

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

**Subcommittee to Study the Administration's Proposals
for the Methods for Selecting the Chief Executive in 2007
and for Forming the Legislative Council in 2008**

**Minutes of the fifth meeting
held on Tuesday, 15 November 2005 at 4:30 pm
in the Chamber of the Legislative Council Building**

Members present :

- Hon TAM Yiu-chung, GBS, JP (Chairman)
- Hon Howard YOUNG, SBS, 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
- Dr Hon LUI Ming-wah, SBS, 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, SBS, JP
- Hon LEUNG Yiu-chung
- Dr Hon Philip WONG Yu-hong, GBS
- Hon WONG Yung-kan, JP
- Hon Jasper TSANG Yok-sing, GBS, JP
- Dr Hon YEUNG Sum
- Hon LAU Kong-wah, JP
- Hon LAU Wong-fat, GBM, GBS, JP
- Hon Miriam LAU Kin-ye, GBS, JP
- Hon Emily LAU Wai-hing, JP
- Hon CHOY So-yuk, JP
- Hon Abraham SHEK Lai-him, JP
- Hon LI Fung-ying, BBS, JP
- 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 LI Kwok-ying, MH
Hon Daniel LAM Wai-keung, BBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon MA Lik, GBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Patrick LAU Sau-shing, SBS, JP
Hon KWONG Chi-kin

- Members absent** : Dr Hon David LI Kwok-po, GBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon SIN Chung-kai, JP
Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon TAM Heung-man
- Public Officers attending** : Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs
- Ms Elsie LEUNG Oi-sie
Member, Constitutional Development Task Force
- Mr Raymond TAM Chi-yuen
Principal Assistant Secretary for Constitutional Affairs
- Clerk in attendance** : Mrs Percy MA
Chief Council Secretary (2)3
- Staff in attendance** : Mr Jimmy MA
Legal Adviser

Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Opinion polls on constitutional development

(Question (e) of LC Paper No. CB(2)283/05-06(01) – Paper provided by the Administration in response to the issues raised by the Panel on Constitutional Affairs at the special meeting on 21 October 2005

LC Paper No. CB(2)345/05-06(04) – Paper provided by the Administration on "The Administration's responses to different opinion polls on constitutional development conducted in the community")

Opinion poll commissioned by the Central Policy Unit in September 2005

Dr Fernando CHEUNG declared that he was a teaching staff of the Department of Applied Social Sciences of the Hong Kong Polytechnic University (PolyU) and was affiliated with the Department's Centre for Social Policy Studies, which was commissioned by the Constitutional Development Task Force (the Task Force), through the Central Policy Unit (CPU), to conduct an opinion poll in September 2005. However, he told the meeting that he had not taken part in the Centre's work on the opinion poll.

2. Members noted that the Task Force and CPU were responsible for the design of the questionnaire of the poll whereas PolyU the execution of the poll such as sample selection, fieldwork and data analysis. Quoting from an article in the Hong Kong Economic Journal by Dr Robert CHUNG Ting-yiu, Director of Public Opinion Programme of the University of Hong Kong, Mr LEE Wing-tat and Dr Fernando CHUENG pointed out that in order to ensure the objectivity and independence of an opinion poll, its entire process, including the design of the questionnaire, should be undertaken by an independent agency. Dr YEUNG Sum and Mr LEE Wing-tat remarked that the design of the questionnaire played a pivotal role in an opinion poll as it could affect the results of the poll.

3. As the questionnaire of the poll conducted by PolyU was not designed by an independent agency, some members, including Dr YEUNG Sum, Mr LEE Wing-tat

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and Mr CHEUNG Man-kwong, considered that the objectivity and independence of the poll were questionable. They said that when the Administration announced the results of the poll, it had not explained clearly to the public that the questionnaire was designed by the Task Force and CPU and had tried to foster the impression that the poll was conducted independently by an academic institution. They considered that the Administration had been misleading the public about the results of the poll.

4. Secretary for Constitutional Affairs (SCA) explained that the objective of the poll was to ascertain the level of public support for and acceptance of the major elements of the package of proposals for the methods for selecting the Chief Executive (CE) and for forming the Legislative Council (LegCo) (the “two methods”) to be put forward by the Task Force, and the questionnaire was designed with this objective in mind. He advised that some members of CPU were academics with relevant expertise in questionnaire design and the Administration had endeavoured to ensure objectivity in the process. He further informed members that the responsibilities of PolyU in the opinion poll were clearly stated in the Introduction of Appendix IV to the Fifth Report, and that the Administration had not hidden from the public the fact that the questionnaire was designed by the Task Force and CPU.

