

立法會
Legislative Council

LC Paper No. CB(2)2274/00-01
(Item V of the minutes have been
seen by the Administration)

Ref : CB2/PL/CA

**Legislative Council
Panel on Constitutional Affairs**

**Minutes of meeting
held on Monday, 9 July 2001 at 8:30 am
in the Conference Room B of the Legislative Council Building**

- Members Present** : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon SZETO Wah
Hon Audrey EU Yuet-mee, SC, JP
- Member Absent** : Hon HUI Cheung-ching, JP
- Public Officers Attending** : Item IV
Mr Robin IP
Deputy Secretary for Constitutional Affairs (1)
Ms Doris HO
Principal Assistant Secretary for Constitutional Affairs (4)
- Item V
Miss Diane WONG
Principal Assistant Secretary for Health and Welfare

Mr LEE Wing-wai
Assistant Director of Social Welfare

By Invitation : Professor Ian HOLLIDAY
Professor of Policy Studies
Department of Public and Social Administration
City University of Hong Kong

Mr George W H CAUTHERLEY
Vice Chairman
Hong Kong Democratic Foundation

Ms Christine LOH
Executive Director
Civic Exchange

Professor Michael E DEGOLYER
Associate Professor of Government & International Studies
Hong Kong Baptist University
Director, Hong Kong Transition Project

Clerk in Attendance : Mr Paul WOO
Acting Chief Assistant Secretary (2)3

Staff in Attendance : Mr Jimmy MA
Legal Adviser

Miss Yvonne YU
Senior Assistant Secretary (2)7

Action
Column

I. Confirmation of minutes of meeting
(LC Paper No. CB(2)1978/00-01)

The minutes of the meeting on 7 May 2001 were confirmed.

II. Papers issued since the last meeting
(LC Paper No. CB(2)1815/00-01)

2. The Chairman said that LC Paper No. CB(2)1815/00-01 was a referral from LegCo Members who met with the Southern District Council (DC) members concerning the roles of and support for DCs. The review of the roles

and functions of DCs was discussed by the Panel on 15 January 2001. The Administration had advised that it was conducting a review which was expected to be completed within 2001. The item had not been discussed by the Panel since January 2001, pending outcome of the review. He asked members to note that the Panel on Home Affairs had scheduled a special meeting on 16 July 2001 at 4:30 pm to discuss the item, and members of this Panel and all other LegCo Members had been invited to attend the meeting.

3. The Chairman said that according to some press reports, the report on the review would be published on that Friday. He considered it inappropriate for the Administration to release the report towards the end of the current legislative session and before reporting the matter to LegCo Members. As the Constitutional Affairs Bureau was involved in the review, he requested Deputy Secretary for Constitutional Affairs (1) to convey members' view to the Home Affairs Bureau.

III. Items for discussion at future meetings (LC Paper No. CB(2)2042/00-01(01))

System of accountability for principal officials

4. The Chairman reminded members that two meetings on 27 August 2001 and 3 September 2001 had been scheduled to consider the report of the delegation on the duty visit and to discuss the system of accountability for principal officials.

5. Members opined that the Panel should be consulted on any recommendations made by the Administration on the proposed system of accountability for principal officials before the proposals were finalized. After discussion, members agreed that the Chairman should write on behalf of the Panel to the Secretary for Constitutional Affairs on the following -

- (a) the present state of progress of the study on the system of accountability for principal officials conducted by the Administration; and
- (b) whether the Administration would be in a position to report to and discuss with the Panel any recommendations arising from its study before mid-August 2001, and if not, when.

IV. Development of the HKSAR's political system

(LC Paper Nos. CB(2)1772/00-01(01), CB(2)2042/00-01(02) and CB(2)1767/00-01(01))

6. The Chairman welcomed the academics and representatives from non-governmental organisations (NGOs) (the deputation) to the meeting and invited them to present their views on the development of the HKSAR's political system. The Chairman referred members to a draft Green Paper on "Thinking about 2007" previously issued to members vide LC Paper No. CB(2)1772/00-01(01) and a written submission from the deputation (LC Paper No. CB(2)2042/00-01(02)).

7. Mr George CAUTHERLEY, Professor Ian HOLLIDAY, Ms Christine LOH and Professor Michael DEGOLYER made a verbal presentation to members. A verbatim transcript of their speeches is in **Appendix**.

8. Ms Audrey EU said that Professor Ian HOLLIDAY seemed to suggest that for constitutional reform in Hong Kong, increasing the number of directly elected LegCo Members should have precedence over the direct election of the Chief Executive (CE). She wished to be advised of the reasons of his suggestion. She also enquired about the basis for suggesting that the number of directly elected LegCo members should be increased by 30. On Ms Christine LOH's suggestion that LegCo should take an active role in social discussions and debates, Ms EU asked whether she had any particular mode in mind as to how individual Members and LegCo as a body should do.

