

立法會
Legislative Council

LC Paper No. CB(2) 825/04-05
(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 20 December 2004 at 2:30 pm
in the Chamber of the Legislative Council Building

Members present : Dr Hon LUI Ming-wah, JP (Chairman)
Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Fred LI Wah-ming, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon James TO Kun-sun
Hon CHAN Yuen-han, JP
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon Frederick FUNG Kin-kee, JP
Hon Audrey EU Yuet-mee, SC, JP

Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Patrick LAU Sau-shing, SBS, JP
Hon Albert Jinghan CHENG
Hon KWONG Chi-kin
Hon TAM Heung-man

**Members
absent**

: Dr Hon David LI Kwok-po, GBS, JP
Hon CHEUNG Man-kwong
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon LI Kwok-ying, MH
Dr Hon Joseph LEE Kok-long
Hon Daniel LAM Wai-keung, BBS, JP
Hon MA Lik, JP

**Public officers
attending**

: Item III

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Clement MAK Ching-hung
Permanent Secretary for Constitutional Affairs

Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

Ms Julina CHAN Woon-yee
Principal Assistant Secretary for Constitutional Affairs

Item IV

Ms Elsie LEUNG Oi-sie
Secretary for Justice

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Clement MAK Ching-hung
Permanent Secretary for Constitutional Affairs

Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

Ms Julina CHAN Woon-yee
Principal Assistant Secretary for Constitutional Affairs

Item V

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

Miss May CHAN Wing-shiu
Principal Assistant Secretary for Constitutional Affairs

Mr LI Wing
Chief Electoral Officer

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Action

I. Confirmation of minutes of meetings

(LC Paper No. CB(2)431/04-05 – Minutes of meeting on 15 November 2004)

The minutes of the meeting held on 15 November 2004 were confirmed.

II. Items for discussion at the next meeting

(LC Paper No. CB(2)448/04-05(01) – List of outstanding items for discussion)

2. The Chairman informed members that as he would be out of town on 17 January 2005, the next meeting originally scheduled for that day had been rescheduled to be held on 13 January 2005 at 4:30 pm. Members agreed that the following items should be discussed at the next meeting –

- (a) Briefing by the Secretary for Constitutional Affairs (SCA) on the Chief Executive's Policy Address 2005; and
- (b) Political Party law.

(Post-meeting note: Members agreed that Dr Hon KWOK Ka-ki's motion should be dealt with at the next meeting (paragraph 42 below refers).)

III. Letter dated 15 October 2004 from pan-democratic Members

(LC Paper No. CB(2)55/04-05(01) – Letter dated 15 October 2004 from pan-democratic Members to the Chairman)

LC Paper No. CB(2)448/04-05(02) – Proposals of pan-democratic Members for the Panel to receive views on issues relating to constitutional development after 2007)

3. The Chairman said that he and the Deputy Chairman had two meetings with representatives of the pan-democratic Members to discuss the letter dated 15 October 2004 addressed to him. They had agreed to put forward the proposals set out in the paper (LC Paper No. CB(2)448/04-05(02)) for the Panel's consideration.

Action

4. After discussion, members agreed that the public should be consulted on the following three issues relating to constitutional development after 2007 –

- (a) Pros and cons of the existing political structure and the implications on good governance/The executive and the legislature relationship/The system and role of the civil service;
- (b) Methods for selecting the Chief Executive in 2007 (including the composition and operation of the Election Committee) and for forming the Legislative Council in 2008; and
- (c) Role and development of political parties.

5. Members also agreed that three special meetings would be held by the Panel, and each meeting would focus on one issue. Some members expressed concern that three meetings might not be sufficient, given the importance of the issues to be discussed. After some discussion, members agreed that the first three special meetings would be held on Saturdays, 15 January 2005, 19 and 26 February 2005 from 9:30 am to 1:00 pm. Subject to the response from the public, more special meetings would be scheduled to receive views from deputations, if necessary.

6. Members further agreed that advertisements would be placed in one English newspaper and one Chinese newspaper to invite the public to give views on the three issues at the three special meetings. In addition, the Panel would issue letters to invite the individuals and organizations set out in the paper to give views on the three issues. The Chairman said that other members were welcomed to suggest individuals/organizations to be invited to give views to the Panel, and the Secretariat would issue a circular in this respect after the meeting.

(Post-meeting note : The circular was issued to members vide LC Paper No. CB(2)492/04-05 on 21 December 2004. In line with the past practice of the Panel, advertisements were placed in the South China Morning Post and Ming Pao Daily News respectively on 22 December 2004 to invite public views. Copies of the advertisements were issued for members' reference vide LC Paper No. CB(2)499/04-05 on 22 December 2004.)

7. Members discussed the proposal that the deputations invited by the Panel to attend the meetings should be given ten minutes to present views. Members agreed that deputations should be given sufficient time to express their views, and each deputation should have about ten minutes to give views and to exchange views with members of the Panel.