5. Mr Albert HO pointed out that the questions in the questionnaire were leading questions, which raised doubts on the objectivity of the poll. In response to Mr HO, SCA explained that respondents of the poll were specifically asked whether they agreed with the proposals that the number of Election Committee (EC) members and the number of seats in LegCo be increased to 1600 and 70 respectively, and not any other numbers, because the Task Force had received many views which suggested such increases during the consultation period. He reiterated that the questionnaire was designed to ascertain the public’s acceptance for the major elements of the package of proposals set out in the Fifth Report.

6. Mr LEE Wing-tat, Mr CHEUNG Man-kwong and Mr Albert HO criticized that the public was not consulted on the timetable for attaining universal suffrage in the questionnaire. SCA responded that the poll was intended to ascertain the level of public support for the proposed package for electing CE in 2007 and for forming LegCo in 2008. As the Standing Committee of the National People’s Congress (NPCSC) had decided in April 2004 that the two elections should not be by means of universal suffrage, no question was asked in the poll on the issue of universal suffrage.

Opinion polls conducted in the community

7. SCA briefed members on the paper which set out the Administration’s responses to opinion polls conducted recently by individual academic and media organizations on the proposed package. He said that while it was difficult to compare these polls because their focus of study, methodology and sampling size varied, the Administration had two major observations. First, the public’s general response to the proposed package was positive and constructive. By way of illustration, he cited the poll conducted by the Chinese University of Hong Kong

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(CUHK) during the period from 25 to 29 October 2005 which showed that 58.8% of the respondents accepted the proposed package. Second, there was public expectation for a timetable for attaining universal suffrage.

Timetable for universal suffrage

8. Referring to the poll conducted by CUHK, Ms Margaret NG and Dr Fernando CHEUNG pointed out that among those who accepted the proposed package, only 32.8% did so gladly, while 36.8% without much feeling and 27.7% with reluctance. Also, 65% of the respondents considered that the Government must immediately set a timetable for attaining universal suffrage. In the light of these findings, Ms Margaret NG asked whether the Administration would consider amending the proposals, such as inserting a timetable and a road map for universal suffrage, so that more people would support the proposals whole-heartedly.

9. SCA said that he noted that the public had shown different degrees of acceptance for the proposals. While the proposed package was not perfect, the Administration had tried its best to find a point of balance and formulate the best possible package to maximize the democratic elements within the framework laid down by the Basic Law and the NPCSC Decision. The Administration also recognized the public expectation for a timetable for attaining universal suffrage. However, the community must first of all have thorough discussion on the model for the political structure after the implementation of universal suffrage, and supporting measures on many fronts were also required for introducing universal suffrage. To make the necessary preparations, the Chief Executive had tasked the Committee on Governance and Political Development (CGPD) under the Commission on Strategic Development (CSD) to study the issue of universal suffrage.

10. Mr CHEUNG Man-kwong said that most of the members of CGPD were pro-Government and doubted whether it could truly reflect the public's aspiration for universal suffrage.

11. SCA responded that members of CSD were drawn from a broad cross section of the community. Its membership also included people from different political parties, including the Democratic Party. He was confident that different views would be duly reflected during the discussions of CSD.

12. Responding to SCA's comment that at present there was no consensus on the issue of universal suffrage, Mr Martin LEE and Mr Albert HO said that in fact back in 2000 all the political parties had reached a consensus on implementing universal suffrage in 2007/08. Mr LEE urged the Administration to include in the proposed package a timetable for universal suffrage so that constitutional development could progress towards this common goal.

13. SCA said that formulating a package which would gain the support of two-thirds majority of all LegCo Members was no easy task. The proposed package

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was arrived at after 18 months of wide consultation with different sectors of the community and represented substantive progress in constitutional development within the framework laid down by the Basic Law and the NPCSC Decision. He stressed that the proposed package should be handled separately from the issue of a timetable for universal suffrage. Ms Elsie LEUNG, Member of the Task Force, echoed SCA's view that in accordance with the NPCSC Decision, the proposed package should only relate to electoral arrangements in 2007/08.

14. Dr YEUNG Sum, however, disagreed. He said that the NPCSC Decision had not precluded making electoral arrangements beyond the 2007/08 elections, such as setting a timetable for universal suffrage. In his view, the results of the opinion polls conducted in the community showed clearly that there was consensus on setting a timetable for universal suffrage and the Administration should submit another report to the Central Authorities to reflect these views.