9. Professor HOLLIDAY said that the "Thinking about 2007" Workshop had not come to any firm conclusion about whether direct election of LegCo Members should precede direct election of CE or the other way around. However, it was considered that one way of making the current system more balanced was to have more directly elected LegCo Members. The proposed increase of 30 directly elected LegCo Members had taken into account that there would be 30 Members returned from the geographical constituency and functional constituency elections respectively in 2004.

10. Ms Christine LOH made three suggestions to advocate and promote good governance in Hong Kong. First, she suggested that when the Administration carried out various consultation processes, LegCo could put a greater demand on the Administration for the processes to be more open. She said that the Education Department and the Planning Department had done a good job in this respect. Secondly, it would be extremely helpful for LegCo Members to consider whether it was necessary to require the Administration to carry out more social impact assessments in policy formulation. The social impact assessment process required greater participation of stakeholders to engender more lively discussion at the community level. It also facilitated LegCo and the policy-makers in the policy making process. Thirdly, from her

own experience as a LegCo Member, mediating conflicts at constituency level was very important. It would be very useful for LegCo Members and their legislative assistants to learn conflict management skills so that they could play the mediation role better.

11. Ms Emily LAU sought the view of the deputation on the pace of constitutional development in Hong Kong. She pointed out that some people considered that the pace was too fast as indirect election started in 1985 and direct election to the legislature was only introduced in 1991. She also asked whether the deputation ran out of resources or support as there had not been much progress since the Workshop was held in October 2000.

12. Professor DEGOLYER held the view that the constitutional development in Hong Kong was moving too slow. It was necessary to start the process of research and consultation earlier than 2007, or 2004, as making changes to the Government structure from the lowest level such as the District Councils to the highest level of the CE was a complex and inter-linked process.

13. Ms Christine LOH said that from the experience of other countries such as South Africa, Scotland, Australia and Taiwan, if a community focused on constitutional issues, it could be an enlivening process for the community as a whole. On the constitutional development in Hong Kong, she opined that it could move much faster because Hong Kong people were well-informed and relatively well educated. If there was a process to cultivate participation of Hong Kong people in constitutional discussion, they could discuss and grasp the issue easily. Nevertheless, there was no such process in place right now.

14. Dr YEUNG Sum agreed with Professor DEGOLYER's view that the constitutional review should start as early as possible. He urged the Administration to conduct a consultation exercise on constitutional reform as soon as possible. As the CE would provide a blueprint of the system of accountability for principal officials in his coming policy address, Dr YEUNG asked how would this affect the Civil Service system and the constitutional system since both CE and LegCo were not returned by universal suffrage.

15. Ms Christine LOH accepted that a comprehensive system of constitutional reform needed to go through a series of complex processes. It might be necessary for CE to introduce a system of political appointment as a first stage to a larger reform. In her view, LegCo Members should ensure that the proposed accountability system was part and parcel of a series of changes in the longer term and that there would be proper articulation of the different stages.

16. On the issue of whether the public was ready for further democracy, Mr CAUTHERLEY said that one should look at the public responses to the surveys conducted by the Hong Kong Transition Project over the years. Very

often, the public was sophisticated enough to differentiate between the community's interest and their own interest. In his view, the public was considered to be ready for democracy.

17. Mr James TIEN said that at the time of economic downturn, the general public and some Members were more concerned about the economic development than the political development in Hong Kong. In his view, the main problem of the political development in Hong Kong was not related to the readiness of the electors but rather the limited choices available to electors. Major political parties were facing increasing difficulties in fielding candidates in elections. He asked how the problem should be addressed if direct election of all LegCo seats was introduced after 2007.

18. On Mr James TIEN's first point, Professor DEGOLYER considered that it was impossible to focus only on either the political or the economic development as they were two sides of the same coin. In his view, the two could not be separated. For example, the recent labour dispute of Cathay pilots was not just an economic issue but also a political issue which affected the image of Hong Kong.

19. On Mr James TIEN's second point, Ms Christine LOH agreed that in terms of breeding of political leaders, it would take some time for people who had been involved in public affairs to eventually stand for elections. However, she was not too discouraged about the situation because she could see a few new faces at the last LegCo election. She said that interested young people could be identified as candidates and would be successful at elections in due course of time. In addition, people who had extensive experience in public offices including LegCo Members of the functional constituencies could also stand for direct election.

20. The Chairman said that in order to attract more people to launch on a political career, e.g. as a LegCo Member or a District Council member, they had to be given more power.

