

立法會
Legislative Council

LC Paper No. CB(2)1679/03-04
(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

**Minutes of special meeting
held on Monday, 15 January 2004 at 8:30 am
in the Chamber 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
Dr Hon David CHU Yu-lin, JP
Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon Bernard CHAN, JP
Hon SIN Chung-kai
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon CHOY So-yuk
Hon SZETO Wah
Dr Hon LAW Chi-kwong, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Michael MAK Kwok-fung
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP

- Member attending** : Hon LEE Cheuk-yan
- Members absent** : Hon Cyd HO Sau-lan
Hon Fred LI Wah-ming, JP
Hon NG Leung-sing, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon YEUNG Yiu-chung, BBS
Hon LAU Wong-fat, GBS, JP
Hon Andrew CHENG Kar-foo
Hon Tommy CHEUNG Yu-yan, JP
Hon LEUNG Fu-wah, MH, JP
Hon WONG Sing-chi
Hon MA Fung-kwok, JP
- Public officers attending** : Mr Donald TSANG
Chief Secretary for Administration
- Ms Elsie LEUNG
Secretary for Justice
- Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs
- Mr Clement C H MAK
Permanent Secretary for Constitutional Affairs
- Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs
- Mr Raymond TAM
Principal Assistant Secretary for Constitutional Affairs
- Ms Julina CHAN
Principal Assistant Secretary for Constitutional Affairs
- Clerk in attendance** : Mrs Percy MA
Chief Council Secretary (2)3
- Staff in attendance** : Miss Millie WONG
Senior Council Secretary (2)4
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Action

I. Briefing by the Administration on the Chief Executive's Policy Address 2004

(LC Paper Nos. CB(2)981/03-04(01)-(08), CB(2)1003/03-04(01), CB(2)988/03-04(01) and FS11/03-04)

Progress report on 2003 Policy Agenda and 2004 Policy Agenda

Secretary for Constitutional Affairs (SCA) briefed members on the progress report on the 2003 Policy Agenda (LC Paper No. CB(2)981/03-04(06)) and the 2004 Policy Agenda (LC Paper No. CB(2)981/03-04(07)).

2. SCA said that in line with the 2003 Policy Agenda, a report on review of the Accountability System for Principal Officials after the first year of implementation was submitted to the Panel in July 2003, the 2003 District Councils election had been completed smoothly, and coordination of external affairs activities as well as liaison with Taiwan organisations in Hong Kong had been strengthened. Two other initiatives, i.e. review on constitutional development after 2007 and electoral arrangements for the 2004 Legislative Council (LegCo) elections, had been rolled over to the 2004 Policy Agenda and would be the focus of work in the coming year.

Review on constitutional development after 2007

Opening remark by the Chief Secretary for Administration (CS)

3. CS briefed members on the Administration's paper (LC Paper No. CB(2)1003/03-04(01)). CS said that the Chief Executive (CE) had announced in the 2004 Policy Address on 7 January 2004 the setting up of the Task Force on Constitutional Development (Task Force) to examine in-depth the relevant issues of principles and the legislative process in the Basic Law relating to constitutional development, to consult the relevant departments of the Central Authorities, and to listen to the views of the public on the relevant issues. The Task Force was headed by him, with the Secretary for Justice (SJ) and SCA as members. The Task Force would carry out a review on constitutional development on the basis of a common understanding between the Central Authorities and the Hong Kong Special Administrative Region (HKSAR) Government regarding the Basic Law.

4. On work plan, CS said that the Task Force had requested the Hong Kong and Macao Affairs Office (HKMAO) of the State Council to arrange meetings with HKMAO itself and other relevant departments of the Central Authorities to discuss issues relating to constitutional development. HKMAO had indicated that specific arrangements for the Task Force to visit Beijing could be discussed after the Chinese New Year. The Task Force welcomed views from the public on the relevant issues. Letters had been sent to invite LegCo Members and relevant

Action

organizations to express their views on the relevant issues. CS emphasized that the Task Force would listen to the views of different sectors of the community in a frank and open manner.

5. CS further said that the paper also set out the constitutional powers and responsibilities of the Central Authorities in constitutional development, the principles that must be complied with in pursuing constitutional development, and issues relating to the legislative process and related legal issues. The paper was prepared by the Task Force to provide a basis for initial discussion. The views of the Central Authorities had not been sought in preparing the paper. After meeting with the Central Authorities, other issues which required examination might come up. The Task Force would inform the Panel and the public of further progress.