IV. Review on constitutional development after 2007

(LC Paper No. CB(2)215/04-05(01) – Paper provided by the Administration entitled "Method for selecting the Chief Executive in 2007 and forming the Legislative Council in 2008 : Outline Work Plan"

The Fourth Report of the Constitutional Development Task Force : Views and Proposals of Members of the Community on the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008

Appendices I and II to the Fourth Report of the Constitutional Development Task Force

Speech by the Chief Secretary for Administration on the Fourth Report

LC Paper No. CB(2)448/04-05(03) – Paper provided by Constitutional Affairs Bureau on the Fourth Report

LC Paper No. CB(2)448/04-05(04) – Transcript of the Question and Answer session of a press conference given by the Constitutional Development Task Force on 15 December 2004)

Briefing by the Secretary for Justice (SJ) and the Secretary for Constitutional Affairs (SCA)

8. SJ said that the Chief Secretary for Administration (CS) was unable to attend this meeting as he was not in Hong Kong. SJ briefly recapped the contents of the First, Second and Third Reports of the Constitutional Development Task Force (Task Force). She said that CS had addressed the Council on the Fourth Report of the Task Force at its meeting on 15 December 2004. The priority of the Task Force was to put forward proposals for amendments to the methods for selecting the Chief Executive (CE) in 2007 and for forming the Legislative Council (LegCo) in 2008 (the “electoral methods”). The Fourth Report set out the views received on the Third Report in respect of how the “electoral methods” could be amended to facilitate further public consultation in the hope that differences in opinion could be narrowed so that a mainstream proposal could be formulated.

9. SCA explained the differences between the Third Report and the Fourth Report of the Task Force. He said that the Third Report set out the nine factors which should be considered in amending the “electoral methods” and the areas in respect of the “electoral methods” which could be considered for amendment. The Fourth Report summarized the spectrum of views expressed on how the “electoral methods” could be amended. It also served to provide a platform for the Task Force to embark on its next stage of work, i.e., to collect views from

Action

different sectors of the community as a basis for formulating a mainstream proposal which stood the best chance of achieving consensus among the various parties.

Issues raised by members

10. Ms Margaret NG pointed out that the term of office of the Election Committee was five years and would end in mid-2005. According to the outline work plan provided by the Task Force (LC Paper No. CB(2)215/04-05(01)), the legislative process relating to amending Annex I to the Basic Law could commence in the later half of 2005, and a Chief Executive Election (Amendment) Bill could be introduced into LegCo in the first half of 2006. Ms NG asked whether the legislative process for amending Annex I to the Basic Law could be completed in time to provide for the constitution of a new Election Committee when the term of office of the existing Election Committee ended in mid-2005, on the premise that the composition of the Election Committee responsible for selecting CE in 2007 would be changed. She said that the outline work plan lacked such details and requested the Task Force to provide a detailed timetable setting out the steps leading to the arrangements for the elections of CE and LegCo in 2007 and 2008 respectively.

11. SCA said that in response to the previous request of members, the Administration had provided the outline work plan on the basis of the existing situation. If a consensus among the relevant parties was reached, the legislative process relating to amending the relevant provisions of Annexes I and II to the Basic Law could commence in the second half of 2005. Thereafter, a CE Ordinance Election (Amendment) Bill and a LegCo (Amendment) Bill would be introduced into LegCo in the first half of 2006 and 2007 respectively. After the amendment bills had been endorsed by LegCo, relevant subsidiary legislation would be introduced into LegCo. SCA assured members that there was sufficient time for the legislative process if a consensus would emerge from the community in mid-2005. Ms NG reiterated her request for a timetable. SCA responded that the Administration had practical difficulty in providing a detailed and firm timetable at this stage. However, the Administration could provide the timetable for the legislative work for the second term CE election in 2002 for members' reference.

(Post-meeting note: The timetable was issued to members vide LC Paper No. CB(2)657/04-05 on 13 January 2005.)

12. Ir Dr Raymond HO asked about the consequences if a mainstream proposal did not emerge in mid-2005. SCA responded that in the circumstance, the methods for selecting CE in 2002 and for forming LegCo in 2004 would apply to the elections in 2007 and 2008 respectively.

Action

13. Mr LEE Cheuk-yan commented that the Fourth Report was a cut-and-paste product of the previous reports of the Task Force, simply repeating the message that the package of proposal to be put forth must comply with the Basic Law and the parameters set in the decision of the Standing Committee of the National People's Congress on 26 April 2004 (the NPCSC Decision). He said that the Fourth Report was built upon quicksand and had departed from mainstream public opinion that universal suffrage should be implemented in 2007 and 2008. He criticized that the Task Force was working behind closed door on a so-called mainstream proposal with consensus in order to impose it on the people of Hong Kong.

14. SJ said that the constitutional development of Hong Kong must follow the framework laid down in the Basic Law and the NPCSC Decision. Any proposal that departed from such framework would be futile, bearing in mind that any amendments to the "electoral methods" required the consent of NPCSC. Although there was public aspiration for universal suffrage, NPCSC had made clear in its decision that the elections in 2007 and 2008 should not be by means of universal suffrage. Given that NPCSC would not overturn its decision lightly, SJ said that it was pragmatic to work out a package of proposals for the "electoral methods" rather than pursuing universal suffrage for the elections in 2007 and 2008.