The "two methods" after 2007/08

15. In response to the comments of SCA and Ms Elsie LEUNG concerning the scope of the proposed package, Ms Audrey EU and Ms Margaret NG pointed out that the two draft motions in Annexes B and C of the Fifth Report were only for the purpose of effecting amendments to the composition of EC to elect the third term CE in 2007 and the composition of the fourth term LegCo in 2008, and not their composition thereafter. That being so, if the two motions were endorsed, they requested the Administration to clarify what would be the electoral arrangements in 2012 if no consensus could be reached on the "two methods" by then.

16. SCA advised that if the two motions were carried, the electoral arrangements in 2012 would be determined in accordance with Article 7 of Annex I and Article III of Annex II to the Basic Law. If a consensus on the "two methods" in 2012 could not be reached by the three parties, the electoral arrangements for 2007/08 would be adopted. Ms Elsie LEUNG supplemented that clause 4 of the NPCSC Interpretation had stipulated that if no amendment was made to the "two methods", the relevant provisions of Annex I and Annex II to the Basic Law would still be applicable to the "two methods". As for the electoral arrangements in 2012, pursuant to clause 3 of the NPCSC Interpretation, CE would submit a report to NPCSC in the light of the actual situation of Hong Kong and a decision would then be made on the relevant arrangements to be adopted for the two elections.

17. Ms Margaret NG did not subscribe to the view of SCA that the electoral arrangements for 2007/08 could be adopted in 2012 if the two motions were carried. She pointed out that the two motions were worded in such a manner that they would only apply to the two elections in 2007/08. Ms Elsie LEUNG said that the Administration would provide a written response to clarify the matter.

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(Post-meeting note : The written response from the Administration was issued vide LC paper No. CB(2)434/05-06(01) on 18 November 2005.)

Remainder term

18. Ms Audrey EU requested the Administration to explain why the provision regarding the term of office of CE elected by EC under paragraph 2 of BL 53 (the “remainder of the term” provision) was included in the (Draft) Amendment to Annex I to the Basic Law, which dealt with the composition of EC to elect the third term CE in 2007. As the Administration had advised that proposed package only concerned electoral arrangements in 2007/08, she also asked whether the ‘remainder of the term’ provision would only apply to the third term CE elected in 2007 and not to CEs of subsequent terms.

19. Ms Elsie LEUNG explained that the “remainder of the term” provision was placed in the (Draft) Amendment to Annex I to clarify, in the event that the office of the third term CE became vacant during the term, that –

- (a) the term of office of the new CE elected under BL 53(2) shall be the remainder of the term of the preceding CE; and
- (b) the new CE might only serve for one more term after expiry of the term.

Conducting another opinion poll/a referendum

20. As the opinion poll commissioned by CPU was conducted before the release of the Fifth report and there was no in-depth discussion in the community on the subject then, some members, including Mr LEE Wing-tat, Ms Margaret NG, Mr CHEUNG Man-kwong and Mr LEUNG Kwok-hung, requested that the Administration should conduct another independent opinion poll or a referendum to ascertain the public’s views on the Fifth Report as well as the issue of timetable for universal suffrage.

21. SCA responded that the Administration had noted the findings of different opinion polls conducted in the community after the release of the Fifth Report, and would continue to monitor the feedback from the community. As for the suggestion of holding a referendum, he said that the decision on the proposed package would be made in accordance with the established mechanism set out in Annexes I and II to the Basic Law and that a referendum would not be held on the matter.

22. Mr LEUNG Kwok-hung believed that a referendum should be held as it was more representative of public views than opinion polls. Mr LEUNG further said that the right of citizens to take part in public affairs, as provided in the International Covenant on Civil and Political Rights (ICCPR), was enshrined in Article 39 of the Basic Law (BL 39). He asked whether the Administration had, since the handover, taken steps to introduce a system for holding referendums on important public issues, through local legislation.

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23. SCA replied that the Administration was well aware that under BL 39, the provisions of ICCPR as applied to Hong Kong would remain in force. He emphasized that democratic development in Hong Kong would be taken forward in accordance with BL 45, BL 68, and Annexes I and II to BL. Ms Elsie LEUNG supplemented that ICCPR did not require its signatories to adopt one particular form of political system, and that pursuant to BL 11, all electoral arrangements in Hong Kong must be in line with BL.

24. Mr CHEUNG Man-kwong and Mr LAU Kong-wah enquired whether the Administration had conducted any opinion poll on the Fifth Report after its release and if so, what were the results of such poll(s). SCA replied that so far the poll conducted by PolyU was the only comprehensive poll commissioned by the Administration which focused specifically on electoral arrangements in 2007/08 as set out in the Fifth Report. Any other surveys carried out by CPU were only meant for the internal reference of the Administration.

