such eventuality could happen also in the old legislation. The school-sponsoring bodies may have invited into the Management Committee wrong persons, but that would be accidental and not caused by the mechanism itself. Even when that accident happens, the "principle of priority" is there in place to help. (According to this principle, in matters regarding the approval or disapproval of managers, the Government is bound to give priority to the opinion of the school-sponsoring body rather than to that of the Management Committee). Obviously, there is no such provision any more in the new law.

To understand better the disadvantaged position of the managers nominated by the school-sponsoring bodies, we have to take note of the following. In the old legislation, the whole Management Committee was a united body. Principals and teachers were employed by them and they were "employees". Now, according to the Amended Ordinance the principal managers, teacher managers and parent managers, being persons who are connected directly with the life of the school, may tend to consider themselves as "insiders" and the sponsoring body managers may be considered by them as "outsiders".

D.

The key-point here is really whether you can nominate all the managers and have a Supervisor with effective power or not. Only if you give an affirmative answer to this question, we have the guarantee that we are able to run schools according to the Catholic vision and mission.

E.

As noted by some Judges, what I have described as the full control of the Management Committee had no guarantee in the letter of the old law. According to the law, only the Management Committee has legal power. What I have described, however, was the factual reality, was the accepted practice. Given the need of a better guarantee after the 1997 handover, the Basic Law formulated Art. 141 (3) for this purpose (just as the "principle of priority", which had been in practice for many years, had to be written into the law [Section 72A], when the need was realized).

2. DOES ART. 136 (1) OF THE BASIC LAW TAKE AWAY OUR RIGHT OF RUNNING SCHOOLS GRANTED BY ART. 141 (3)?

A.

There is a well-known legal principle that one should assume that there is no contradiction in the same set of laws, otherwise one would assume self-contradiction

on the part of the law-makers. Now, the Basic Law is one unified set of laws and it includes both Art. 136 (1) and Art. 141 (3). While Art. 136 (1) says that the Government has the right to promote education reforms, Art. 141 (3) says that the religious bodies have the right to continue to run schools according to their previous practice. In comparison, Art. 136 (1) states a general principle, while Art. 141 (3) is a specific provision concerning only religious organizations. Now, the general principle does not nullify the specific provision. Actually, Art. 141 (3) sets the bottom line of Art. 136 (1). To say that Art. 136 (1) overrides Art. 141 (3) is to suppose that the legislator made a mistake in approving Art. 141 (3). Vice-versa, when we uphold the value of Art. 141 (3), we are not lessening the value of Art. 136 (1). We recognize that education needs continuous and various reforms, but always safeguarding the rights acknowledged in Art. 141 (3), that is, the right of religious bodies to run schools according to previous practice, just as the big promise during the handover was "50 years no change", but nobody would consider Art. 136 (1) of the Basic Law to be in contravention of this promise. What should not be changed are the fundamental elements of the system. Changes are reasonable, but they should not damage the fundamental system of education in Hong Kong.

B.

It is wrong to say that when we want to uphold Art. 141 (3) we are claiming a right of universal veto. We surely accept the supervision of the Government on our schools according to law. In the old law there are so many reminders of this highest level of supervision of schools from the Government. In the same way, when we say that we have the absolute control of our schools, we surely understand that this is under a higher supervision of the Government. (In this sense, we have wholeheartedly accepted the spirit of the school-based management project. We have welcomed the active participation of the stake-holders in the management of the school, we have even invited into the Management Committee itself teachers and parents who are in full agreement with our vision and mission. After Report No. 7 was issued, we demanded from all our schools that another structural tier be set up to allow the stake-holders to have more participation in the running of the schools.)

3. WHAT IS BEING GUARANTEED BY ART. 141 (3) OF THE BASIC LAW IS PRECISELY OUR RIGHT OF RUNNING SCHOOLS, BUT IN THE AMENDED EDUCATION ORDINANCE 2004 THIS RIGHT HAS BEEN DAMAGED OR WE CAN EVEN SAY IT HAS BEEN TAKEN AWAY

A.

We have emphasized that the clause "according to previous practice" in Art. 141 (3)

of the Basic Law is not superfluous and the Judges of the Court of Final Appeal agree. Actually, to run schools according to the previous practice is the same as to "really run schools", while according to the Amended Ordinance we are no more those who run schools.

The clause "according to the previous practice" is directly connected to "running schools". The problem here is "the running of the school", that is, the power of governing the school, of setting the direction of the school. It is about how we could effectively run our schools according to our vision and mission.

Regretfully, as we mentioned, the Consultation Paper in the year 2000 tried already to ignore the different levels of management, confusing the highest level at the Management Committee with other levels of dealing with education matters. The Court of Appeal has further weakened the solemn meaning of "management", using the word "managerial matters" as if they were only about minor details of daily operations.