Timetable

6. Miss Margaret NG asked about the timeframe expected for the Central Authorities and the HKSAR Government to reach a common understanding regarding the Basic Law.

7. CS responded that he was not in a position to estimate the time required at this stage. The process of discussions with the public and the Central Authorities was important in terms of laying a foundation for the work relating to constitutional development. However, he was aware that the process could not take too long in order to allow time for the necessary legislative work to be completed before 2007, if there was a need to amend the method for selecting CE.

8. Dr YEUNG Sum expressed disappointment that the Government had announced the establishment of the Task Force, instead of the timetable for public consultation on constitutional review as promised. He said that the Democratic Party had recently interviewed 912 citizens, 70% of them felt that the Government had not respected public aspirations for democracy, and 52% felt that the Government had not shown genuine commitment in pursuing constitutional development. He said that the Government had deliberately dwelled on the legal issues as a tactic to stall democratic development in Hong Kong.

9. CS said that the Task Force proposed to adopt a step-by-step approach, and it was necessary to first clarify the relevant issues to provide a solid legal foundation for the constitutional review. He assured members that the Government had no intention to procrastinate, and efforts would be made for the whole exercise to be completed before 2007.

Consultation within the HKSAR and with the Central Authorities

10. Mr James TIEN said that Members belonging to the Liberal Party had been invited to meet with the Task Force, and sought clarification about the purpose of

Action

the meeting. Mr TIEN suggested that the Administration should make arrangement for the two Mainland legal experts (XIAO Weiyun and XIA Yong) currently in Hong Kong to have a direct dialogue with the Panel on the relevant legal issues. He also asked whether the Committee for the Basic Law could be consulted on the legal issues identified by the Task Force.

11. CS responded that the Task Force would like to listen to Members' views on the various issues identified by the Task Force, as set out in the paper. As the visit of the two Mainland legal experts was not arranged by the HKSAR Government, parties who were interested to meet with the experts should make their own arrangements. SJ explained that according to its terms of reference, the Committee for the Basic Law would only study questions arising from the implementation of Articles 17, 18, 158 and 159 of the Basic Law.

12. Mr IP Kwok-him suggested that the Task Force should also meet with the Hong Kong deputies to the NPC and Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference, as well as members of the Drafting Committee for the Basic Law, in addition to different sectors of the community. This would help to achieve a common understanding of the important principles relating to constitutional development of the HKSAR.

13. CS said that paragraph 7 of the paper had listed a number of parties which had been invited by the Task Force for meetings in stages. The parties mentioned by Mr IP would be covered under the categories of "political bodies" and "other organizations".

Principles to be complied with in constitutional development

14. Miss Margaret NG queried whether the nature of the consultation on constitutional development of the HKSAR had changed from one that was supposed to be conducted within the HKSAR to one with the Central Authorities through the Task Force. Miss NG said that under the Basic Law, there were two principles relevant to the specification of methods for selecting CE and forming LegCo, i.e. "in the light of the actual situation in HKSAR" and "in accordance with the principle of gradual and orderly progress" ("the two principles"). She asked whether a common understanding on "the two principles" should be reached between the Central Authorities and the HKSAR, and whether the Central Authorities would have the ultimate power in interpreting "the two principles" if there were different interpretations. Miss NG further asked the source of power for the Central Authorities to interpret the provisions of the Basic Law, if any.

15. CS said that as the Central Authorities had constitutional powers and responsibilities in overseeing constitutional development of the HKSAR, it was important to achieve a common understanding on the requirements of the Basic Law with the Central Authorities. In further response to Miss NG, CS said that in

Action

theory, discussions on constitutional review within the HKSAR could start even if a common understanding had not been reached with the Central Authorities on certain issues, but the public should be aware of the possible consequences.

16. To follow up on Miss NG's earlier question, the Chairman asked whether the interpretation of "the two principles" was a political or legal issue. CS said that "the actual situation in the HKSAR" would cover the social, economic and political situation in the HKSAR.