15. SJ further said that a copy of the Fourth Report and its Appendices was given to NPCSC for reference. She stressed that the views summarized in the Fourth Report represented views received during consultation, and were not made up by the Task Force. The purpose of consultation was to narrow the differences in the opinions in the community so that the more representative views would emerge and the Task Force could eventually put together a mainstream proposal for further discussion. For instance, there were views supporting an increase in the number of Election Committee members from 800 to 1 200 or 1 600. The follow-up questions asked were whether this should form the basis for the next stage of discussion and if the number was to be increased, what principles and criteria should be used in considering the level of increase. SCA supplemented that the increase in the number of Election Committee members was amongst views received during consultation on the Third Report, and the Task Force had not come to any view on the matter.

16. Mr LEE Cheuk-yan asked whether universal suffrage for the two elections could only be discussed when the Central Authorities gave the green light. SJ said that even though universal suffrage would not be implemented in 2007 and 2008, it would be useful to explore whether there were other means or forms to achieve universal suffrage to pave way for the future. There were views that universal suffrage could take the form of direct election or indirect election. SJ pointed out that whether different forms of universal suffrage should be explored was one of the follow-up questions set out in the Fourth Report.

Action

17. Referring to the follow-up questions set out in the Fourth Report, Mr LEE Cheuk-yan queried why it was necessary to start examining the long-term future of functional constituencies (FCs), given that FCs did not have any future because universal suffrage was the ultimate goal in the democratic development in Hong Kong. He said that judging from the selective nature of the follow-up questions, the Task Force appeared to have formed a predetermined view on certain issues. Dr KWOK Ka-ki pointed out that the retention of FCs contravened Article 68 of the Basic Law and should not be followed up at all. He also requested SJ to clarify her earlier comments that universal suffrage could be achieved by indirect election.

18. SJ said that during consultation, there were different views as to whether FCs should be retained. The Task Force would not deal with the issue at this stage as the NPCSC Decision had made clear that the ratio between Members returned by FCs and geographical constituencies (GCs) through direct election in the year 2008, who should respectively occupy half of the seats, was to remain unchanged. As regards the future of FCs, the Task Force considered it as one of the issues that needed to be followed up in the future. SJ added that the Task Force was of the view that the retention of FCs would not necessarily be inconsistent with the ultimate goal of universal suffrage. While there was a view that FCs should be abolished in order to implement universal suffrage, such a view was not shared by some people, including some academia.

19. SCA supplemented that under Article 45 of the Basic Law, the selection of CE by universal suffrage was by way of nomination by a broadly representative nominating committee. For the election of LegCo Members, Article 68 stipulated that the ultimate aim was the election of all the members of the Legislative Council by universal suffrage, but the Basic Law was silent on how universal suffrage should be achieved. It was therefore necessary to explore the different forms of universal suffrage before forming a view.

20. SCA added that an ex-LegCo Member, Mr Eric LI Ka-cheung, had previously suggested that one of the models for universal suffrage was for candidates to be nominated by FCs or professional organizations and elected by all registered electors. SCA further said that during consultation on the Third Report, there was a view that FCs should be retained in the long run. One of the reasons was that FCs provided a platform for business sectors and professionals to participate in politics, and LegCo Members elected through this means could make a useful contribution through their professional expertise. All these views and contrary views were set out in the Fourth Report. SCA stressed that the Task Force had not formed any view on these issues which should be further deliberated in the long run. Meanwhile, the Task Force would concentrate on handling the methods for the two elections in 2007 and 2008.

Action

21. Dr KWOK Ka-ki said that he was shocked by SJ and SCA's replies. It was unacceptable to him that the FC elections could be regarded as a form of universal suffrage. It was widely recognized that universal suffrage could only be achieved by the "one person one vote" system under which all eligible electors had the right to vote. Dr KWOK further said that at the Council meeting on 15 December 2004, CS had said that he would not rule out the possibility of conducting an opinion poll on the package of proposals for the "electoral methods". Dr KWOK asked the Administration to give a definite answer on the issue.

22. SCA said that there would be wide public consultation on the Fourth Report. Apart from enhancing community participation by organizing seminars and forums which were open to public, visits would be paid to District Councils (DC) so that district representatives would have the opportunity to put forth their views directly. Details of the arrangements had yet to be worked out. As CS had said at the Council meeting on 15 December 2004, the Task Force would not at this stage rule out the possibility of conducting an opinion poll on the Fourth Report.

23. Dr KWOK said that he would move a motion urging the Administration to carry out an extensive and in-depth opinion poll on the proposals in the Fourth Report. The Chairman requested him to provide the wording of the motion in writing.

24. Mr LEE Wing-tat said that he was disappointed at the Fourth Report in that the Report had not addressed the public's aspiration for universal suffrage for the elections in 2007 and 2008 or provided a roadmap for constitutional development for the purpose of achieving the ultimate aim of universal suffrage. He said that a roadmap would facilitate the relevant parties such as Members returned by FCs or the business sector to prepare for direct election. Without a roadmap, the timetable for implementation of universal suffrage would be indefinite.