We insist that the power at the highest level of management ensures the realization of the vision and mission of our Catholic education, which is not only the unifying element of our schools in Hong Kong, but also constitutes the standard of our Catholic education all over the world. This Catholic education has proved to be effective and appreciated even by non-believers.

B.

The Judges of the Court of Final Appeal, in agreement with us and in disapproval of the Court of Appeal, have recognized that the clause "according to previous practice" is relevant. However, they still dismissed our claim that Art. 141 (3) of the Basic Law should protect our right to have a complete control of the management of all our schools.

Actually, the Court of Final Appeal has given a new, very restrictive interpretation to Art. 141 (3) of the Basic Law, saying that it is (only) the (strictly) "religious dimension" in educational practice that "receives protection". Then it goes on mentioning several concrete activities, like "morning prayer" and "religious instruction", as expressions of this "religious dimension". Since these (activities) have not been "banned" by the Amended Ordinance, the Amended Ordinance has not breached Art. 141 (3) of the Basic Law.

It is our firm belief that Basic Law Art. 141 (3) is not about only the "religious dimension" understood in such a narrow sense, even less is it about only concrete religious activities, as exemplified by the Judges. Instead, it is about our right to govern the schools (that is the meaning of "running schools"), to ensure that Catholic schools are run according to the Catholic vision and mission, to ensure the achievement of the goal of a holistic education. It is about morality and the view of life. (Herewith, I present to you a list of values pursued in Catholic education).

Actually, I would say that what the Court of Final Appeal recognized in Art. 141 (3) of the Basic Law is both too little and too much. It is too little because the content of religious and moral education is far more important than some concrete religious activities. It is too much, because I doubt whether some examples mentioned by the Court as not "banned" by the Ordinance, could be taken as obviously granted. We would be all too happy if this were truly so. Still, we would certainly not give the same importance to such activities as to the Catholic principles of moral education.

4. OTHER POINTS THAT ARE NOT DIRECTLY RELEVANT TO THE LAW DISPUTE BUT RAISE SERIOUS QUESTIONS ON THE NEW STRUCTURE

A.

It seems odd that nowhere in this controversial case any clarification has been given about the duties of a School Management Committee. In my view, a good division of duties is important for a fair and effective management of a school.

In my humble opinion, the first main duty of the School Management Committee should be the supervision of the school personnel. Now, in the Amended Ordinance, this duty is performed by the IMC, whose members include persons to be supervised. So they are going to supervise themselves! Every time that the IMC has to discuss matters like the behaviour or performance of the principal or teachers, the principal or teacher-manager(s) must leave the meeting!

B.

The second main duty of a School Management Committee seems to concern finances. In the hypothesis of a two-tier management structure, even though conflicts of interest may arise in the School Executive Committee (SEC) when discussing, for example, the annual budget, the School Management Committee (SMC) with their higher and disinterested vision can settle in a fair way any controversy. Now, with the IMC, every conflict of interest goes to this highest and only management structure. It is not

difficult to see how inconvenient this is.

C.

As regards all other more routine matters in daily school management, in a two-tier structure these can be thoroughly discussed in the SEC, receiving then only a general approval from the SMC. Now, are all these matters to be discussed from scratch in the IMC?

D.

Before the Amended Ordinance, the school-sponsoring bodies, especially those which sponsored several schools, having the power of nominating all the managers, is an "intermediate body" between the Government and the individual school. Everybody knows that the intermediate bodies have a beneficial "check and balance" effect on Government power and, consequently, they are beneficial for an effective democracy in society. Presenting the new system as more democratic is to put things upside down, distorting the true meaning of reality. Democracy within the school can be effectively guaranteed by the two-tier structure, but the IMC system is meant to increase the dictatorial power of the Government. How can one expect principals and teachers of individual schools, who are all paid by the Government, to confront the Government as equals?

CONCLUSION

Dear friends, the decision of the Court of Final Appeal is final. So we will not be given further chance to clarify anything in Court. We regret that our claim has not been recognized. We grieve, but we do not despair. God is the Lord of history. We throw all our worries on him. He takes care of us. May He grant that, through support to our educational ideal by our Catholic and non-Catholic friends, a truly Catholic education can still be offered in the schools which bear the name "Catholic", so that the young people may understand and pursue the real goal of human existence and contribute to a happy and meaningful life for everybody in society.

I am ready to answer two or three questions. After that, to show my grief, I will, for 3 days and 3 nights, abstain from food, excepting water and Holy Communion. I do not want anybody to join this expression of grief of mine, but I would be grateful for spiritual accompaniment through prayer in these days.