

立法會
Legislative Council

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by the Administration)

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Panel on Constitutional Affairs

**Minutes of special meeting
held on Saturday, 15 January 2005 at 9:30 am
in the Chamber of the Legislative Council Building**

Members present : 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 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 CHEUNG Man-kwong
Hon CHAN Yuen-han, JP
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon SIN Chung-kai, 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 Timothy FOK Tsun-ting, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon LI Kwok-ying, MH

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
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon TONG Ka-wah, SC
Hon Patrick LAU Sau-shing, SBS, JP
Hon Albert Jinghan CHENG

**Members
absent**

: Dr Hon LUI Ming-wah, JP (Chairman)
Hon LEE Cheuk-yan
Dr Hon David LI Kwok-po, GBS, JP
Hon LEUNG Yiu-chung
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBS, JP
Hon Albert CHAN Wai-yip
Hon Frederick FUNG Kin-kee, JP
Dr Hon Joseph LEE Kok-long
Hon Daniel LAM Wai-keung, BBS, JP
Hon MA Lik, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHIM Pui-chung
Hon KWONG Chi-kin
Hon TAM Heung-man

**Public officers
attending**

: Item I

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Raymond TAM Chi-yuen
Principal Assistant Secretary for Constitutional Affairs

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

**Attendance by
invitation**

: The Hong Kong Federation of Electrical and Mechanical
Contractors

Mr Paul CHONG
Hon Secretary

New Century Forum

Mr Patrick TSANG
Member

Member of Kwai Tsing District Council

Mr WONG Bing-kuen

Association of Engineering Professionals in Society Ltd

Mr CHEUNG Yan-hong
Vice Chairman

Kowloon Federation of Associations

Mr CHIU Kwok-wai
Secretary (Policy Studies)

Hong Kong Chinese Civil Servants' Association

Mr WONG Hyo
President

The Democratic Party

Mr Gary FAN
Deputy Spokesman of DP on Constitutional Affairs

Power for Democracy

Mr TSOI Yiu-cheong
Convener

Neighbourhood and Worker's Service Centre

Mr Ivan WONG
Organization Officer

Front Line Welfare Employees Union

Mr TAM Leung-ying
Executive Secretary

Member of Island District Council

Mr LEUNG Siu-tong

Hong Kong General Building Contractors Association

Mr Anthony CHAN
Vice President

Concern on Hong Kong Future Development Group

Mr LAM Tsz-kin
Convener

Hong Kong Human Rights Monitor

Miss LUI Ching-wu
Education & Project Officer

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

Staff in attendance : Mrs Eleanor CHOW
Senior Council Secretary (2)4

Ms Fonny LO
Legislative Assistant (2)3

Action

I. 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

(LC Paper Nos. CB(2)613/04-05(01), 645/04-05(01), 658/04-05(01)-(05), 680/04-05(01) and 681/04-05(01)-(05))

Meeting with deputations

The Deputy Chairman took the chair and informed members that the Chairman was unable to attend this meeting as he was not in Hong Kong. He said that the purpose of the meeting was to receive views from deputations on “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”. Two more special meetings had been scheduled for 19 and

Action

26 February 2005 to receive views on two other issues relating to constitutional development, namely “Methods for selecting the Chief Executive (CE) in 2007 and for forming the Legislative Council (LegCo) in 2008” (the “electoral methods”) and “Role and development of political parties” respectively.

2. Noting that the deputations did not include any representative from the academia, Ms Margaret NG asked whether invitation letters had been sent to them. The Clerk informed members that in response to members’ suggestions, invitation letters were sent to eight academics but none had indicated that they would attend this meeting. Ms Margaret NG said that the expert views from academics were valuable reference for the Panel’s further deliberation on the issue of constitutional development. She suggested and members agreed that a follow-up letter be sent to invite the eight academics to give views on issues relating to constitutional development at future meetings.

(Post-meeting note : Invitation letters were sent to the eight academics on 18 January 2005.)

3. At the invitation of the Deputy Chairman, the deputations made oral presentation on their submissions. A summary of views of the deputations is in **Appendix**.

4. The Deputy Chairman informed members that the Panel had received a written submission from Civic Exchange concerning functional constituency (FC) which would be issued to members after the meeting.

(Post-meeting note : The submission was issued vide LC Paper No.CB(2) 680/04-05 on 17 January 2005.)

Response of the Administration

5. SCA said that he would like to first give an overall response to the deputations. He said that the political structure of Hong Kong was based on the framework laid down in the Basic Law. The Government was accountable to the public and together with LegCo, it worked for the well being of the people of Hong Kong. The work of the Government was highly transparent and monitored by the public, media and an independent judicial system. There were checks and balances in the political system of Hong Kong which were similar to that of western democratic countries. SCA further said that he would like to respond to some of the specific comments made by the deputations.

The Hong Kong Federation of Electrical and Mechanical Contractors (HKFEMC)

6. Addressing the concern of HKFEMC about excessive outsourcing, SCA said that the Administration had to streamline its operation and maintain a lean

Action

and efficient civil service in order to reduce the fiscal deficit. The reduction of civil service establishment was capped at 160 000 to ensure that the level of service provided to the community would be maintained.

New Century Forum (NCF)

7. NCF raised two main issues, namely the procedure for appointing members to serve on advisory and statutory bodies (ASBs) and the conduct of researches on public policies. On the former, SCA said that there were guidelines governing the appointment of persons to serve on ASBs. For instance, the maximum number of ASBs a person could serve was limited to six and the maximum number of years a member could serve on any single ASB was six. On the latter, SCA said that as set out in CE's 2005 Policy Address, the Administration would allocate an additional \$20 million to the University Grants Committee to reinforce the policy research capability.