25. SCA said that the Task Force had to set priorities for its work. Its immediate task was to formulate a package of proposals for the elections in 2007 and 2008 with a view to achieving consensus among the parties concerned. As regards the issue of universal suffrage, SCA said that there were different views on the timing of implementation. Some views supported implementation in 2007 and 2008, while other views supported 2012 or beyond 2012. As the Basic Law set out the blueprint for constitutional development in the first ten years after the reunification, the practical approach was to follow the blueprint in the first ten years and at the same time explore how the ultimate aim of universal suffrage could be achieved.

Action

26. SCA further said that the Task Force had set out in its Second Report the nine factors which must be considered in pursuing constitutional development. With the “electoral methods” now open for amendment, it was a step towards the democratic development for Hong Kong. Although the Task Force could not provide a roadmap for constitutional development at this stage, the professional or business sectors could still participate in LegCo direct elections. In fact, Hon James TIEN and Hon Mrs Selina CHOW won the 2004 LegCo GC elections.

27. Mr Ronny TONG asked whether the Task Force would address the public aspiration for universal suffrage by formulating a mainstream proposal which would strengthen democratic representation and yet comply with the NPCSC Decision. He said that such a proposal could at least pave the way for future democratic development even though universal suffrage could not be achieved in 2007 and 2008.

28. SCA assured members that as a step towards constitutional development, the Task Force would make the best endeavour to come up with a proposal to enhance democracy within the parameters of the NPCSC Decision. The Task Force, however, could not formulate the proposal unilaterally. The proposal would be formulated on the basis of the consensus emerged from the community.

29. Mr Ronny TONG asked whether any proposal to increase the number of FC seats in the 2008 LegCo election, which was not in accord with the ultimate aim of universal suffrage stipulated in the Basic Law, would be acceded to. SCA explained that in accordance with the NPCSC Decision, if the number of FC seats in the 2008 LegCo election were increased, the number of GC seats would likewise be increased so as to maintain the 50/50 ratio.

30. Dr YEUNG Sum said that the Fourth Report had failed to live up to the expectation of the people of Hong Kong and was a fake manifestation of democracy. He said that despite the fact that NPCSC had ruled out universal suffrage for the elections in 2007 and 2008, more than 60% of the electors who voted for the democratic camp in the 2004 LegCo election supported it. In the circumstances, he queried how the Task Force could claim that the Fourth Report had summarized the views of the public and the mainstream proposal to be put forth in the Fifth Report would be underpinned by public opinion. He said that if the Task Force had a conscience, it should not distort the views of the public.

31. SCA said that the package of proposals for amending the “electoral methods” would require tripartite consensus (two-thirds majority of all LegCo Members, CE and NPCSC) and cooperation from four parties (LegCo Members returned by FC and GC, CE and NPCSC). Although Members of the democratic camp obtained 60% of the votes in the 2004 LegCo election, some 40% of the

Action

electors voted for Members of other parties and groups whose stance on the timetable for implementing universal suffrage was different from that of the pan-democratic Members. He stressed that the concerted effort of all the parties concerned was required in order to achieve a consensus on the electoral arrangements for 2007 and 2008.

32. In respect of the increase of the number of Election Committee members to allow wider participation by different strata of the community in the election of CE, Mr Albert HO asked whether the number of members of the Election Committee could be increased to half a million or a million. SJ said that one should explain the principles and criteria that were used in making such proposals. The principles and criteria must comply with the Basic Law and the NPCSC Decision.

33. Ms Emily LAU said that she had proposed at a Panel meeting in the last session that members of the Election Committee could be elected by “one person one vote”. The view, however, was not included in the Fourth Report. SCA said that such a view had been included in the Appendix to the Fourth Report. He had on different occasions explained that an election involving all the registered voters was tantamount to implementing universal suffrage, which had been ruled out by the NPCSC Decision. SJ supplemented that “universal suffrage” meant election by “one person, one vote”. The proposal that members of the Election Committee responsible for selecting CE would be elected by “one person, one vote” would therefore contravene the NPCSC Decision.

34. Ms Emily LAU queried the basis for the Administration’s view that indirect election of CE would contravene the NPCSC Decision. She said that the Administration sought to make interpretation of the NPCSC Decision which was tantamount to setting up new barricades for democratic development and depriving the voting right of the people of Hong Kong. She sought legal advice as to whether the NPCSC Decision had prohibited election of CE in the form of indirect election.

35. In response, Senior Assistant Legal Adviser 2 said that while the NPCSC Decision had ruled out universal suffrage for the elections in 2007 and 2008, it did not define the meaning of “universal suffrage”. The Administration’s interpretation that “universal suffrage” equated to “one person, one vote” was widely accepted. However, whether the term “universal suffrage” in the NPCSC Decision was meant to include indirect elections would depend on the intent of NPCSC in making the decision.