21. Mr CAUTHERLEY supplemented that the lack of legitimacy of political parties might also discourage people from joining political parties. The need for a proper legal structure for the political party system in Hong Kong was a rather urgent issue.

22. Referring to the written submission presented to the Panel (LC Paper No. CB(2)2042/00-01(02)), Ms Margaret NG agreed with the view that while LegCo had very substantial powers, the composition of LegCo had ensured that it rarely used them. In her view, there was a huge imbalance of power between the executive and the legislature, as well as between the executive and the judiciary. The executive would often go unchecked, and the legislature was under-powered. She pointed out that although LegCo was the

legislature in the HKSAR under the Basic Law, one of the three branches of the Government, the total budget for LegCo was only equivalent to the budget for a small to medium-size Government department. As Ms Christine LOH had suggested that LegCo should play a more proactive role, she asked how this could be achieved under the present situation.

23. Ms Christine LOH said that apart from the Government and the civil society, LegCo could also play a role in stimulating political discussion. On Ms NG's point that LegCo was under funded and under-powered, she said that in order for the Government to address these issues, it was important for LegCo to obtain community support. As it was perceived by some people that the community did not wish to spend a lot of time, effort and money on formal political process, it might therefore be helpful if LegCo Members and political parties could think about how to get the support of the community in this respect.

24. Professor Ian HOLLIDAY said that there was a link between the democratic foundation of a parliament and its legitimacy and power, as demonstrated in some overseas political systems. It was considered necessary to enhance the legitimacy and power of LegCo by increasing its democratic base. He said that the Workshop had recommended that the functional constituencies could be reformed by expanding its franchise or diluted by increasing the number of geographical constituency seats to 60.

25. Ms Margaret NG said that functional constituencies and other seats which were not directly elected in LegCo should be abolished. While the public might not be able to understand readily the demand for increased directly elected seats in LegCo, the public understood the pressing need of electing CE by universal suffrage. This might be the real starting point. She suggested that the direction of the research to be undertaken by the deputation should focus initially on the desirability of electing CE by universal suffrage. She also suggested that the structure, working and funding support of LegCo could be studied to see how LegCo could function better as a legislature but not as a council. Ms NG also asked whether any groups promoting consultation processes in the community could consider involving LegCo Members or LegCo as a whole, in addition to the Government departments and the community.

26. In response to Ms Margaret NG's last question, Ms Christine LOH replied in the positive. On research study on the needs of LegCo, Ms LOH said that members might wish to consider requesting the Research and Library Services Division of the LegCo Secretariat to assist as it had produced excellent work in the past.

27. The Chairman thanked the deputation for their views which would facilitate members' further deliberation in the matter.

V. Issues relating to employees of subvented welfare organizations taking up public offices

(LC Paper No. CB(2)2042/00-01(03))

28. At the invitation of the Chairman, Assistant Director of Social Welfare (ADSW) briefed members on the Administration's paper which attached a draft guideline for subvented non-governmental organizations (NGOs) in welfare sector on the issue of their employees taking up public offices.

Encouraging staff to take up public offices

29. Ms Audrey EU asked whether the Administration had any statistics on the number of employees taking up public offices, and on those who were not granted approval to take up public offices. In the case of the latter, she enquired whether there was any channel for appeal against such a decision. Referring to the draft guideline, she pointed out that it was impractical to require an employee to make sure that his involvement in the public service would not bring forth any "negative effect" to his performance of duty. In order to encourage and facilitate employees to take up public offices, Ms EU suggested that it should be stipulated in the guideline that Board Chairman/Agency Head should grant approval for employees to take up public offices save for special reasons.

30. ADSW explained that the draft guideline was promulgated for reference of the management of NGOs and would help them draw up their respective agency practices governing their employees taking up public offices. In fact, the nature of public offices and the demands of these appointments put on the appointees varied significantly from one to another. The Administration would not like to see rigid rules and barriers that frustrated or inhibited people taking up public service appointments. It was for the Board Chairman/Agency Head to consider the extent of negative effect that may possibly be brought about by the employee's involvement in the public office.

31. On the statistics sought by Ms EU, ADSW said that under the existing policy, there was no rule in respect of adjustment of salary/benefits for employees taking up remunerated public offices. Hence, there was no requirement for NGOs to submit reports to the Administration on their employees taking up public offices. On appeal mechanism, ADSW explained that the Administration did not have any intention to act as an arbitrator between NGOs and the employees. With the introduction of the Lump Sum Grant subvention system for welfare NGOs, a more open and accountable government was advocated. If a complaint was received from an aggrieved employee, the Administration would consider taking it up with the relevant NGO. He added that the Hospital Authority and tertiary institutions had not encountered any specific problem after promulgation of similar guidelines.