Mr WONG Bing-kuen, Member of Kwai Tsing District Council

8. In response to Mr WONG Bing-kuen's view that the separate voting system had hampered the functions of LegCo, SCA explained that FC was part of the electoral system to allow different sectors to contribute to the community through their participation in LegCo, and to realize the principle of balanced participation. In order to maintain stability in the community, an initiative proposed by a LegCo Member would be taken forward only if it gained the support of Members returned by both geographical constituency (GC) and FC.

Association of Engineering Professionals in Society Ltd (AEPSL)

9. SCA said that during the consultation on the Third Report of the Task Force on Constitutional Development (the Task Force), there was a view that corporate voting should be replaced with individual voting in FC elections, which was advocated by AEPSL. SCA said that such a view would be carefully considered by the Task Force. As regards AEPSL's suggestion to reform the Civil Service system which was composed of Executive and Administrative Officers and others, SCA said that the system had been in existence for many years and these officers formed an important and integral part of the Civil Service system. He further said that some of the senior posts in the Government were taken up by officers of professional grades. For instance, the Permanent Secretary for Environment, Transport and Works (Works), the Secretary for Health, Welfare and Food, and the Secretary for Justice were professionals.

Kowloon Federation of Associations (KFA)

10. SCA noted that KFA was concerned about the strained relationship between the executive and the legislature. SCA said that to tie in with the

Action

implementation of the accountability system for Principal Officials (POs) two years ago, the Administration had invited two LegCo Members who were affiliated with political parties to join the Executive Council (ExCo). The number of Members joining ExCo had increased to three in October 2004. He said that the Administration would endeavour to improve the relationship between the executive and the legislature but that could not be achieved within a short time. The concerted effort of the two bodies was also required.

Hong Kong Chinese Civil Servants' Association (HKCCSA)

11. SCA said that he supported the view of HKCCSA that the Civil Service should remain politically neutral. One of the major considerations in implementing the accountability system was for POs to face the political pressure and shoulder political responsibility, and for civil servants to remain politically neutral so that they would continue to underpin POs and to serve the community irrespective of who were in the PO posts.

The Democratic Party (DP)

12. SCA noted that DP was concerned about political party development. He considered that the constitutional development in Hong Kong and the development of political parties must complement each other. In this connection, the Administration was mindful of how to create an environment that would encourage political participation by independents and persons affiliated with political parties and groups. One of the suggestions was to increase the number of LegCo seats to allow more people to stand for elections. As regards DP's concern about the conflict of interest arising from retired civil servants joining the private sector, SCA said that the Secretary for Civil Service had already addressed the issue on different occasions.

Power for Democracy (PD)

13. SCA said that the Administration shared the concern of PD as to whether the constitutional reform pursued by the Task Force would yield fruit. He said that with the "electoral methods" now opened to amendment, there were opportunities for wider public participation. The question of whether constitutional development in Hong Kong would move forward or remain status quo would depend on the mainstream proposal to be formulated by the Task Force and the interactive response from LegCo Members. The concerted and coordinated effort of the Administration and LegCo was required in order to discharge their constitutional responsibilities in this respect. SCA said that in the coming months, he would make the best endeavour to discuss and exchange views with LegCo Members on the possible proposals for the "electoral methods".

Action

14. Addressing PD's concern on universal suffrage, SCA explained that elections by universal suffrage must be conducted fairly and openly and could take the form of direct or indirect elections. He had, on different occasions, quoted the suggestions of some members of the public including Mr Eric LI Ka-cheung, a former LegCo Member, that one of the models for universal suffrage was for candidates to be nominated by FC or professional organisations and elected by all registered electors. The Administration had not come to any view in this regard and was prepared to listen to views relating to universal suffrage.

15. SCA said that he disagreed with the view of PD that the Administration lacked vision in formulating policies. He said that projects such as Disneyland, the Closer Economic Partnership Arrangement and the Hong Kong-Zhuhai-Macao Bridge, which were initiated by the Administration a few years ago, were beneficial to Hong Kong's long-term development.

Neighbourhood and Worker's Service Centre (NWSC)

16. In response to NWSC's comment that there were insufficient GC seats in LegCo, SCA said that in accordance with the decision of the Standing Committee of the National People's Congress on 26 April 2004, if the number of GC seats in the 2008 LegCo election were increased, the number of FC seats would likewise be increased so as to maintain the 50/50 ratio. If this was to be pursued, it was necessary to examine and determine the new FCs to be added and their respective electorates.

Front Line Welfare Employees Union (FLWEU)

17. SCA clarified that the Election Committee which was responsible for selecting CE composed of not only the business sector. Altogether there were four categories of electorates in the Election Committee including (a) the industrial, commercial and financial sectors; (b) the professions; (c) the labour, social services and religious and other sectors; and (d) Members of LegCo, representatives of district-based organizations, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference.

Mr LEUNG Siu-tong, Member of Island District Council

18. Addressing Mr LEUNG Siu-tong's concern on the relationship between the executive and the legislature, SCA said that as explained earlier, three LegCo Members who were affiliated with political parties or groups had now joined ExCo. As regards the suggestion to enhance media coverage to promote government policies, SCA said that new measures had been adopted including the arrangement for POs to exchange views with the public on policy issues through the radio.

Action

Hong Kong General Building Contractors Association (HKGBCA)

19. SCA said that in considering HKGBCA's suggestions to broaden the electorate base of FCs and to increase the number of FC seats including the splitting of the Real Estate and Construction FC into two FCs, the Task Force would take into account the principle of balanced participation and representativeness of the proposed new FCs.

Concern on Hong Kong Future Development Group (CHKFDG)

20. SCA said that he could not accept the allegation put forth by CHKFDG that the Cyberport project was an example of "collusion between business and the Government". He said that LegCo committees had been consulted on all the infrastructure projects proposed by the Government, including the Cyberport, before they were implemented.