36. Mr LEUNG Kwok-hung said that the discussion was meaningless. He pointed out that under the International Covenant on Civil and Political Rights (ICCPR), the right of the people to vote at elections was by universal and equal suffrage. This right was enshrined in Article 39 of the Basic Law. Given that

Action

China was a signatory state to ICCPR, it had the responsibility to ensure that such right was guaranteed.

37. SJ read the following paragraph from a 1994 United Nations publication entitled “Human Rights and Elections - A Handbook on the Legal, Technical and Human Rights Aspects of Elections” -

“United Nations human rights standards relating to elections are broad in nature and thus may be achieved through a wide variety of political systems. United Nations electoral assistance does not seek to impose any given political model. Rather, it is based upon a realization that there is no single political system or electoral methodology which is appropriate for all peoples and States. While comparative examples provide useful guidance for the construction of democratic institutions that both respond to domestic concerns and conform to international human rights norms, the best formulation for each jurisdiction will ultimately be that shaped by the particular needs, aspirations and historical realities of the people involved, taken within the framework of international standards”.

38. SJ said that the paragraph demonstrated that implementing universal suffrage in the form of direct election by “one man, one vote” was not the only way to meet the United Nations human rights standards relating to elections.

39. Mr LEUNG Kwok-hung said that the people of Hong Kong should be consulted on the mainstream proposal on the “electoral methods” to be proposed by the Task Force by way of a referendum. However, the lack of a law on referendum had deprived the right of Hong Kong people to express their views on the matter. He would introduce a private bill on referendum in the near future.

40. SJ and SCA responded that the Basic Law made no provision for the conduct of a referendum. In addition, there was no local law to regulate the conduct of referendum. The Administration’s position on referendum was that any proposal which sought to introduce new requirements for amending the “electoral methods” in addition to those stipulated in the Basic Law and the parameters set by the NPCSC Decision was unnecessary and inappropriate. The motion on referendum moved by Dr Fernando CHEUNG had already been negated by the Panel at a previous meeting. In accordance with the established procedure, the Administration would respond if there was a private bill on referendum and its view on it was sought by the President.

Action

41. Dr KWOK Ka-ki proposed the following motion which was tabled at the meeting –

“就政制發展專責小組第四號報告書的諮詢，本會要求當局應進行廣泛而深入的民意調查。小組亦應把報告書內的具體建議，諮詢全港市民意見，而其中應包括訂立普選時間表。”

42. The Chairman ruled that the motion was related to the agenda item under discussion and asked whether members wished to discuss the motion at this meeting or at the next meeting. Some members were of the view that a vote on the motion should be taken immediately given that the Panel had already discussed the agenda item for more than one hour. Some members were of the view that the motion should be debated on before a vote was taken. Dr KWOK Ka-ki requested that members should be allowed sufficient time to debate the motion. The Chairman said that the motion would be dealt with at the next meeting.

V. Review of the conduct of the 2004 Legislative Council election

(Electoral Affairs Commission Report on the 2004 Legislative Council Election held on 12 September 2004 submitted to the Chief Executive on 11 December 2004)

Statement of the Secretary for Constitutional Affairs on the Electoral Affairs Commission Report

LC Paper No. CB(2)448/04-05(05) – Paper provided by the Registration and Electoral Office on the Report

LC Paper No. CB(2)448/04-05(06) – Paper provided by Constitutional Affairs Bureau on "Independent Committee of Experts for the Review on the Management, Planning and Conduct of Elections"

LC Paper No. CB(2)448/04-05(07) – Speech of the Chairman of Electoral Affairs Commission on the Report at the press conference on 15 December 2004

LC Paper No. CB(2)448/04-05(08) – Chief Executive's statement on the appointment of members of the Independent Committee of Experts

LC Paper No. CB(2)448/04-05(09) – Press statement by the Chairman of the Independent Committee of Experts)

Action

Briefing by SCA

43. SCA said that the Electoral Affairs Commission (EAC) continued its investigation into the uncompleted complaint cases as well as other outstanding issues after the submission of the Interim Report. The Final Report released on 15 December 2004 gave a detailed report on the findings of those issues. Both the Interim Report and the Final Report affirmed that the electoral process of the 2004 LegCo election was conducted in an open, fair and honest manner. The problems which occurred on the polling day had not affected the integrity of the election.

44. SCA further said that the Final Report also set out EAC's recommendations on improvement measures for future elections. These recommendations would be considered by bureaux and departments concerned seriously. If there was any plan to introduce changes to the arrangements for future elections, there would definitely be prior consultation with LegCo and the public. SCA also briefed members on the composition and terms of reference of the Independent Committee of Experts (the Experts Committee). He said that that Experts Committee would make a report to CE in about three months and the report would be made public.

Briefing by the Chief Electoral Officer (CEO)

45. CEO highlighted the major findings in the Final Report, i.e. the investigation findings of the malfunctioning of the Interactive Voice Response System (IVRS) which was deployed to collect electoral statistical figures through telephone calls from 501 polling stations on the polling day, and the problems and errors in reporting voter turnout figures.