17. Mr LEE Cheuk-yan expressed concern that the Task Force had made reference to the explanation given by Mr JI Peng-fei on the principles that must be complied with in pursuing constitutional development, namely, the principles of "gradual and orderly progress", the "actual situation in Hong Kong", and "giving consideration to the interests of the different sectors of the society". He asked whether it was the intention of the Task Force to consult the Central Authorities on the meaning of these principles. He said that to do so would be tantamount to inviting the Central Authorities to impose restrictions on the democratic development in the HKSAR. Mr LEE also pointed out that the most important principle, i.e. the wish of the majority of the people in Hong Kong, was absent in the paper.

18. CS said that the Basic Law was a national law. Reference could be made to the explanation given by Mr JI Pengfei in understanding the legislative intent of the Basic Law. CS further said that the wish of the people of Hong Kong was of great importance in considering the constitutional development of the HKSAR. This could be demonstrated by the fact that the Task Force would start to listen to the views of the public on a preliminary basis before its visit to Beijing.

Need to invoke Article 159 of the Basic Law

19. Mr Howard YOUNG said that paragraph 6 of the Appendix to the paper referred to the amendment procedures in Annexes I and II to the Basic Law and that in Article 159 of the Basic Law. He asked about the timeframe required for the Standing Committee of the NPC to approve or note for record the proposed amendments to the methods for selecting CE and for forming LegCo stipulated in the Annexes.

20. SJ said that the Standing Committee of the NPC met every two months. She estimated that, in respect of the amendments proposed under Annex I, it would take about three months for approval to be granted by the Standing Committee of the NPC, after the endorsement of LegCo and the consent of CE had been obtained. As regards amendments proposed under Annex II, SJ said that the Government had no experience in this respect. However, laws enacted by LegCo must be reported to the Standing Committee of the NPC for the record in accordance with Article 17 of the Basic Law. She would need to clarify with the

Action

NPC whether the same reporting arrangement would apply to amendments proposed under Annex II. In response to the Chairman, SJ said that the reporting for record would not affect the entry into force of such laws.

21. Dr YEUNG Sum asked whether it was the view of the Government that the amendment procedures in Annexes I and II to the Basic Law were self-sufficient, and that there was no need to invoke Article 159 for any amendments made to the methods as prescribed in Annexes I and II. He said that if the amendment procedures in Article 159, which had yet to be established, would apply to the Annexes, it was quite impossible for the necessary legislative work to be completed before 2007.

22. CS responded that the paper had set out the different views in the community, and not the Government's position, on the issue. However, as Annexes I and II were annexes to the BL, they should be read in the context of the relevant provisions of the Basic Law, e.g. Articles 45 and 68. The Task Force welcomed Members' view on the issue.

23. Ms Emily LAU said that the view of the Frontier was that there was no need to invoke Article 159 for any amendments made to the methods prescribed in Annexes I and II. Ms LAU further said that she had moved a number of motions relating to constitutional development for debate in the Council in the past. None of the Government officials including Mr Michael SUEN, former SCA and Mr Stephen LAM, SCA, or Members speaking on the motions had mentioned that the amendment procedures in Article 159 should apply to Annexes I and II. Ms LAU pointed out that while the Panel had initiated discussion on the mechanism for amending the Basic Law four or five years ago, no progress had been made by the Administration so far. If Article 159 was required to be invoked for amending the methods in Annexes I and II and in the absence of such an amendment mechanism, democratic development was unlikely to be achieved in the foreseeable future.

24. CS reiterated that the paper merely set out the different views on issues on legislative process and related legal issues concerning constitutional development in the Basic Law, to facilitate the public to fully discuss and give views on these issues.

25. Ms Emily LAU requested the Administration to provide the origin of the viewpoint that the amendment procedures in the Basic Law should apply to any amendments to the methods as prescribed in Annexes I and II. SCA agreed to provide the information after the meeting.

(Post-meeting note : The Administration's response was issued to members vide LC Paper No. CB(2)1093/03-04(01)).

Action

Issues identified by the Task Force

26. Mr CHEUNG Man-kwong said that the five issues on legislative process set out in the Appendix to the paper were neither mentioned by SCA in the past discussions with the Panel nor in the internal study conducted by the Administration. He asked whether the Government had come up with these issues as a result of the remarks made by the four Mainland legal experts on the HKSAR's constitutional development. Mr CHEUNG reminded members that SCA had already clarified at the last Panel meeting on 15 December 2003 that research into the views of the four Mainland legal experts, which were not in an area new to the Administration, was not required. He queried the basis for the Task Force to come up with the legal issues in question, e.g. application of the procedures in Article 159 to amendments made to Annexes I and II, and whether they were hurdles introduced to impede democratic development in Hong Kong.