Hong Kong Human Rights Monitor (HKHRM)

21. SCA explained that the delineation of responsibilities between the executive and legislature was that the Government proposed and LegCo disposed. All the bills that were passed and budgets that were approved had to secure legislature support before the Administration could proceed with any particular initiative. The way that FC had been designed, as part of the legislature, embodied the principle of balanced participation. In Hong Kong, the legislature was designed to reflect both the opinion of the general community through Members returned by GCs and also the opinion of different sectors through Members returned by FCs. The separate voting system was designed to ensure that any initiative put forth by individual Members could only be proceeded with if it gained the support of Members returned by both GCs and FCs. This guaranteed a high degree of stability in public governance and in the initiatives to be taken forward.

22. SCA further said that the question of whether the electoral arrangements for FCs were consistent with the International Covenant on Civil and Political Rights (ICCPR) as applied to Hong Kong had been tested before the courts of Hong Kong before 1997. The answer given by the courts was in the affirmative. Following reunification, the evolution of Hong Kong's electoral system had proceeded in accordance with the principle of gradual and orderly progress and the actual situation in Hong Kong as embodied in Articles 45 and 68 of the Basic Law. SCA stressed that the existing electoral system and any changes proposed to it would be legal and constitutional so long as they complied with the Basic Law.

Action

23. Addressing HKHRM's concern on Private Member's Bill (PMB), SCA said that Hong Kong was not alone in having certain restrictions on the introduction of such bills. In the United Kingdom, members of the Parliament had to draw lots every year for their PMBs to be put forth.

Issues raised by members

Representation of the Administration at the meeting

24. Mr LEUNG Kwok-hung queried why neither the Chief Secretary for Administration nor the Secretary for Justice, who were members of the Task Force, attended the meeting to listen to deputations' views on constitutional development.

25. The Deputy Chairman explained that in accordance with the Basic Law and the Rules of Procedure of LegCo, the Administration had the discretion to decide on who should be represented at meetings of LegCo committees. SCA said that the Administration had decided that he and his colleagues from the Constitutional Affairs Bureau should attend this meeting. He said that he would relay the views of the deputations and Members expressed at the meeting to members of the Task Force.

The system and role of the Civil Service

26. Ms Audrey EU and Ms Margaret NG said that they were disappointed at not being able to seek further views from the representative of HKCCSA, who had left the meeting. Ms Margaret NG said that the neutrality and stability of the Civil Service was conducive to constitutional development and execution of government policies, especially during the transitional period. She shared the view of HKCCSA that the Civil Service system, apart from being stable, should be updated and modernized to cope with the prevailing changes. Ms NG sought the views of the deputations on the changes made to the Civil Service system in the past few years that had aroused their concern and the reform initiatives that they would expect to see in the Civil Service.

27. The representative of NCF said that the major change to the Civil Service system after the reunification was the implementation of the accountability system. Some of the POs, who were not former civil servants, had not received training on public administration and had no knowledge about policy cycle. CE was such an example and his performance in terms of policy formulation and execution had not been satisfactory. The representative further said that since the implementation of the accountability system, civil servants were not consulted on new policies before implementation. Civil servants also faced increasing work pressure as they found it difficult to cope with the rapidly changing policies.

Action

28. The representative of AEPSL said that he was given to understand that only Administrative Officers would be promoted to senior and management level under the existing Civil Service system. He said that the system should be improved to provide opportunities for officers at professional and disciplinary grades who demonstrated leadership to receive appropriate training for promotion to senior and management level.

29. The representative of HKFEMC said that he would give his view from the perspective of the construction industry. He said that after 1997, his experience in dealing with his counterparts in the Civil Service had been disappointing. First, civil servants in a bid to prove their value following the outsourcing of various services had created unnecessary work that were regarded by the industry as disturbing. In the view of the industry, many of the additional work, other than making the civil servants more occupied, was non-productive and yet the industry had to put in a lot more resources to cope with the new requirement. He said that making complaints against the Civil Service was not easy, as the industry had to bear the consequences arising from such actions. Second, given the complexity involved in a construction project, civil servants of the professional grades should exercise flexibility and professional judgement to deal with new developments and unexpected changes in the course of construction. However, some civil servants only worked according to rules so as to maintain justice and fairness. The construction industry believed that justice and fairness should always be upheld but such principles should not be used by civil servants as an excuse to shirk responsibilities. The representative cited an example that exercising unnecessary care in giving approval in various stages of the construction work would create problems for the industry such as late payment of wages to workers. The representative explained that in a construction project, it was common to have several layers of contractors and subcontractors, given the various work processes involved. While contractors and subcontractors were waiting for works to be approved before they would effect payment to workers, workers were afraid that there would be default in payment. The public was in general sympathetic to workers and did not realize that contractors and subcontractors were also victims of the existing approval process.

30. Ms Margaret NG asked deputations to comment on the functions and role of the Secretary for Civil Service, the performance of whom she found disappointing. The representative of NCF said that there should be avenues for civil servants to reflect their views to the management. He was uncertain whether the Secretary for Civil Service, who was not a civil servant, could represent the interests of civil servants.

31. Referring to the speaking note of the representative of HKFEMC (LC Paper No.CB(2) 681/04-05(06), Mr LAU Kong-wah asked the representative to elaborate on his view on “a pathological environment”. The representative said

Action

that he would elaborate from the perspective of the construction industry. He said that the core paper in the construction industry was the building contract. A contract should be fair and conducive to the mutual cooperation of a contractor and the Government. However, the provisions set out in the building contract were so stringent that they distorted the operation of the construction industry.

32. Pointing out that civil servants were required to promote policy for their respective bureaux, Mr LAU Kong-wah asked how civil servants could maintain their neutrality. The representative of NCF said that the Civil Service faced the dilemma of remaining neutral on one hand, and advocating policy for their POs on the other. One of the ways to solve the problem was to allow POs to have a team of staff who were politically appointed. This team of staff, to be consisted of eight to ten members, would actively promote policies for the PO concerned and having the same term of office as the PO. The team of staff would also chair ASBs that were related to their policy portfolios.