46. CEO also briefed members on a number of measures recommended by EAC to improve the arrangements for future elections as set out in the Final Report. CEO added that EAC welcomed the decision of CE to set up the Experts Committee and would fully co-operate with it.

Issues raised by members

Vote counting arrangements

47. Mr LAU Kong-wah expressed concern that EAC would revert to centralized counting of votes for future GC elections. Mr LAU pointed out that the problems relating to the counting of GC votes were technical in nature and could be overcome by enhancing the software of the information systems. He said that decentralized counting should not be given up lightly. His view was shared by Dr YEUNG Sum who pointed out that apart from expediting the counting process, decentralized counting was open and transparent, and allowed candidates, their polling agents and the public to monitor the counting process at

Action

individual polling stations. Dr YEUNG considered that decentralization of counting for GC votes was a right approach. He said that if necessary, reference could be made to the software system used in Taiwan to improve the counting arrangements.

48. CEO said that EAC had not made a decision on the matter and merely suggested in the Final Report that consideration could be given to other alternatives with a view to improving future counting arrangements. SCA said that decentralized counting of votes had proved to be successful in the 2003 DC election, when the election results were available much earlier than previous elections. Its success, however, did not necessarily apply to LegCo elections. In fact, centralized or decentralized counting arrangements had both merits and weaknesses. In considering new counting arrangements, reference would be made to the arrangements adopted in other countries.

49. SCA highlighted some problems relating to the decentralized counting arrangement adopted for the 2004 LegCo election. He said that for example, a request for recount of a GC could involve some 100 individual polling stations and many of which were schools. If a recount could not be completed overnight, the operation of the schools would be affected on the following day. In addition, the experience in the 2004 LegCo election revealed that the one-shift system was too harsh for polling staff. However, if a two-shift system was adopted for future elections, over 1 000 teams of polling staff would be required (i.e. two teams for each of the 500 polling stations). This could lead to operational difficulties given the large number of staff involved. SCA added that EAC had therefore proposed in the Final Report that for better control and monitoring, consideration should be made to decentralizing the counting of GC votes to the regional level, with one counting station in each of the five GCs, or to the district level, with one counting station in each of the 18 districts. However, EAC had also pointed out that the downside of these options would be that the election result would be obtained considerably later than that for polling-cum-counting stations.

50. SCA further said that some candidates favoured decentralized counting because the preferences of electors at individual polling stations could be easily assessed to help them plan and conduct their electioneering campaign strategically in future. Should EAC decide to adopt decentralized counting of GC votes in a smaller scale, i.e. to the regional level or district level, consideration should be given to continual publication of the counting results of candidates at individual polling stations within a GC. SCA also said that one of the benefits of centralized counting arrangements was that the standards adopted in determining the validity of ballot papers would be more consistent, hence minimizing disputes. SCA assured members that consultation would be conducted on any new counting arrangements before implementation.

Action

51. Ms Audrey EU and Miss CHAN Yuen-han said that while decentralized counting had worked well for DC elections, it might not be suitable for LegCo elections. Given the large number of polling stations in a GC election and the various problems relating to recruitment and training of polling staff, they inclined to support centralized counting for GC votes at future elections. Ms EU said that if centralized counting was adopted in future, information relating to voter turnout figures and counting results of candidates at individual polling stations should be made available if possible.

Information technology/electronic systems

52. Mr Howard YOUNG asked whether IVRS, which had malfunctioned on the polling day, accepted voice or dual tone multi-frequency input. CEO confirmed that it was the latter, which was regarded as a more reliable means. In further response to Mr YOUNG, CEO said that consideration had also been given to using personal computers or facsimile machines to collect electoral statistical figures. Such an arrangement, however, was considered less cost-effective than IVRS because it would require the procurement of over 1 000 computers or facsimile machines for the 501 polling stations in order to ensure full system back up.

53. Mr Albert HO said that some registered voters had complained that they were not allowed to vote because their names had already been crossed out in the voter register. Mr HO said that verification of electors' identities and vote casting could be done by electronic means to minimize human errors. The Chairman said that EAC should make use of modern technology to improve the electoral processes, e.g. to introduce electronic voting.

54. CEO said that after a polling officer had crossed out the name of a registered voter in the voter register and issued a ballot paper, the entry was verified by his partner. It was, however, difficult to ensure that this process was entirely free from human error. As regards verification of electors' identities by electronic means and electronic voting, feasibility studies had been conducted in the past and the conclusion was that the process was complex, costly and not flawless. It was concluded that manual verification and voting was more practical and reliable.

Advance polling

55. Dr YEUNG Sum proposed that for future elections, advance polling should be arranged to facilitate electors who were not in Hong Kong on the polling day to vote.

Action

Adm

56. SCA said that the proposal had been considered in the past but was withdrawn as some Members had expressed concern that the premature release of exit poll results conducted on advance polling day might influence electors' choice on general polling day. SCA agreed to revisit the issue.

Matters relating to electoral staff

57. Dr YEUNG Sum said that his office had received complaints from electoral staff that they had been treated unfairly in terms of their working hours on the polling day. CEO said that because of the delay caused by the malfunctioning of IVRS, electoral staff had to work extended hours on the polling day. It was indeed a hard day for them. He assured members that EAC would consider improvement measures to prevent recurrence of the problem.