32. Principal Assistant Secretary for Health and Welfare (PAS/HW) supplemented that the draft guideline aimed at striking a pragmatic balance between encouraging and enabling staff to take up civil duties in community participation on the one hand and proper use of subvention money as public funds on the other.

33. Ms Margaret NG concurred with the view of Ms Audrey EU. She asked the Administration to consider amending the draft guideline so that employees would be encouraged, instead of discouraged, to take up public offices. She said that employees taking up public offices should be regarded as making contributions to the organizations concerned.

Non-remunerated public service

34. Mr CHEUNG Man-kwong said that participation in public service was an honour as well as a civic responsibility. For employees of public-funded bodies taking up remunerated public offices, he agreed that a system of adjustment of salary/benefits should be in place. He asked the Administration to also address the situation of employees taking up non-remunerated public service. He was aware of cases where staff spent a significant amount of time in non-remunerated public service which required their professional knowledge or skills. He said that the Government should consider granting subsidy to enable the organizations concerned to employ staff to relieve part of the duties of the staff engaging in non-remunerated public service.

35. ADSW said that under the Lump Sum Grant subvention system for welfare NGOs, each subvented NGO was allowed autonomy and flexibility to determine how its financial and manpower resources would be deployed and the actual course of action to take when an employee occupying subvented position took up a public office.

36. Mr CHEUNG Man-kwong was dissatisfied with the Administration's reply which did not address the points he raised. Mr SZETO Wah said that it was unfair that some public offices were remunerative while some were not. He was of the view that staff engaged in public service should be remunerated and required to contribute a percentage of the income received for holding the public office to the organization to compensate for the time which they would otherwise have spent on the organization's work. The organization could then use the contribution to employ additional staff if necessary.

Adjustment to salaries/benefits for employees of NGOs

37. Ms Emily LAU said that according to the draft guideline, the Board Chairman/Agency Head of NGOs was only strongly advised, but not required, to put in place a procedure of adjustment of salary/benefits for employees

taking up remunerated public offices. This was different from the practices adopted by the Hospital Authority and tertiary institutions. It was difficult for the community to accept that the salary/benefits of employees of subvented welfare NGOs were not required to be adjusted upon taking up remunerated public offices.

38. ADSW said that the proposed guideline should become part of the administrative guidelines issued to NGOs to promote and foster best management and human resource management practices. Individual NGOs were expected to formulate their own internal procedures on the subject based on the guideline and the Administration could offer advice to them in the process if necessary. He added that how NGOs had complied with the guideline would be taken into account by the Administration in the performance evaluation of NGOs, which was an important consideration in determining the allocation of resources in future.

39. Ms Emily LAU said that under the proposed guideline, there was nothing the Administration could do if a NGO decided that it was unnecessary to adjust the salary/benefits of an employee taking up remunerated public office. She said that the Administration should require the NGO to provide an explanation in the circumstances. ADSW agreed that NGOs' views in this aspect would be sought in the consultation with the Lump Sum Grant Steering Committee.

40. The Chairman said that it was the concern of the Panel that some subvented welfare organizations did not adopt the practice of deducting the salary/benefits of their staff taking up public offices. Following discussions by the Panel, the Administration agreed to promulgate some guidelines in this respect for NGOs to follow. However, the guideline now proposed by the Administration did not provide for any specific guidelines on the question of adjustment of salary/benefits. As it was still a matter for individual NGOs to decide, members were dissatisfied with the proposed guideline.

Conclusion

41. The Chairman requested the Administration to provide a revised draft guideline for the consideration of the Panel, taking into account members' views expressed at the meeting. Ms Emily LAU said that the Administration should formulate a clear policy governing employees in welfare NGOs taking up public offices. The Administration agreed to consult the Lump Sum Grant Steering Committee before issuing the guideline, and would report progress to the Panel.

Action
Column

VI. Restrictions on activities undertaken by a former Chief Executive
(LC Paper No. CNB(2)2042/00-01(04))

VII. Mechanism for amending the Basic Law
(LC Paper Nos. CB(2)2047/00-01(01), CB(2)1763/00-01(04) and
CB(2)2058/00-01(01))

42. As the meeting was overrun, members agreed to schedule a meeting at 8:30 am on 17 July 2001 to discuss the above two items.

43. The meeting closed at 10:50 am.

Legislative Council Secretariat

13 September 2001

Verbatim Transcript of the meeting of the
Panel on Constitutional Affairs on 9 July 2001

DEVELOPMENT OF THE HKSAR'S POLITICAL SYSTEM

MR GEORGE W H CAUTHERLY (Vice-Chairman, Hong Kong Democratic Foundation):

Mr Chairman, I will start. I am doing the introduction on behalf of my other colleagues.