Collusion between business and the Government

33. Ms Emily LAU invited deputations to give views on whether “collusion between business and the Government” existed and if so, how to follow up the matter.

34. The representative of CHKFDG said that although SCA did not accept that there was “collusion between business and the Government”, the Cyberport project and the West Kowloon Cultural District (WKCD) project were such examples. He said that the Administration could consider setting up a special committee to investigate the incidents. This might prevent a large-scale demonstration from the public to protest against any transfer of benefits from the Government to the business sector.

35. The representative of HKGBCA said that “collusion between business and the Government” existed in any society, and the question was the extent of the problem. He said that such incidents could be investigated by a special committee or LegCo.

36. The representative of NCF said that the way the Cyberport project and WKCD project had been handled by the Government reflected that there were loopholes in the existing constitutional system. In the case of the WKCD project, the Government had circumvented the scrutiny of LegCo as the project involved land grant to the consortium in exchange for the development right of the site and would not involve public funding. The Government had also openly stated that auction of the site was undesirable as the land sale proceeds would go to the general revenue and might not be used for developing cultural facilities. However, to grant the land to the successful consortium without auction would result in getting a price lower than the market rate, and thereby affecting the

Action

general revenue. The representative said that LegCo should revisit the definition of “budget” and consider including a statutory requirement to the effect that disposal of Government’s assets which would affect public revenues, be it in the form of cash or cash in kind, should require the approval of LegCo.

37. The representative of DP said that CE had confined the issue of “collusion between business and the Government” as a legal issue. However, it was also a political and economic issue. “Collusion between business and the Government” was a built-in feature in the existing political system. As CE was elected by the 800-member Election Committee which composed mainly of representatives from the commercial and business sectors, he was bound to be accountable to the Election Committee. Under the circumstances, it was not difficult for the Government to by pass LegCo’s monitoring to transfer benefits to the business sector.

38. The representative of FLWEU said that there were many examples of the Government colluding with the business sector. For instance, it was the responsibility of the Government to provide basic services to meet public needs, yet many of these government services were contracted out. In the end, it was the contractors rather than members of the public who would receive benefits. Another example of collusion was the implementation of the mandatory provident fund scheme. The original intention of a provident fund scheme was to provide protection to grass root workers after retirement. In the end, it was the financial institutions which operated the funds making huge profit from such a scheme.

39. The representative of NWSC said that there were three areas in which improvements should be made to prevent the Government from colluding with the business sector. First, the lack of transparency in the tendering process and in striking deals with consortiums should be looked into. Second, privatisation of public assets had benefited the tycoons and consortiums rather than the general public. The privatisation policy should be reviewed. Third, the mechanism for approving retired civil servants taking up employment in the private sector should be reviewed to ensure that there would be no conflict of interests.

40. In response to the views of the representative of NCF, Dr YEUNG Sum said that DP had all along been dissatisfied with the way the Government had handled the Cyberport project. DP would follow up with the Financial Secretary on the definition of “budget” and would closely monitor the WKCD project to prevent recurrence of the problem.

41. Ir Dr Raymond HO clarified that he was not involved in writing the submission of AEPSL in which his name was mentioned. He said that if the Administration did not adopt the policies of privatisation and outsourcing, it would have difficulty in achieving the objective of reducing civil service

Action

establishment. He invited deputations to give further views on how the two policies could lead to “collusion between business and the Government”.

42. The representative of NWSC said that consortiums and tycoons were able to acquire profitable public assets through privatisation. He said that it was illogical for the Government to sell off assets that were profitable to those who were already well off. He further said that outsourcing could exploit workers as their wages were reduced after joining the company which had been awarded the contract for outsourcing. He considered that the Government could reduce the magnitude of outsourcing by streamlining its operation effectively.

43. The representative of HKFEMC said that although he supported the direction of outsourcing, he was concerned about excessive outsourcing. He said that outsourcing would not necessarily lead to higher efficiency. On the other hand, excessive outsourcing could lead to shirking of responsibilities by civil servants.

Relationship between political structure and governance

44. Mr CHEUNG Man-kwong asked HKFEMC to explain its view that “good governance is not necessarily dependent on political structure”. Mr CHEUNG said that if there was a relationship between political structure and governance, then political structure was an issue that must be dealt with in order to take forward constitutional reform. He said that the reason for CE to remain in the office in the second term despite his poor governance in the first term was that he was elected by a “small-circle” election. The people of Hong Kong had to put up with CE’s poor governance because they did not have the right to vote him down. This provided a good example of how a deficient political structure could lead to poor governance. Mr CHEUNG said that by not implementing universal suffrage in 2007 and 2008, the Government had encouraged poor governance. He advocated a change to the existing political structure to prevent continuity of poor governance.

45. The representative of HKFEMC explained that poor governance was not necessarily a direct result of political structure because the former could be a result of other factors. HKFEMC did not want to send a message to the Government that it could use the existing political structure as an excuse for poor governance. In its view, poor governance could simply be a result of poor performance of the incumbent CE and/or his team.

46. SCA said that in his view, the existing political structure provided effective governance because the Government was clean, transparent and monitored by LegCo, the media and an independent judicial system. In addition, Hong Kong was a free society where people could freely express their views on any subject. It was the hope of the Government to open up the “electoral

Action

methods” for 2007 and 2008 to provide for wider public participation and enhance its governance.

47. Dr YEUNG Sum, Mr LEE Wing-tat and Mr Albert HO held the view that there was a direct relationship between political structure and governance. Mr Albert HO pointed out that an effective political structure would provide a basis for good governance, especially in the circumstances where the society was not run by competent persons.

48. The representative of HKFEMC said that HKFEMC considered that “good governance is not necessarily dependent on political structure” because it did not have a strong view on the existing political structure. His personal view, however, might be different from that of HKFEMC. He explained that HKFEMC did not resist to changes to the political structure but had reservation about any radical changes. The main concern was that the construction industry would suffer if it could not cope with the radical changes.