58. Mr LEE Wing-tat asked whether training on crisis management was provided to senior staff of the Registration and Electoral Office (REO) and members of EAC to prepare them to handle unexpected incidences during election. CEO said that staff of REO had not received any such training. SCA said that he was not sure about the kind of management training received by the Chairman and members of EAC, but they were appointed to EAC because of their experience in the business and professional fields and their proven public service records.

59. Mr LEE Wing-tat said that the role of the District Officers of the Home Affairs Department who were appointed as Returning Officers (ROs) was very important. As he was responsible for coordinating the public elections of the Democratic Party in the past few years, some cases concerning the performance of ROs had been brought to his attention. As ROs were not accountable to EAC or REO, they might have handled matters in a different way. Mr LEE considered that this mode of operation might cause problems. SCA responded that ROs were either Administrative Officers or Executive Officers. Overall speaking, they were politically neutral and performed their duties as ROs in a responsible and professional manner. He said that Mr LEE could provide information on specific cases concerning the 2004 LegCo election for the Administration to follow up, if considered necessary.

Handling of ballot papers

60. Ms Margaret NG expressed concern about the handling of ballot papers from the day they were printed to the day they were counted at an election. She said that she had lost confidence in the integrity of the ballot count for a number of reasons. First, she learnt that ballot papers were kept by Presiding Officers (PROs) in their residence before the polling day. Second, she noted that the counting of some of the FC votes in the 2004 LegCo election commenced before all the FC ballot boxes were delivered to the Central Command Centre. She

Action

considered that EAC had not attached sufficient importance to the security of ballot papers and the verification process. She asked whether EAC had a mechanism for ballot paper trail.

61. CEO explained that with 501 polling stations involved in the GC elections, there were practical difficulties for REO to arrange manpower and transportation for the delivery of ballot papers to all these stations before 7:30 am on the polling day. In addition, if delivery was arranged in the early morning on the polling day, it would mean that the polling staff had to work even longer hours. Entrusting the ballot papers to PROs and Deputy PROs concerned was an established practice. Given the ballot papers for the 2004 LegCo election was larger and heavier, about 30% to 40% of the ballot papers were kept in the custody of PROs, Deputy PROs and/or Assistant PROs before the polling day. The remaining ballot papers were delivered to the polling stations on the polling day.

62. SCA agreed with Ms NG that the integrity of ballot papers should be protected and that they should be handled with great care from the very start when they were printed. SCA pointed out that after the vote count, ballot papers were kept in safe custody for another six months and would be retrieved if there was a need to use them as evidence to handle petition lodged by candidates. SCA said that consideration could be given to improving the security and safe custody of ballot papers. The adoption of a two-shift system for polling staff and the provision of a three-tier structure for the replenishment of supplies would facilitate improvement in this respect.

63. As regards the issuance and verification of ballot papers, CEO said that there was regulation governing the issuance of ballot papers and the verification of the ballot paper count. For control purpose regarding the total number of ballot papers issued, the counterfoil of each ballot paper bore a serial number on its front. At the close of poll, a PRO would record the numbers of unissued ballot papers, spoilt ballot papers and unused ballot papers in his possession. When counting commenced, a PRO would count the valid votes obtained by each candidates, verify the ballot paper count and compile the counting results. In most circumstances, the number of ballot paper cast tallied with the number of ballot papers issued. There were a few occasions where the number of ballot papers cast was less than the number of ballot papers issued. The reason for the discrepancy was unknown for all these years but it was believed that some electors had not cast their votes. CEO confirmed that in the 2004 LegCo election, due to the late delivery of a few ballot boxes, counting for FC votes had commenced before all the ballot boxes were opened. In further response to Ms NG, CEO undertook to provide information on the number of "TENDERED" ballot papers issued in the 2000 and 2004 LegCo elections.

(Post-meeting note: The information provided by CEO was issued to members vide LC Paper No. CB(2)506/04-05 on 24 December 2004.)

Action

Disqualification of electors

64. Mr Albert HO expressed concern about the procedure leading to disqualification of an elector due to change of address.

65. CEO explained that there was stringent vetting procedure prior to striking out an elector's name from the voter register. In the event that a poll card sent to a registered elector was undelivered and returned to REO, REO would make an inquiry to the elector concerned before compiling the next provisional register. The inquiry would be made in writing and sent by registered post addressed to the person concerned to ascertain whether the address recorded in the existing register against that person's name was no longer his residential address. If the letter was undelivered and returned to REO, REO would follow up by phone calls. If the person could not be contacted, REO would have reason to believe that the person was no longer residing in the address recorded in the existing register. The person's name would be put on an omissions list. The omissions list together with the provisional register would be published for public inspection. If no appeal was lodged by the person concerned by a specified date, his name would be omitted from the final register. Once his name was struck out from the final register, the person could no longer vote.