CHAIRMAN:

Yes, thank you, Mr Cautherley.

MR GEORGE W H CAUTHERLEY (Vice-Chairman, Hong Kong Democratic Foundation):

Thank you, Mr Chairman, for inviting us here today. "Thinking about 2007" is a long-term project with the objective of fostering public discussion on possible developments in Hong Kong systems of governance that might be implemented starting from 2007. It is a coalition of people and groups coordinated by the Hong Kong Democratic Foundation who are interested in public governance issues. It is worth noting, and encouraging in light of the comment made by the Chief Secretary that there is no need for discussion on this issue until 2004, that the suggestion that the HKDF coordinates such an exercise came from a senior member of the current administration back in 1999.

It does seem that there is an understanding in some quarters of the Government, at least, that the issues of further development of our systems of governance are of sufficient complexity to justify lengthy and thoughtful discussion. "Thinking about 2007" starts from the premise that our present system of governance needs and would benefit from further development, and on the basis that both the Joint Declaration and Basic Law point towards the need for further development post-2007. Hong Kong's post-1997 history amply demonstrates that our present system of governance, where public policy-making is the preserve of an exclusive few and in which the legislature is effectively excluded from initiating public policy legislation, is less than satisfactory.

Policy development and policy implementation each require different mind sets and different skills, yet in our present system policy development is in effect undertaken by policy implementers, and it is unrealistic to expect the best solutions to be forthcoming in such an environment. While it is easy to point the finger at the desirability for improvement in the system of governance, it is a much more difficult task to come up with effective proposals or at least effective proposals that would gain broad consensus from the community at large.

The outcomes of any element of change in the system can be very far-reaching and therefore detailed examination and consideration needs to be given to each and every change

that might be proposed. That is why this is a process that deserves to be conducted in an exhaustive, measured and thoughtful manner.

The first phase of the “Thinking about 2007” project was to convene a workshop, the primary purpose of which was to share experience from other jurisdictions to act as a guide and stimulus to future discussion on the Hong Kong situation. The workshop was co-organised by the Hong Kong Democratic Foundation and the Hong Kong Policy Research Institute, and extensively supported by City University and Hong Kong Baptist University.

The HKDF has previously organised major seminars on constitutional issues. In 1991 it organised a seminar “Democracy and Political Development” to follow up on the findings by the Electoral Reform Society, a UK-based NGO, which the HKDF had sponsored to visit Hong Kong to evaluate the need for electoral improvements. Many of the EFS’s recommendations were subsequently incorporated into government legislation for the 1995 elections. In 1998 the HKDF organised its “Government in Evolution” seminar, in some ways a precursor to the “Thinking about 2007” project.

The “Thinking about 2007” workshop which took place on 21st October last year comprised four sessions: Constitutional Experiences in Histories, presented by Professor Rudiger WOLFRUM, Director of Max Planck Institute for Foreign Public Law and International Law in Heidelberg, Germany; Constitutional Models and Theories presented by Professor Michael Davis, Department of Government and Public Administration, Chinese University of Hong Kong; Electoral Systems and Parties, presented by Professor David Farrell, Department of Government, Manchester University, England and Professor Nigel Roberts, School of Political Science and International Relations, Victoria University, Wellington, New Zealand; and Participatory Processes and Public Government Inter-actions presented by Mr Peter Mandicas, Senior Associate and Regional Director, Asia Programmes, National Democratic Institute of International Affairs, USA.

Audience participation was facilitated through two focus and discussion group sessions, and many of the issues identified in the subsequent green paper that was produced came out of these two sessions. More than twenty groups and organisations attended, as well as observers from a number of consulates. In all attendance exceeded 80 individuals.

The outcome of the workshop was a green paper which identified 32 issues that were thought to be worthy of further detailed study as part of the process of evaluating possible developments of the present system that could be beneficial, and these are by no means exhaustive. The green paper is divided into two parts: Institutions of Government, which covers the constitution, the executive, the legislature, the judiciary and the electoral system; and Civil Society, which provides the spirit and institutions of the people which the formal machinery of government needs in order to function effectively.

Professor Ian Holliday will outline and comment on Institutions of Government issues. Christine Loh of Civic Exchange will talk about the tools required to build a vibrant civil society, and Dr Michael Degolyer will set out our thoughts on how this process of evaluation, discussion and debate might most effectively be progressed further.

CHAIRMAN:

Thank you very much, Mr Cautherley. We will now invite Professor Ian Holliday to present his views.