Functional constituency (FC)

49. Referring to SCA’s response to the suggestion to replace corporate voting by individual voting in FC elections (paragraph 9 above), Ms Audrey EU pointed out that the suggestion would broaden the electorate base of the relevant FCs which was consistent with the principle of wider representation and balanced participation. She asked what factors SCA had to carefully consider. SCA explained that Administration had to discuss with LegCo Members as the support of a two-third majority of LegCo Members was required for implementation of any proposed changes to the electoral arrangements.

50. Ms EU invited deputations to give views on the retention of corporate votes for FCs.

51. The representative of AEPSL considered that replacing corporate votes with individual votes in FC elections would broaden the electorate size. Such a suggestion should be discussed by individual FCs which could then put forward proposals for consideration of the Task Force.

52. The representative of HKGBCA said that he supported further development of FCs. He explained that the electors of the Real Estate and Construction FC was composed of members of three umbrella associations. Each association was tasked to serve its own profession and would compete against each other at elections. The representative also queried the representativeness of the three umbrella associations and considered that the electorate of the FC could be broadened to enhance representation.

Action

53. The representative of NWSC said that he supported the abolition of FCs in the long term. In the short term, the FCs should be expanded to cover all registered voters, such as housewives, students and ethnic minorities.

54. The representative of KFA said that with FCs becoming more and more professional, consideration could be given to enhancing the development of FCs to reflect the prevailing changes. He supported that the electorate size of FCs be broadened.

55. The representative of FLWEU said that as far as the FC election was concerned, the proposal of the former Governor, Mr Christopher Patten to add nine FCs so as to expand the electorate to include almost all working persons was the only one that was more acceptable to Hong Kong people. He further said that in overseas countries where elections comparable to FC elections were adopted, the objective was for the elected candidates to represent the interest of those from the underprivileged sectors such as workers. In Hong Kong, FCs represented the privileged class and professional bodies. The representative said that he did not support the retention of FCs.

56. The representative from HKHRM said that she disagreed with SCA that FC election was consistent with ICCPR. She said that Hong Kong was one of the rare places which had FC elections. Pointing out that certain sectors such as housewives and workers were not represented by FCs, she disagreed that the design of FC embodied the principle of balanced participation. She said that the Administration should stop misleading the public by advocating that FCs could be one of the models for universal suffrage. She also urged the Administration to provide a timetable for abolishing corporate voting in FC elections, and then for abolition of FCs.

57. The representative of CHKFDG said that the proposal to increase the number of FC seats was a regression rather than a progression towards democratic development. The design of FCs and corporate voting had deprived some sectors and individuals from voting. In his view, "one person, one vote" was the fairest electoral system.

58. Mr Howard YOUNG invited deputations to give views on how to improve the existing arrangement of corporate voting in FC elections.

59. The representative of AEPSL said that as far as the Real Estate and Construction FC was concerned, the number of corporate electors could be increased to provide for wider representation. He said that AEPSL was not in a position to represent other FCs to give views on whether corporate voting should be replaced by individual voting. It was for individual FCs to discuss how democratisation should be taken forward in order to achieve the ultimate aim of universal suffrage.

Action

60. The representative of HKGBCA said that for the Real Estate and Construction FC, vote planting could easily be arranged. For example, a consortium could easily manipulate the voting result by forming a number of companies which would in turn become members of one of the umbrella associations with entitlement to vote in the FC. Improvement should be made to prevent distorted representation in this respect.

61. Dr YEUNG Sum said that given the many drawbacks of FCs, the FC system should be abolished. He said that “one person, one vote” was the answer to all these problems.

Advisory and statutory bodies (ASBs)

62. On the subject of ASBs referred to in the submission of NCF, Mr LEE Wing-tat said that since reunification, members of DP invited to serve on ASBs had reduced in number. He asked deputations to give views on the procedure for appointing persons to serve on ASBs.

63. The representative of NCF said that CE had stated in his 2005 Policy Address that the Government would engage more representatives from the middle class to join ASBs. He said that the message was not new. In fact, he had been included in the list of persons for invitation to serve on ASBs some ten years ago, yet for all these years he had not been approached by the Government. Some of his friends, however, had been appointed to serve on several ASBs at one time. He said that the Government had not been responsive to the needs of the middle class. He urged the Government to take practical measures to invite representatives from the middle class to join ASBs.

64. Mr LEE Wing-tat said that the Administration should conduct a survey to find out how many persons had multiple membership on ASBs. He said that a person who served on several ASBs was unable to spend sufficient time on each and every ASB. He urged the Administration to consider whether the system of ASBs should operate in such a way.

65. Mr Albert HO said that one of the reasons for some talents not invited to serve on ASBs was that they did not share the same view as the Administration. He said that the existing system did not allow for competition of talents to participate in the work of ASBs. He considered that the root of the problem was the system of governance and he asked whether NCF agreed to this view.

66. The representative of NCF said that the system of governance was a complicated issue and NCF needed to conduct more in-depth study before it could give views on the subject. As regards the electoral system for 2007 and 2008, NCF intended to give views to the Panel at its next special meeting.

Action

Response of the Administration

67. At the invitation of the Deputy Chairman, SCA made the following comments in response to the issues raised at the meeting –

- Adm (a) He would reflect to the Environment, Transport and Works Bureau the views of HKFEMC concerning outsourcing and the way building contracts were handled;
- Adm (b) He would reflect to the Home Affairs Bureau the views of NCF and Mr LEE Wing-tat concerning the composition of and the procedure for appointing persons to serve on ASBs;
- (c) On the issue of “collusion between business and the Government”, SCA said that allocation of land was the responsibility of the Government, and major infrastructure projects had to go through the tendering process as well as subject to the monitoring of LegCo and the media. In addition, Hong Kong was a capitalist society where fair competition and accumulation of wealth by individuals and enterprises by lawful means were allowed; and
- (d) He reiterated that local courts had ruled in 1995 that the electoral arrangements for FCs were legally in order.

