

Legislative Council House Committee
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

Views of the Central Authorities on the Constitutional Development
of the Hong Kong Special Administrative Region

Introduction

At its meeting on 4 November 2005, the Subcommittee to Study the Administration's Proposals for the Methods for Selecting the Chief Executive ("CE") in 2007 and for Forming the Legislative Council ("LegCo") in 2008 of the House Committee of the LegCo ("the Subcommittee") requested the Administration to prepare a paper on the views of the Central Authorities on the opinions of the Hong Kong community on constitutional development.

2. This paper sets out the views of the Central Authorities on the opinions of the Hong Kong community on constitutional development by reference to relevant documents.

The Basic Law

3. Upon its resumption of the exercise of sovereignty over Hong Kong, the People's Republic of China established the Hong Kong Special Administrative Region ("HKSAR") in accordance with the Constitution and, in accordance with the basic policies of "one country, two systems" and "Hong Kong people ruling Hong Kong with a high degree of autonomy", enacted the Basic Law to prescribe the systems to be practised in the SAR, including the political system.

4. In submitting the Basic Law (Draft) and related documents at the Third Session of the Seventh National People's Congress on 28 March 1990, Director JI Pengfei said that "the political structure of the HKSAR should accord with the principle of 'one country, two systems' and aim to maintain stability and prosperity in Hong Kong in line with its legal status and actual situation. To this end, consideration must be given to the interests of the different sectors of society and the structure must facilitate the development of the capitalist economy in the Region. While the part of the existing political structure proven to be effective will be maintained, a democratic system that suits Hong Kong's reality should gradually be introduced."

5. The political system of the HKSAR is stipulated in detail in Chapter IV of the Basic Law and the relevant Annexes. Article 45 of the Basic Law stipulates that "the CE of the HKSAR shall be selected by election or through consultations held locally and be appointed by the Central People's Government. The method for selecting the CE shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures." Article 68 of the Basic Law stipulates that "the LegCo of the HKSAR shall be constituted by election. The method for forming the LegCo shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the LegCo by universal suffrage."

6. In the process of drawing up the Basic Law, the Central Authorities conducted broad consultation in Hong Kong. According to the Explanations provided by Mr JI on 28 March 1990, "[t]he work of drafting the Basic Law was completed with the close attention and broad participation of the entire nation, especially the compatriots and people from all circles in Hong Kong. What is especially noteworthy here is that the Hong Kong Basic Law Consultative Committee, formed by people from all walks of life in Hong Kong, collected a great amount of opinions and suggestions in Hong Kong on the Basic Law and promptly referred them to the Drafting Committee and has rendered active and effective assistance to the work of drafting the Basic Law from the very beginning."

The Interpretation by the Standing Committee of the National People's Congress

7. The Standing Committee of the National People's Congress ("NPCSC") made an interpretation of Article 7 of Annex I and Article III of Annex II to the Basic Law on 6 April 2004. Paragraph 3 of the Interpretation states that the CE of the HKSAR shall make a report to the NPCSC as regards whether there is a need to amend the methods for selecting the CE and the method for forming LegCo and its procedures for voting on bills and motions; and the NPCSC shall, in accordance with the provisions of Articles 45 and 68 of the Basic Law of the HKSAR of the People's Republic of China, make a determination in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. In the Explanatory Note on the Interpretation, Mr LI Fei, Vice Chairman of the Legislative Affairs Commission of the NPCSC, stated that "[t]he development of the political structure of Hong Kong involves the relationship between the Central Authorities and the SAR, and must progress within the framework of the Hong Kong Basic Law. Amendments to the method for selecting the CE and the method for forming the LegCo are important questions for the development of the political structure of Hong Kong. The decision as to whether any amendment is needed and how the amendment is to be made rests with the Central Authorities. This is an extremely important principle established by the Constitution and the Hong Kong Basic Law, and is inherent in the policy of 'one county, two systems'".