PROFESSOR IAN HOLLIDAY (Professor of Policy Studies, Department of Public and Social Administration, City University of Hong Kong):

Thank you very much. The green paper looks, in its constitutional chapters, at the classic branches of government, that is the executive, legislature, judiciary and, at the territorial dimension, local government. It also looks at electoral systems which cut across some of those different branches. Executive, legislature and local government all have an electoral dimension. We take a pragmatic approach. We are not looking for a total re-write of the Basic Law or of the Hong Kong constitution. We believe that there is lots of room for manoeuvre in the existing Basic Law, and we seek to exploit that, but we also pick up on the need to re-think into 2007.

We make some procedural points at the beginning. We believe that any movement for change must be highly transparent, inclusive, have informal as well as formal dimensions, involve a campaign for public education, and must have some mechanism for public validation of any changes that are proposed. That mechanism could be a territory-wide referendum. It could be a constitutional convention, but we believe that something along those lines is necessary.

Looking at the executive, we briefly note some of the problems: that the current franchise for electing a chief executive is small and restricted; that there is lots of secrecy in the process; that policy secretaries on contract could become increasingly accountable to the chief executive alone; and that there is some fragmentation in the executive deriving from the different mandates from which the executive is composed. The chief executive comes by one route. The civil service is a tenured bureaucracy. ExCo members are appointed by the chief executive. There are a series of problems here.

When looking at solutions we take the two extreme cases: a presidential system and a parliamentary system. And we look at the strengths and weaknesses of both. A presidential system would essentially consolidate power in the chief executive, but we feel that there are not really enough checks and balances within Hong Kong society and the polity as a whole to make this system viable in Hong Kong. The legislature is still quite weak. Civil society is still under-developed in some ways, and we do not even have a full universal suffrage system for electing all LegCo members. We also believe that a presidential system could simply generate increased polarisation between the chief executive and the insiders on the one hand, and the rest on the other hand, which may well include many LegCo members. So a presidential system is not something we favour.

To move towards a parliamentary system would mean increasing the popular base of the parliament, of LegCo, and also of increasing its powers. Now we believe that the first

can actually help to lead to the second, that if you increase the popular base for LegCo that may well in itself help to increase its legitimacy and power. It is one of the things that has happened in the European Union is once the European parliament was directly elected from '79 it has gradually claimed more and more powers for itself over the subsequent twenty-year period because it is one of the few European institutions that can claim a popular mandate. So we believe that that may point to a way forward.

It may well be, of course, that some sort of checks and balances, mixed-mode system, is the solution, whereby the position of the chief secretary is reinforced, policy secretaries have their positions reinforced by being appointed uniquely from the civil service, that there is a clearer separation between policy and implementation among civil servants. So, each of those we set on the table as a kind of framework, but it is this discussion of subsequent parts of the green paper.

Looking in more detail at the legislative branch, and therefore looking also at what a parliamentary system might compose, might look like, I have already mentioned the increase in popular sovereignty that can boost legitimacy and power. But beyond that we have a few more detailed issues that we consider. Obviously the composition of LegCo is currently a problem in that the non-elected, or those that are not elected from a territorial constituency, are often to be seen to side with the government and to generate permanent reinforcement of the government's position. Voting procedures we are critical of, the need for parallel majorities in LegCo. We believe that LegCo committee procedures could be reinforced with more amendments being made in committee so that some of the work that is done on the floor of the House is not duplicating that which has been done in committee. And there is clearly a small number of LegCo members and a high number of committees, in that almost any parliament has to have a certain number of committees because the same sort of business flows through all houses, and there is therefore a very high ratio of committees to legislators and a very heavy workload on LegCo members, and that also needs to be addressed.

Within the, looking at the legislature, legislative branch, we tackle the question of functional constituencies. One option is obviously to abolish. Another is to reform through some sort of pattern like expanded franchise, and a third option is to dilute, cutting down from maybe 30 out of 60 to say 30 out of 90, if LegCo size were to be expanded through the creation of 30 more geographical constituencies. Each of those may well be a way forward.

Looking at the judiciary. We did not pay so much attention to this, but we do believe that there is a need for a constitutional court in Hong Kong and we also believe that the independence of the judiciary is hard to maintain when executive power is so strong and pervasive. We further believe that the judiciary can be buttressed and strengthened if other institutions of government can themselves be strengthened. So here there is a tie-in to our analysis of the legislative branch that, whilst that can check the legislative, it can also thereby help to buttress the judiciary and make the judiciary less exposed as a single check on executive power, which it sometimes appears to be.

