

香港人權監察

HONG KONG HUMAN RIGHTS MONITOR

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SUBMISSION ON "SYSTEM OF ACCOUNTABILITY FOR PRINCIPAL OFFICIALS"

The Hong Kong Human Rights Monitor believes that the only way to make principal officials accountable to the people and strengthen the democracy of the HKSAR is under a scheme that includes universal and equal suffrage.

The right to participate in public affairs is a fundamental right. It has important bearings on the protection and realization of other civil, political, cultural, economic and social rights. Article 25 of the International Covenant on Civil and Political Rights (ICCPR) states that all citizens shall have, without unreasonable restriction, the right to take part in the conduct of public affairs, either individually or through a freely chosen representative, and that there shall be periodic elections based on universal and equal suffrage.

The Human Rights Committee has noted on several occasions its concern that the electoral system for the Legislative Council *does not comply* with the Covenant.¹ The Committee has recommended that the Hong Kong Government "take all necessary measures to maintain and strengthen democratic representation of HKSAR residents in public affairs."

The Basic Law attempts to address the requirement for universal and equal suffrage. Article 26 states, "[p]ermanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law." Article 68 states, "[t]he ultimate aim is the election of all the members of the Legislative Council by universal suffrage."

The Basic Law does not provide any guaranty of democracy in the future. The political review in the year 2007 may not necessarily result in universal and equal suffrage, or even further advances toward universal and equal suffrage.

Under the current system, a nomination committee selects the Chief Executive and the Central People's Government (CPG) appoints the Chief Executive. The nomination committee is not elected based on universal and equal suffrage.

The Chief Executive has tremendous power, including the appointment and removal of principal officials. However, many people in Hong Kong believe that principal officials, who should be held responsible for serious mistakes or incompetence in their work, would not be removed by the Chief Executive. So far in Hong Kong it has not become general practice for such a principal official to resign voluntarily or be removed by the Chief Executive when the majority of the public has

lost confidence in that official. This means that neither principal officials nor the Chief Executive is accountable to the public. If Hong Kong is to develop a system in which all principal officials are no longer civil servants but are incumbents politically appointed by the Chief Executive such a change will make the political appointees and the policy bureaus and department under their control more accountable to the Chief Executive himself but may not necessarily lead to a government more accountable to the people. Only when the Chief Executive is made to be accountable to the people will the principal officials and the executive branch will be accountable this way.

Currently, senior government officials are nominated by the Chief Executive and appointed by the CPG. The Chief Executive is not required to consult with any other parties before the nomination. As a matter of general practice, the Chief Executive should not nominate a person for a senior post without consulting the Legislative Council and having the support of a simple majority of the members thereof.²

The Human Rights Monitor therefore calls for the Chief Executive to be elected by universal and equal suffrage, or by a legislature that was elected by universal and equal suffrage. Moreover, the Human Rights Monitor calls for consultation and consent by a simple majority of the Legislative Council prior to the nomination of senior officials to the CPG. By implementing these changes to the current system, the entire executive branch, including principal officials, would have legitimacy. This system, in and of itself, will make the executive branch more responsive to Hong Kong people's demands and opinions, and so make the Administration accountable to the people.

Conclusion

Hong Kong needs to develop a constitutional convention whereby the Chief Executive removes principal officials when the public has lost confidence in such officials. Hong Kong needs full democracy, totally based on universal and equal suffrage, and such a constitutional convention to make the Chief Executive, the principal officials and the executive branch accountable to the people.

¹ The Concluding Observations of the Human Rights Committee, dated 9 November 1995, stated, "The Committee is aware of the reservation made by the United Kingdom that article 25 does not require establishment of an elected Executive or Legislative Council. It however takes the view that once an elected Legislative Council is established, its election must conform to article 25 of the Covenant. The committee considers that the electoral system in Hong Kong does not meet the requirements of article 25, as well as articles 2, 3 and 26 of the Covenant. It underscores in particular that only 20 of 60 seats in the Legislative Council are subject to direct popular election and that the concept of functional constituencies, which gives undue weight to the views of the business community, discriminates among voters on the basis of property and functions. This clearly constitutes a violation of articles 2, paragraph 1, 25(b) and 26. It is also concerned that laws depriving convicted persons of their voting rights for periods of up to 10 years may be a disproportionate restriction of the rights protected by article 25."

The Concluding Observations of the Human Rights Committee, dated 4 November 1999, stated, "The Committee reiterates its concern, expressed in paragraph 19 of its concluding observations, adopted at the end of the consideration of the fourth periodic report, that the electoral system for the Legislative Council does not comply with articles 2, paragraphs 1, 25 and 26 of the Covenant. The Committee is concerned about the impending abolition of the Municipal Councils that would further diminish the opportunity of HKSAR residents to take part in the conduct of public affairs, that is guaranteed

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under article 25. The HKSAR should reconsider this step. It should take all necessary measures to maintain and strengthen democratic representation of HKSAR residents in public affairs."

² Of course, such a practice is only meaningful if the Legislative Council is elected by universal and equal suffrage. The recommendation of the Human Rights Monitor presumes that the government will continue to work toward full democracy.