68. The Deputy Chairman thanked the deputations and the Administration for attending the meeting.

69. The meeting ended at 1:25 pm.

Panel on Constitutional Affairs
Special Meeting on 15 January 2005
Summary of deputations' views on constitutional development after 2007

| Organizations/Individuals (Legislative Council Paper Nos.) | 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 |
|--|---|---|---|
| 1. Hong Kong Federation of Electrical and Mechanical Contractors (HKFEMC) (CB(2)613/04-05(01) & CB(2)681/04-05(06)) | <ul style="list-style-type: none"> • While HKFEMC has no comments on the existing political structure, it has reservations about any radical change to it. • Good governance is not necessarily dependent on the political structure. | <ul style="list-style-type: none"> • The independence of the executive, the legislature and the judiciary should be maintained. • The executive and the legislature should work together for the well being of Hong Kong. However, there is no need for an arbitrary harmonious relationship. | <ul style="list-style-type: none"> • HKFEMC expects that the Civil Service as a whole will formulate policies for the well being of the people and implement them with commitment and diligence. • While HKFEMC supports the broad direction of outsourcing government services, it cautions against excessive outsourcing and points out the danger of some civil servants using outsourcing as an excuse to evade responsibilities. |

| Organizations/Individuals (Legislative Council Paper Nos.) | 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 |
|---|--|---|--|
| 2. New Century Forum (CB(2)658/04-05(01)) | <ul style="list-style-type: none"> • The Government should improve the operation of advisory and statutory bodies (ASBs) by enhancing the representativeness of their members, setting the maximum number of ASBs a person may serve on, making public the attendance rates of their members and consulting widely the views of the public, experts and the academics in formulating policies, etc. • The Government's decision-making mechanism should be scientific in that it should be based on thorough analysis and discussion. The research capability on public policy should be enhanced within the Government and the community to ensure that policies are formulated with strong scientific justifications and public support. | <ul style="list-style-type: none"> • The Legislative Council (LegCo) should monitor more closely the progress of the initiatives set out in policy addresses. It should ask the Government to report progress and analyse the achievement made so far. • Policy addresses should set out clearly the concrete proposals and indicators for measuring performance. | <ul style="list-style-type: none"> • The Civil Service should remain politically neutral, and should not be affected by the political appointments of the Chief Executive (CE) and the principal officials (POs). |

| Organizations/Individuals (Legislative Council Paper Nos.) | 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 |
|---|---|---|---|
| | <ul style="list-style-type: none"><li data-bbox="636 352 1122 863">• The Government's research capability on public policy should be strengthened by, inter alia, setting up research teams under POs, strengthening the Central Policy Unit's role in coordination, organising seminars to collect views from various sectors and overseas experts, and publishing research findings to arouse public concern.<li data-bbox="636 911 1122 1342">• The community's research on public policy should be strengthened by, inter alia, promoting the development of think tanks in the community, setting up a joint government/non-government research institution on public policy, and publishing the research findings for the reference of the public. | | |

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|---|---|---|---|
| | <ul style="list-style-type: none">• POs should have their own supporting teams. Each team is dedicated to the work of external liaison (including liaising with LegCo), lobbying, policy coordination and policy research.• The incumbent POs are making contradictory remarks on government policies because of the lack of a tacit understanding among themselves. POs should work on a united front to promote and implement policies set by the Government.• In pursuing any constitutional reform, due consideration should be given to its impacts on the Civil Service, so as not to undermine the operation of the Government and the stability of the society. | | |

| Organizations/Individuals (Legislative Council Paper Nos.) | 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 |
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| <p>3. Mr WONG Bing-kuen Member, Kwai Tsing District Council (CB(2)645/04-05(01))</p> | <ul style="list-style-type: none"> • The leaders of the Government lack legitimacy. They formulate policies behind closed doors, and fail to grasp public sentiment. • Although directly-elected Members are supported by the general public, their power and functions are restricted by the separate voting mechanism and the electoral system of LegCo. • The conflicts mentioned above have brought about undesirable consequences such as policy failures, conflicts between the Government and the public, an unpopular Government, etc. • The solution is to implement the election of CE and LegCo Members by universal suffrage as soon as possible. | <p style="text-align: center;">—</p> | <ul style="list-style-type: none"> • The retirement age should be extended to address the problem of civil servants taking up employment in private companies immediately after retirement. • Civil servants reaching the retirement age but in good physical conditions should not be forced to retire, so as to reduce the burden on pension payment. |

| Organizations/Individuals (Legislative Council Paper Nos.) | 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 |
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| <p>4. Association of Engineering Professionals in Society Ltd. (CB(2)658/04-05(02))</p> | <ul style="list-style-type: none"> • The number of Election Committee members, i.e. 800, may be increased to enhance its representativeness. • The arrangement of corporate voting in the functional constituency (“FC”) elections should be reviewed. • The electorate base of FCs should be broadened with the view to achieving the ultimate goal of universal suffrage. • The Executive Council (“ExCo”) should continue to play an advisory role. POs may hold internal meetings to deal with administrative issues so that more competent persons and professionals can be invited to join ExCo to specifically assist in the formulation of policies. | <ul style="list-style-type: none"> • There is an urgent need to improve the relationship between the executive and the legislature. Their strained relationship and the lack of mutual trust have seriously undermined the operation of the Government. • The executive should take the initiative to improve its relationship with the legislature. | <ul style="list-style-type: none"> • There is a need to reform or even abolish the system under which only Administrative Officers will be promoted to the ruling echelon of the Government. Advancement opportunities should be opened up to competent officers of other grades. |