Looking at electoral systems which cut across several of these branches of government, we actually believe that in the long term stability would be good. There has

been too much change in electoral systems in Hong Kong and it can be confusing for voters. We also believe that the electoral system may not be as critical as getting the right balance between core institutions, that the key thing may well be to ensure that the three main branches – the executive, legislature and judiciary – have a correct balance of powers and correct checks between them, rather than simply focusing on the technical aspects of the electoral system. Nevertheless, looking at that system there is clearly a tension between representation on the one hand, which a PR system is very good at delivering, and accountability on the other, which a first-past-the-post system is good at delivering. It is easy in, say the UK system, which is first-past-the post, to kick out a government. That is one of the things that that system is extremely good at. But many people feel that it is not very good at representing minority interests. The Liberal Democratic Party in the UK regularly polls seventeen, eighteen percent. It never gets more than five or six percent of the seats in the House, so some views are just not represented there. So there is a tension between representation and accountability.

Again we believe that a mixed system may well be the way forward. First-past-the-post for a series of constituencies, so retaining the geographical link, which in Hong Kong I think is valued just as it is in the UK. In the UK there would be massive resistance to eliminating territorial constituencies. People like to feel that they have an MP, that they know who it is that represents them, but you can add on to that a party list system which seeks to correct the imbalance that first-past-the-post can generate. Just look at the current British House of Commons where Labour won just over 40 percent of the vote and has a landslide majority. It is not representative in that sense, but a party list system could help to correct that.

We look in a small section at campaign finance noting that Hong Kong has extremely large geographical constituencies which put a large pressure on anybody who is seeking to campaign for election, and in some sense make it difficult for those who are without resources to campaign successfully, and we believe that it may be time for Hong Kong to move beyond its very, very limited campaign finance which is currently in operation and to move towards a more substantial system.

Finally the local government section of the green paper. This poses the issue of whether we do need a local tier of government in Hong Kong. We note that the territory is extremely compact and maybe does not therefore need one. We also believe that it could be used to foster civic activities, civic identity. But if it was to do that it would need to be a real local government system rather than something with no powers. It may well then be necessary to break up the Housing Authority, the Hospital Authority, to give them the same sorts of territorial base as the local government system itself would have so that it would have some sort of jurisdiction over them.

So, those are the main aspects of the green paper on the constitutional dimension.

CHAIRMAN:

Thank you, Professor Holliday. Maybe your turn, Ms Loh? I now invite Ms Christine Loh.

MS CHRISTINE LOH (Executive Director, Civic Exchange):

Thank you, Chairman. I believe it is important for civil society to take on the responsibility to promote good governance in Hong Kong, and we are certainly using our own time and resources to help in this process. When we talk about political reform I would like to propose that we can look at it from two perspectives. One is what I may refer to as the formal perspective, and that is what Mr Cautherley and Dr Holliday have been referring to, talking about structures, the voting process, the relationship between the executive and the legislature, etc, etc. We know that there may be an opportunity for substantial change to take place in 2007, but I think that over the years progress has been relatively slow. But, as I said, that is the formal process.

There has to be another process to really compliment this formal process. If I may refer to this as the sustainable part of political reform. My first proposition is that it is important for Hong Kong to build better ways for society to talk to itself. We are having to face many important issues of the day. Apart from political reform, Hong Kong is also discussing what kind of economic restructuring we need. We have to talk about the environment, education and many, many other issues.

What are the most effective ways for civil society, for stakeholders, for ordinary citizens, to participate in this process? If I can refer to the kind of formal process that Dr Holliday and Mr Cautherley have talked about as the “IQ aspect” of that discussion, I would like to talk about the “EQ aspect” of that debate. If we look at what government does, government uses many tools to disseminate information and supposedly cultivate public participation. They have, they use the Gazette, they use public consultation processes, press release. All kinds of processes, come in to talk to the Legislative Council and so on. If we look at two particular processes that I think could help us to build a different kind of communication process we can look at what has been happening over the last few years on the issue of education reform and urban planning reform.

The Education Department undertook, I think over a two-year period, quite extensive workshops and town hall meetings, basically public meetings for a larger group of stakeholders to discuss their proposed education commission report. I think that was one of the few times in Hong Kong’s history where the government made a concerted effort to design a process that tries to communicate and deliberate fundamental issues about the education systems with ordinary people, teachers, principals, students and parents. Another process that I myself was intimately working with was the Planning Department’s various public meetings concerning reclamation and urban planning. Again it was the first time that the Planning Department actually held a whole series of meetings to get public response. Those meetings were very important because not only that they ended up being events where the government could gather public response, it was also a way for the public to show each

other what ideas they had, and it created occasions where civil society became much more stimulated because they could see at one time how many other people were working on the issues, and it became more effective for civil society to put their views across.

If I may summarise, therefore, by saying that these kinds of occasions, and the skills that are used in these occasions – public presentations, facilitation skills, conflict management skills – I mean all these skills are what I would call social tools. These social tools are essential to building democracy. My own assessment is that in Hong Kong, whilst many of these tools are used by a variety of people, they are not necessarily very uniformly applied when we come to using them in determining and deliberating public policy.