A revised package of proposals

25. Mr LAU Kong-wah pointed out that different opinion polls conducted in the community after the release of the Fifth Report had consistently shown that the majority of the general public accepted the proposed package and favoured the idea of setting up a timetable for universal suffrage. The mainstream view was that constitutional development should be taken forward in two stages. The first stage would focus on electoral arrangements in 2007/08. The second stage would discuss how to implement universal suffrage. He said that despite this general support for the proposed package, there were rumours that the Administration would put forward a revised package of proposals and/or defer the presentation of the two motions to February 2006. He asked whether this was the case and if so, whether the Administration had assessed how the general public, in particular supporters of the proposed package, would react to such moves on the part of the Administration.

26. SCA replied that the package of proposal as set out in the Fifth Report was the only package approved by the Executive Council. He said that if the presentation of the two motions was deferred to February 2006, there would not be sufficient time to work on the necessary legislative amendments to the Chief Executive Election Ordinance. As different opinion polls had shown that some 50% of Hong Kong people accepted the proposed package, the Administration reckoned that there was a basis for continuing discussions on the current proposals. He reiterated that the Administration would keep on monitoring public opinions on the proposed package.

27. Mr Martin LEE asked whether the Administration had the responsibility to put forward a new package if the current one was negated by LegCo. SCA replied that the Administration would do its best to garner the support of LegCo on the proposed package. If it was not endorsed by LegCo, in accordance with the NPCSC Interpretation of April 2004, the provisions in Annex I and Annex II to BL relating to the "two methods" would still be applicable. Mr LEE responded that the

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Administration, rather than the pan-democratic Members, should then bear the responsibility for the stagnant constitutional development in Hong Kong. Mr LEE further said that it would be contrary to the principle of gradual and orderly progress laid down in BL if constitutional development remained at a standstill.

Functional constituencies

28. Mr CHIM Pui-chung expressed dissatisfaction that the Administration had incited members of the functional constituency (FC) represented by him to exert pressure on him to support the Administration's proposals. Mr CHEUNG Man-kwong asked how many policy secretaries had tried to incite electors of FCs to conduct opinion polls with a view to influencing the stance of the respective LegCo FC Members on the proposed package. Ms Emily LAU asked whether it was the Administration's policy to do so, and whether any incentives had been provided to the FCs for this purpose.

29. SCA clarified that he and the Secretary for Financial Services and the Treasury had recently been invited to attend a seminar held by electors of the Financial Services FC. They had taken the opportunity to explain the proposed package to electors of the FC. He further said that the policy secretaries had indeed contacted various FCs, including the Accountancy FC, for the purpose of explaining the proposed package to them. The Administration had not given any incentives to the FCs to gain their support for the proposed package. He stressed that it was up to individual FCs and LegCo FC Members to decide on their stance on the proposed package and whether to conduct any opinion poll on it.

30. Mr LEUNG Kwok-hung commented that the FC system was prone to threats and manipulations because it was the outcome of small-circle elections. Mr LEE Cheuk-yan said that LegCo Members returned by FCs would be a strong opposition to the introduction of universal suffrage. To attain universal suffrage, FC seats should be decreased while seats returned by Geographical Constituencies through direct elections increased. However, increasing the number of FC seats to 35 as proposed under the current package would make it even more difficult for the FC system to be abolished in future.

31. SCA expressed disagreement with Mr LEE. He said that the newly-added FC seats would be returned through election by District Council members from among themselves. Close to 60% of all LegCo seats would be elected directly or indirectly by over 3 million voters.

Commission on Strategic Development

32. Ms Margaret NG asked whether the Subcommittee would invite members of CGPD to attend its meetings. The Chairman suggested that it would be a simpler arrangement to request CGPD to provide their discussion papers to the Subcommittee for reference. SCA said that the papers of CGPD would be made public and would

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be provided to the Subcommittee if so requested. Ms NG also asked how the work of CGPD would dovetail with that of the Subcommittee and the Panel on Constitutional Affairs. The Chairman suggested that this issue be discussed at a later stage as CGPD had not yet convened its first meeting and its papers were not yet available.

33. In response to Mr CHIM Pui-chung, SCA clarified that CSD was a consultative body, rather than an organ vested with decision-making power, and the work undertaken by CSD would not in any way contravene BL.

II. Date of next meeting

34. Members noted that the next meeting to be held on 19 November 2005 was originally scheduled for receiving deputations. As the Subcommittee had already met with all the deputations at the meeting on 12 November 2005, members agreed that the Subcommittee should continue its discussion with the Administration at the meeting on 19 November 2005. Members also agreed that the meeting should be held at 9:00 am instead of 2:00 pm.

35. The meeting ended at 6:36 pm.

Council Business Division 2
Legislative Council Secretariat
18 April 2006