Other issues

66. Mr Albert HO asked whether there were only two cases involving the use of cardboard boxes as ballot boxes and whether the contingency measure adopted was legally in order. CEO confirmed that there were only two such cases and the findings of EAC were reported in paragraph 2.30 of the Interim Report. In both cases the transfer of ballot papers from carton boxes to ballot boxes were witnessed by polling agents. EAC was satisfied that the stopgap measure taken by PRO, as the person in charge of polling station and entrusted with the power and authority to ensure that the polling process was not disrupted, was acceptable and not improper in the circumstances.

67. Mr TAM Yiu-chung said that there was an increasing number of Hong Kong residents working and residing in the Mainland in recent years. As they did not have a local address, they could not become registered electors. Pointing out that these persons should not be deprived of their right to vote, Mr TAM asked SCA to consider introducing measures to deal with the issue. SCA said that the issue would need to be dealt with separately as it involved the consideration of whether a person was ordinarily resident in Hong Kong or not.

Adm

68. Mrs Selina CHOW stressed that while there were inadequacies in the electoral arrangements for the 2004 LegCo election, any proposed new improvement measures should not undermine the independent status of EAC or user-friendliness of the existing electoral arrangements. She said that the

Action

conduct of the election was similar to a military operation, and effective time management of different electoral processes on the polling day was very important. Unfortunately, this was not evident in the 2004 LegCo election. She hoped that members of the Experts Committee could make use of their expertise in legal, management and logistics and information technology matters to review the conduct of the 2004 LegCo election comprehensively with a view to recommending improvement measures to prevent recurrence of similar problems at future elections.

69. SCA assured members that EAC would remain a statutory and independent body to ensure that public elections were conducted in an open, fair and honest manner. He said that the Administration would not interfere with EAC on the practical arrangements for the conduct of elections. He agreed with Mrs CHOW that the electoral arrangements should be as user-friendly as possible to the electors and the candidates alike. CEO noted the comments of Mrs CHOW and said that it was the wish of EAC to introduce measures to provide better convenience for electors. One such example was that electors eligible for voting in GC and FC elections could cast their votes in a polling station for both GCs and FCs in the election.

Accountability

70. Ms Audrey EU pointed out that paragraph 14.61 of the Report stated that “the simultaneous introduction of too many new things not tested as to their interaction amongst each other for a large-scale operation would probably create problems”. Paragraphs 14.62 and 14.63 stated that members of EAC had relied on the competence of REO staff in reviewing the tests and determining the sufficiency and performance of IVRS, and testing the appropriateness and capacity of the new ballot box. Ms EU regretted that the Report was written in such a way that the mistakes in the conduct of the election were borne by working staff while the question of accountability was not addressed. She said that many of the problems of the 2004 LegCo election could have been anticipated and had not been properly dealt with at the preparatory stage. This reflected inadequacies in the planning process, involving officials at policy-making and management levels. She asked whether the Experts Committee would look into the question of accountability.

71. SCA said that in the Interim and Final Reports, EAC had admitted that there were inadequacies arising from a number of administrative and planning errors relating to the practical arrangements for the election. The Chairman of EAC had, on different occasions since the election on 12 September 2004, apologized to the public and candidates for the problems with the arrangements on the polling day. The Experts Committee would assess the management responsibilities for the arrangements for the 2004 LegCo election and would consider how practical arrangements for future elections could be improved.

Action

The Experts Committee would also review and advise on how REO could better support EAC in carrying out its statutory functions in the conduct and supervision of elections.

Adm

72. Ms EU considered that the apology of the EAC Chairman was most insincere as he had said that given his experience in the conduct of elections, it would be irresponsible for him to step down from the post. She reiterated that the problems identified in the Interim and Final Reports were not unforeseen. Mr LEE Wing-tat concurred with the view of Ms EU and said that it was inappropriate for the EAC Chairman to say that he would not step down from his post before conclusion of the investigation by the Experts Committee. SCA said that he would relay their views to the EAC Chairman.

73. Dr YEUNG Sum expressed concern that the Final Report had not addressed the question of accountability. He considered that the insufficient testing on equipment and arrangements for election was unforgivable. He said that the Democratic Party might still propose the setting up of a select committee on the 2004 LegCo election, subject to the outcome of the investigation by the Experts committee. CEO concurred that REO could have done better and that insufficient testing was indeed unacceptable. He assured members that improvements would be made for future elections.

74. Mr Albert HO asked who would decide whether any person should be held accountable for the problems of the 2004 LegCo election. SCA said that the Experts Committee would submit a report to CE about three months after it had commenced its work. Subject to the recommendations of the Experts Committee, CE would decide on the follow-up actions required. SCA added that CE had accepted the Interim and Final Reports submitted by EAC and that the election was conducted in a fair, open and honest manner.

75. The Chairman commented that many problems of the 2004 LegCo election, e.g. those relating to polling and counting arrangements, testing of new systems and equipments and logistical arrangements, as well as training for polling staff, were essentially management problems. The Chairman suggested that more advanced technologies should be deployed with a view to improving and developing the electoral processes in the future.

76. The meeting ended at 6:09 pm.