So my first suggestion is that, alongside any discussion we are going to have about the formal reform of the political process, we can all be a lot more conscious about the effectiveness, the suitability of different types of social tools to promote better deliberation of public issues. If Hong Kong is ever going to have any kind of constitutional convention process where we are going to discuss very complex issues relating to political reform, we are going to need the social skills, the communication abilities to actually make use of those processes to have the best quality discussion possible.

So I would urge that LegCo can also think about how to promote the use of the skills more widely within the government to engage the public in putting their views forward.

Thank you, Chairman.

CHAIRMAN:

Thank you, Ms Loh. Professor Degolyer?

PROFESSOR MICHAEL E DEGOLYER (Associate Professor of Government and International Studies, Hong Kong Baptist University, Director, Hong Kong Transition Project):

Thank you, Mr Chairman. I was quite surprised a few days ago to get a human rights award actually for an article that I wrote for a business publication. I never thought of myself as writing about politics or political economy in terms of human rights but more as issues of governance and management. Constitutional reform is no more different and no less necessary than constantly updating our various methods of management and corporate research, and so I see constitutional reform as a process of constant adjustment appropriate to the circumstances and the culture of each country. I think we have seen in the Asian economic crisis and the continued crisis in our Asian systems questions of governance constantly being raised. So this is an issue of governance.

I think we also know that there is no such thing as a perfect system. All we have to do, for example, is to look at the recent U.S. election. There is no perfect system and everybody who throws rocks at each other finds that they are actually living in glass houses.

Change of constitutional processes or structures is not something to be feared either. We can see this very clearly, for example, in the case of China itself who recently changed their constitution to protect private property and who have also changed now the Communist Party constitution to admit capitalists as Communist Party members. I think this shows you some of the courage that is needed to face the changed situation, changed context, and to make the appropriate changes.

We have seen, for example, down at the lowest level, local level, structures such as mutual aid committees which were developed in the early 1970's, that there has been approximately a 50 percent reduction in the people who tell us that they are members of MAC's or have participated in MAC activities, and there has been some weakening down at the local level, management and representation here at Hong Kong.

The question, I think, is what needs change and how to change it, not whether we should change. And to do this I think my task on this panel is to look at the kinds of research that we should undertake, and that needs to be undertaken as a community. This is not just something that academics can and should do. They should participate and facilitate but not dominate. We need a kind of comparative research. Of course this is similar to benchmarking in businesses. Any business that is worth its salt pays very close attention (that stays in business), any business that wants to stay in business pays very close attention to the best practices in its industry or in its area. And we also need contextual research. Our context, our history, our structures are ours, our practices are ours, and they are different from anywhere else, and while we have some commonalities, we have to take these experiences and the history of other places and the structures of other places, the practices of other places, look at what they do, try to understand it well and apply it in our own situation and circumstances, and also monitor how those work or do not work here.

In this case what we think is appropriate coming out of this workshop, "Thinking about 2007", is that we need a longer time frame to do this kind of research and we need broader community participation to do this kind of research. And we recently, for example, set up the Hong Kong Political Science Association. It had its first AGM just in May this year. We do have young structures in terms of understanding politics and political science, and applying those to good governance. But we do have a building structure, a budding structure, a structure that should be employed. I see the Political Science Association, the Civic Exchange, the Policy Research Institute, the Democratic Foundation, these other NGO's, as units, community units that need to be involved in the type of research and consultation that we need.

And speaking finally about the consultation process itself, this is a process that was developed in the early 1970's and there has basically been very little change since then. If we worked with computers that were still based on early 1970's technology, or telephones that were still based on early 1970's technology, I doubt very seriously that any of us who are in business would be in business. Times have changed. The technology has changed. Our place here in Hong Kong has changed. Our culture has changed. Our educational processes have changed. We need to stay up with that change and not to fear it, but to address it openly and to identify the various issues and concerns that are there. And I have noted this morning

in the newspaper that the DAB conducted a survey of Election Committee members and found various concerns that they had about constitutional processes and change. This is the kind of initial research that needs to be done. But there needs to be other kinds of follow-up processes, and this is really what we are trying to accomplish in this first workshop and hope to follow up research that will be proposed in future. And we would also elicit and very much appreciate the participation of the various, of LegCo itself as an institution, and the various parties and other structures that are concerned with the same thing. Our focus is good governance, and that is a process that, that is an object, a goal, that requires constant attention and constant improvement and constant application.

Thank you.

CHAIRMAN:

Thank you, Professor Degolyer.