The Decision by the NPCSC

8. On 15 April 2004, the Constitutional Development Task Force published its Second Report on the issues of principle in the Basic Law relating to constitutional development. The Report set out in detail the views received by the Task Force from the community on these issues of principle, the observations of the Task Force on the actual situation of the SAR at present, as well as the views of the Task Force on issues of principle relating to constitutional development. The Task Force also recommended that the CE should, in accordance with the Interpretation promulgated by the NPCSC on 6 April 2004, submit a report to the NPCSC, recommending that the methods for selecting the CE and for forming the LegCo be amended, and requesting the

NPCSC to make a determination to that effect in accordance with the relevant provisions and principles in the Basic Law. The CE endorsed the recommendations of the Task Force and submitted a report to the NPCSC on 15 April 2004.

9. The NPCSC convened its Ninth Session on 25 and 26 April 2004 and examined the "Report on whether there is a need to amend the methods for selecting the CE of the HKSAR in 2007 and for forming the LegCo of the HKSAR in 2008" submitted by the CE. Pursuant to the relevant provisions of the Basic Law and the Interpretation, the NPCSC endorsed the "Decision of the NPCSC on issues relating to the methods for selecting the CE of the HKSAR in the year 2007 and for forming the LegCo of the HKSAR in the year 2008" ("the Decision") and promulgated it on 26 April 2004.

10. The NPCSC mentioned in the Decision that, before adopting the Decision, it had consulted the Constitutional Development Task Force and different sectors of the community in Hong Kong. In the course of its deliberation, the NPCSC was fully aware of the concern of the Hong Kong community on the methods for selecting the CE and for forming the LegCo after 2007, including the views of some bodies and people that they wished to see the selection of the CE by universal suffrage in 2007 and the election of all the members of LegCo by universal suffrage in 2008.

11. The Decision mentioned that any change relating to the methods for selecting the CE and for forming the LegCo should conform to principles such as being compatible with the social, economic, political development of Hong Kong, being conducive to the balanced participation of all sectors and groups of the community, being conducive to the effective operation of the executive-led system, and being conducive to the maintenance of the long-term prosperity and stability of Hong Kong.

12. The Decision also mentioned that "Hong Kong does not have a long history of practicing democratic elections. Until now, Hong Kong residents have exercised the democratic right to participate in the selection of the CE of the SAR for less than 7 years. Since the reunification of Hong Kong with the motherland, the number of members of LegCo returned by geographical constituencies through direct elections has already substantially increased. When the set-up is such that half of the members are returned by geographical constituencies through direct elections and half of the members are returned by functional constituencies, the impact on the operation of the Hong Kong society as a whole, especially the impact on the executive-led system, remains to be examined through practice. Further, at present, different sectors of the Hong Kong society still have considerable differences on how to determine the methods for selecting the CE and for forming the LegCo after the year 2007 and have not come to a broad consensus. In the circumstances, conditions do not exist for the selection of the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures as provided for in Article 45 of the Hong Kong Basic Law and the election of all the members of the LegCo by universal suffrage as provided for in Article 68 of the Hong Kong Basic Law."

13. Mr QIAO Xiaoyang, Deputy Secretary-General of the NPCSC, came to Hong Kong on 26 April 2004 to attend a seminar on constitutional development. In the seminar, he made a speech entitled "Finding the right path for the constitutional development in Hong Kong" and explained his understanding of the Decision by the NPCSC. Mr QIAO emphasized in his speech that the promotion of progressive development of democracy in Hong Kong had been a consistent policy of the Central Authorities; it was an obligation under the principle of "Hong Kong people ruling Hong Kong with a high degree of autonomy". It was also an essential spirit of the Basic Law. Furthermore, constitutional development in Hong Kong should be taken forward within the parameters laid down by the Basic Law, in the light of the actual situation of Hong Kong and in a gradual and orderly manner.

14. The NPCSC reiterated in the Decision that developing democracy in the HKSAR in the light of the actual situation and in a gradual and orderly manner according to the provisions of the Basic Law had all along been the resolute and firm stance of the Central Authorities. With the development and progress in all aspects of the Hong Kong community and through the joint endeavours of the Government of the HKSAR and Hong Kong residents, the democratic system of the HKSAR would certainly be able to progress forward incessantly, and ultimately attain the aims of selecting the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures and electing all the members of the LegCo by universal suffrage provided for in the Basic Law.

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