27. CS responded that after internal deliberation by the Government and having taken into account the views of different sectors of the community, the Task Force identified two categories of issues which required to be addressed. CS pointed out that the Central Authorities might not agree to all the views set out in the paper. In addition, the four Mainland legal experts had not made any specific remarks relating to the amendment procedures in Article 159. SCA added that the community could have different views on the issues identified by the Task Force, and the Task Force would therefore like to listen to these views. For example, the Article 45 Concern Group was of the view that any amendments made to the methods prescribed in Annexes I and II to the Basic Law only required amendments to the local electoral laws in Hong Kong. However, there was another view that making amendments to local legislation alone would not be adequate.

28. Mr IP Kwok-him asked CS to explain the Government's understanding of the principles relevant to the political structure of the HKSAR. The Chairman said that he would be interested to know in the case of dispute, which authority should decide whether any reform proposals, if implemented, would contravene the Basic Law.

29. CS reiterated that the Government's understanding was not important at this stage. It was the role of the Task Force to listen to the views of the community including LegCo Members on the issues set out in the paper and to reflect these views to the Central Authorities.

30. Ms Audrey EU pointed out according to paragraph 14 of the paper, the HKSAR Government had in the past carried out preliminary study on the five issues set out in the Appendix. Of these five issues, the Administration had only reached conclusion on the last issue, i.e. the interpretation of the phrase "subsequent to the year 2007" in Annex I to the Basic Law. Ms EU said that she

Action

found it odd that this conclusion had coincided with the viewpoint of the four Mainland legal experts. In addition, on the remaining four issues which the four Mainland legal experts had not expressed views, the Government had chosen not to provide any preliminary views or conclusions.

31. SCA responded that the Administration had advised the Panel of its conclusion on the last issue in November 2003, before the four Mainland legal experts expressed their views on 4 December 2003. The issue was included in the Appendix to allow an opportunity for different sectors of the community to give further views if any. SCA supplemented that the Government had some initial views on the other four issues raised, but preferred not to make public these views in order to allow thorough discussion in the community. SJ clarified that the five issues were not raised by the Central Authorities. The Task Force would like to listen to the views of the community on these issues in preparation for its meetings with the Central Authorities.

32. Mr James TO queried the necessity for the Task Force to highlight the relevant issues which were not issues of concern of the Central Authorities. He opined that what the Task Force should have done was to listen to the views of the Central Authorities on constitutional development of the HKSAR, instead of consulting the public on the issues identified by the Task Force.

33. Mr Albert HO asked whether the Task Force would present the Government's views, in addition to the views received from the public, to the Central Authorities during its visit to Beijing. He expressed concern that the HKSAR Government would eventually accept the position of the Central Authorities in the event that there were different views held by community and the Central Authorities on certain issues.

34. CS responded that the HKSAR Government had studied the issues set out in the paper and considered that these issues required to be addressed in pursuing constitutional development of the HKSAR. CS reiterated that the first and foremost task of the Task Force was to listen to the views of different sectors of the community. The Task Force would reflect to the Central Authorities the views of the public on the relevant issues and the Government's position on these views, and would also bring back to Hong Kong the views of the Central Authorities. While in theory the HKSAR could discuss reform proposals in the absence of a common understanding reached with the Central Authorities regarding the Basic Law, the process in such a scenario would be a difficult one.

II. Date of next meeting

35. In view of the importance of the subject matter, Mr James TO suggested that a special meeting should be held to continue discussion with members of the

Action

Task Group before their visit to Beijing after the Chinese New Year. Members agreed that the meeting would be held on 27 January 2004 at 2:30 pm.

36. The Chairman requested the Administration to provide a progress report and a compendium of views received by the Task Force for members' consideration at the meeting.

(Post-meeting note : To avoid a clash with another meeting, the meeting was rescheduled to 28 January 2004 at 4:00 pm.)

37. The meeting ended at 9:55 am.

Council Business Division 2
Legislative Council Secretariat
12 March 2004