

Legislative Council Panel on Constitutional Affairs

**The First Report of the Constitutional Development Task Force :
Issues of Legislative Process in the Basic Law Relating to
Constitutional Development**

Introduction

This paper aims to introduce the report, which was issued on 30 March 2004 by the Constitutional Development Task Force, on issues of legislative process in the Basic Law relating to constitutional development.

Background

The Establishment of the Constitutional Development Task Force

2. In his Policy Address on 7 January 2004, the Chief Executive said that the Hong Kong Special Administrative Region (HKSAR) Government understood the concerns of the community over our future constitutional development. In addition, the Chief Executive undertook that the Government would actively promote constitutional development in Hong Kong on the basis of maintaining “One Country, Two Systems” and adhering to the Basic Law. The Chief Executive established the Constitutional Development Task Force, headed by the Chief Secretary for Administration and with members including the Secretary for Justice and the Secretary for Constitutional Affairs, to examine in-depth the relevant principles and 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 Work of the Constitutional Development Task Force

3. The first focus of the Constitutional Development Task Force is to deal with issues of principles and legislative process in the Basic Law relating to Hong Kong's political structure. To this end, on 14 January this year the Task Force issued a paper to the Legislative Council Panel on Constitutional Affairs (LC Paper No. CB(2)1003/03-04(01)) to set out the relevant issues. It then embarked on a series of meetings with organisations and individuals of different sectors in the community to discuss the issues.

4. Apart from meeting with organisations and individuals of different sectors in the community, the Task Force has been gathering public views through various channels, such as letters, facsimiles and e-mails. In addition, the Task Force launched its official website on constitutional development (www.cab-review.gov.hk), and posted onto it the relevant issues of principles and legislative process relating to constitutional development, to invite views from members of the public on these issues.

5. As at 24 March, the Task Force had met with 77 organisations and individuals to listen to their views on the relevant issues of principles and legislative process, and had received from the public around 550 letters, facsimiles and e-mails, expressing views on matters relating to constitutional development and the above issues. More than 200 of the views received related to issues of legislative process. The submissions by organisations and individuals met by the Task Force, the summaries of views of organisations and individuals met by the Task Force (extracts relating to issues of legislative process), and

more than 200 public views relating to issues of legislative process, have been included as Annexes to the First Report of the Task Force.

6. Since 24 March, the Constitutional Development Task Force has continued to receive submissions from organisations and individuals that met with the Task Force, and the confirmed versions of the summaries of views of the organisations and individuals. Copies of the above submissions received by the Task Force up to 29 March have been made available at the Legislative Council Secretariat for reference. As regards public views received through other channels by the Task Force after 24 March which relate to the relevant issues, we will publish them separately in due course for public inspection.

7. Besides, through arrangements made by the Hong Kong and Macao Affairs Office (HKMAO) of the State Council, the Task Force paid a visit to Beijing from 8 February to 10 February this year, and met with the HKMAO and the Legislative Affairs Commission of the Standing Committee of the National People's Congress to discuss issues relating to constitutional development. In addition, the Task Force had discussions with a group of Mainland legal experts. On the day following the Task Force's return to Hong Kong, the Task Force informed the Legislative Council and the public about the visit. For details, please refer to the statement made by the Chief Secretary for Administration on 21 February at the Legislative Council.

The First Report of the Constitutional Development Task Force

8. After wide-ranging discussions over more than two months, the Task Force considers that it is now able to draw conclusions on the issues of legislative process relating to constitutional development, and prepares the First Report to state its views in this respect. A summary of the Report is as follows –

First, in respect of what legislative process should be used for amending the methods for selecting the Chief Executive and for forming the Legislative Council as set out in Annex I and Annex II to the Basic Law, the Task Force considers that amendments should be made at two levels. First, the “methods” should be amended in accordance with the provisions as set out in the relevant Annexes to the Basic Law. Thereafter, the local electoral laws should be amended to prescribe the detailed arrangements.

Second, in respect of whether it is necessary to invoke Article 159 of the Basic Law to amend the “methods” as prescribed in the two Annexes, the Task Force’s understanding is that amendments can be made in accordance with the special procedures in the relevant Annexes. As long as the relevant amendments are not inconsistent with the provisions in the main text of the Basic Law, the amendment procedures in Article 159 need not be invoked.

Third, in respect of the initiation of amendments relating to the two “methods”, the Task Force considers that, if it is decided that there is a need to amend the “methods”, the procedures in the relevant Annexes should then be followed. Having regard to Article 74 of the Basic Law, bills which relate to the political structure should only be introduced to the Legislative Council by the HKSAR Government.

Fourth, if a consensus on the formation of the fourth term Legislative Council cannot be reached, the method for forming the third term Legislative Council should apply to the formation of its fourth term.

Fifth, on how the phrase “subsequent to the year 2007” should be understood, the Task Force’s view is the same as that already made known earlier on, that is, if there is a need, amendments to the method for selecting the third term Chief Executive in 2007 may be considered.

9. The Task Force has distributed, on 30 March, copies of its First Report to all Members of the Legislative Council. Copies of the report are available at all Public Enquiry Service Centres of District Offices. Members of the public may also access the report through the website on constitutional development mentioned in paragraph 4 above.

Meeting with the Standing Committee of the National People's Congress

10. At the meeting to be held on 2 - 6 April, the Standing Committee of the National People's Congress will scrutinize a proposal to give interpretations on Article 7 of Annex I and Article III of Annex II to the Basic Law of the HKSAR. On 30 March, representatives of the Standing Committee of the National People's Congress met with the Constitutional Development Task Force. Thus, the Task Force had a formal opportunity to reflect fully to the representatives of the Standing Committee of the National People's Congress, the views of the community on the issues of legislative process collected in the past two months or so, as well as the views of the HKSAR Government on these issues. On that day, the Task Force briefed the representatives of Standing Committee of the National People's Congress on its First Report.

Way Forward

11. Compared with the issues of legislative process, the issues of principles relating to constitutional development are more complicated. The views of the community on these issues are also more divergent. The Task Force will next focus on the issues of principles. When the report is completed, we will let the community know the outcome of the Task Force's work in this respect.

Constitutional Affairs Bureau
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