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| | <ul style="list-style-type: none"> Consideration should be given to expanding the functions of LegCo, such as allowing LegCo Members to introduce bills on subjects relating to people's livelihood. | | |
| 5. Kowloon Federation of Associations (CB(2)658/04-05(03)) | — | <ul style="list-style-type: none"> The tense relationship between the executive and the legislature has made it difficult for the Government to take forward its policies and has seriously undermined the credibility of the Government. LegCo panels provide a good platform for communication and debates between government officials and Members. Members should avoid making abusive remarks to | — |

| Organizations/Individuals (Legislative Council Paper Nos.) | 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 |
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| | | <p>one another so as to avoid losing public's trust in LegCo.</p> <ul style="list-style-type: none"> • The Government may study the feasibility of inviting LegCo Members to participate in policy formulation. • The Government should also review the functions and composition of ExCo. • Policy bureaux should strengthen communication with the legislature. • Concerted efforts are required for improving the relationship between the executive and the legislature. | |
| 6. | <p>Hong Kong Chinese Civil Servants' Association (CB(2)681/04-05(01))</p> <ul style="list-style-type: none"> • Irrespective of the changes to the political structure of Hong Kong, they should facilitate the Government's effective governance in accordance with | <ul style="list-style-type: none"> • The relationship between the executive and the legislature has been tense, giving rise to growing concern. | <ul style="list-style-type: none"> • The key elements underpinning the sound Civil Service system in Hong Kong include neutrality, commitment to the rule of |

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|---|---|--|---|
| | <p>the Basic Law, and the Civil Service's effective fulfilment of its role of assisting CE in his governance.</p> | <ul style="list-style-type: none"> LegCo and the Government should establish a constructive relationship in the overall interest of Hong Kong and treat each other as partners in serving the community. They should make concerted efforts to promote economic development and build a harmonious society, so as to enhance the competitiveness of Hong Kong in the face of the challenges of globalization. | <p>law, impartiality and professionalism. Among them, the most important element is neutrality, that is, political and administrative neutrality, taking the overall interest of the society as the prime consideration and being free from the influence of political parties and groups as well as commercial interests.</p> <ul style="list-style-type: none"> The adoption of certain measures by the Government in recent years has dealt a serious blow to the sound Civil Service system. The Government should formulate a modernized Civil Service system which can keep abreast of the times. |
| 7. Democratic Party (CB(2)658/04-05(04)) | <ul style="list-style-type: none"> The incumbent CE who has been elected by a "small circle" election lacks legitimacy. It is very difficult | <ul style="list-style-type: none"> Upholding of the colonial "executive-led" system by the SAR Government, coupled with the | <ul style="list-style-type: none"> The Civil Service should be politically neutral to avoid conflict of interest. |

| Organizations/Individuals (Legislative Council Paper Nos.) | 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 |
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| | <p>for a CE without a public mandate to govern the Special Administrative Region (SAR).</p> <ul style="list-style-type: none"> • Apart from impeding the development of political parties, the statutory requirement that the CE elect must relinquish his political affiliation deprives him of the public support he may obtain from his attachment with his political party, and makes it difficult for him to govern the SAR Region and implement policies. • A democratic and open political system with election by universal suffrage should be established as soon as possible to allow the public to participate in the governance of the society. Government policies formed under such a system will be more in line with the overall interest of the society. | <p>implementation of the “accountability system for POs” under which POs are not accountable to the public, are not conducive to establishing a good working relationship between the executive and legislature.</p> <ul style="list-style-type: none"> • While the legislature is returned by election and represents public opinion, the executive lacks a public mandate. The political system is imbalanced and inharmonious. • As a result of the introduction of FCs and the separate voting system, motions supported by the public are negated in the Council. | <ul style="list-style-type: none"> • With retired senior civil servants taking up senior posts in the private sector one after another after the reunification, there is growing concern that the “sanitization process” to safeguard against conflict of interest is on the verge of disintegration in the Civil Service. |

| Organizations/Individuals (Legislative Council Paper Nos.) | 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 |
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| 8. Power for Democracy (PD) (CB(2)681/04-05(02)) | <ul style="list-style-type: none"> • As both CE and LegCo are not elected by universal suffrage, they lack representativeness and legitimacy. For years the Government has not been able to grasp and respond to public opinion, which is the main reason for the failure of the Government to achieve good governance. • CE is elected by the Election Committee which is composed of only 800 members and many of them represent the consortia and tycoons. Under the circumstances, CE is not accountable to the public and collusion between business and the Government may arise. • In the absence of a clear mechanism for accountability, the accountability system cannot function properly. Moreover, there is no team spirit among the POs. | <ul style="list-style-type: none"> • As compared to the executive, the legislature undoubtedly has greater legitimacy and representativeness. • The executive-led principle of governance has given rise to unnecessary tension between the executive and legislature. • The early implementation of election of the members of ExCo, CE and LegCo Members by universal suffrage will rationalise the relationship between the executive and the legislature effectively. | — |

| Organizations/Individuals (Legislative Council Paper Nos.) | 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 |
|---|--|---|---|
| | <p>Vicious rivalries even arise as the small-circle CE election approaches. All these have caused greater confusion in the overall implementation of policies.</p> <ul style="list-style-type: none">• In the absence of a political party system, the POs are uncertain about their political prospects. In handling policy matters, they do not have any long-term goals and shirk responsibility.• FCs polarize the society and LegCo. The separate voting system makes it difficult for a consensus to be reached within LegCo. As a result, LegCo cannot exercise checks and balances on the Government.• The FC electoral system may aggravate the problem of collusion between business and the Government. | | |

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|---|---|--|--|
| | <ul style="list-style-type: none"> • The FC electoral system violates human rights in respect of universal and equal suffrage. PD casts doubts on the Government's remarks that FC elections can be regarded as a form of universal suffrage. • A democratic political system underpinned by universal and equal suffrage should be established as soon as possible. | | |
| 9. Neighbourhood and Worker's Service Centre (CB(2)681/04-05(03)) | <ul style="list-style-type: none"> • Under the executive-led system, the Government ignores public opinion. It introduces bills relating to policy reforms to LegCo for passage without conducting wide public consultation and achieving public consensus. • The LegCo's separate voting mechanism makes it difficult for Members to amend bills and make improvement to government policies. As a | — | — |

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| | <p>result, the role of Members to reflect public opinion has been greatly diminished.</p> <ul style="list-style-type: none">• The number of directly-elected seats is insufficient and should be increased to better reflect opinion of the public and monitor the implementation of government policies.• Members returned by FCs lack representativeness and their role has been reduced to that of a “gate-keeper” who helps the Government restrict amendments to bills.• District Councils (“DCs”) are advisory bodies only and their power in district administration is confined to the implementation of minor improvement projects. Moreover, a hundred-odd DC members are appointed by the Government. These factors have rendered DCs unable to assume its monitoring role on | | |

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| | <p>the Government.</p> <ul style="list-style-type: none"> The Government should respect public opinion by implementing election of CE and LegCo Members by universal suffrage in 2007 and 2008 respectively. This move can resolve social conflict and affirm legitimacy of CE and LegCo. | | |
| 10. Front Line Welfare Employees Union (FLWEU) (CB(2)681/04-05(04)) | <ul style="list-style-type: none"> On the one hand, the SAR Government is executive-led. On the other hand, only half of the LegCo Members are directly elected and the operation of LegCo faces many constraints such as those arising from the “separate voting system”. As a result, LegCo is unable to assume its role of monitoring the Government and improving governance. The election of CE by an | — | — |

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| | <p>Election Committee which is mainly composed of representatives of the business sector will give rise to collusion between business and the Government as well as the transfer of benefits from the Government to the business sector.</p> <ul style="list-style-type: none"> • The Government has not taken the rights and interests of the grass roots into account in its governance. • FLWEU supports the implementation of direct election of LegCo Members and CE by universal suffrage. | | |
| <p>11. Mr LEUNG Siu-tong Member Islands District Council (CB(2)658/04-05(05))</p> | <ul style="list-style-type: none"> • Mr LEUNG supports a political system under which the executive, the legislature and the judiciary assume separate powers while exercising checks and balances on one another. | <ul style="list-style-type: none"> • Cooperation between the executive and the legislature should be enhanced. Meetings, seminars, etc. should be held for the purpose of strengthening communication and | |

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|--|---|---|--|
| | <ul style="list-style-type: none"> • The Government should consult widely and set short-term, medium-term and long-term goals before implementing any policies. • Publicity in the media should be enhanced to promote policies. • The Government should take heed of public views, address the people's pressing needs and work for the well being of the people. | <p>narrowing differences.</p> <ul style="list-style-type: none"> • People with dissenting political views should be appointed to ExCo so as to enhance the participation of political parties. | |
| 12. Hong Kong General Building Contractors Association (HKGBCA) (CB(2)716/04-05(01)) | <ul style="list-style-type: none"> • HKGBCA is not supportive of returning all LegCo Members by direct election. In accordance with the Basic Law, improvements should be made to the existing system in a gradual and orderly manner. • The electorate base and representativeness of individual FCs should be | — | — |

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| | | | |
| 13. | Concern on Hong Kong Future Development Group (CHKFDG) | — | — |
| <ul style="list-style-type: none"> • broadened and the number of seats should be increased. • The major cause of the growing social conflict and polarization is that CE does not have the mandate of the people and the Government lacks legitimacy. CHKFDG supports the election of CE, LegCo Members and the deputies of the Region to the National People's Congress by universal suffrage, so as to enhance their legitimacy and reduce conflicts. • Under the existing political system, LegCo cannot fully discharge its functions of representing public opinion and monitoring the implementation of government policies, and the rights and interests of the grass roots as well as the demands of the middle class are being ignored. • Members returned by FCs lack | | | |

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|---|--|---|---|
| | <p>legitimacy and this form of election may lead to collusion between the business and the Government.</p> <ul style="list-style-type: none">• The separate voting system cripples the function of LegCo to reflect public opinion and leads to social division.• CHKFDG is against the adoption of the proportional representation electoral system and supports the adoption of the “single seat, single vote” electoral system.• Upon the implementation of the election of CE by universal suffrage, ExCo should operate as a cabinet, so as to strengthen its governing role.• The Group supports the implementation of election of CE and LegCo Members by universal suffrage in 2007 and | | |

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| | <p>2008 respectively.</p> <ul style="list-style-type: none"> • A political party law should be introduced and more political talents should be groomed. • The appointed membership of DC members should be abolished. | | |
| <p>14. Hong Kong Human Rights Monitor (CB(2)681/04-05(05))</p> | <ul style="list-style-type: none"> • As CE is elected by the Election Committee which is composed of only 800 members, he lacks legitimacy and hence is unable to grasp public opinion. • The accountability system is unsuccessful. There is a lack of coordination and communication among POs. • The existence of FCs, the separate voting system of LegCo and the undue restrictions on the introduction of private bills by Members have seriously undermined the | <ul style="list-style-type: none"> • The Government encounters great difficulties in introducing new policies because of the imbalance of power and legitimacy between the executive and the legislature. | |

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| | <p>representativeness of LegCo.</p> <ul style="list-style-type: none">• The FC electoral system violates the International Covenant on Civil and Political Rights.• The FC electoral system should be abolished and all LegCo Members should be elected by universal suffrage.• To enhance his representativeness, CE should be elected by universal suffrage. There should not be any restriction on the nomination for CE.• A greater degree of democracy should be allowed to facilitate the development of political parties, which in turn will help address the problems of the lack of political experience of CE and poor communication and incoordination among POs. | | |

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| | <ul style="list-style-type: none"><li data-bbox="636 395 1133 624">• The Basic Law should be amended to remove the restrictions on the introduction of private bills, so as to enable LegCo to monitor the Government. | | |