

立法會
Legislative Council

LC Paper No. CB(2)1968/05-06
(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 20 March 2006 at 2:30 pm
in the Chamber of the Legislative Council Building

Members present :

- Dr Hon LUI Ming-wah, SBS, JP (Chairman)
- Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)
- Hon James TIEN Pei-chun, GBS, JP
- Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
- Hon LEE Cheuk-yan
- Dr Hon David LI Kwok-po, GBS, JP
- Hon Margaret NG
- Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
- Hon CHEUNG Man-kwong
- Hon Bernard CHAN, JP
- Hon CHAN Kam-lam, SBS, JP
- Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
- Hon LEUNG Yiu-chung
- Dr Hon Philip WONG Yu-hong, GBS
- Hon Howard YOUNG, SBS, JP
- Dr Hon YEUNG Sum
- Hon LAU Wong-fat, GBM, GBS, JP
- Hon Miriam LAU Kin-ye, GBS, JP
- Hon CHOY So-yuk, JP
- Hon Timothy FOK Tsun-ting, GBS, JP
- Hon TAM Yiu-chung, GBS, JP
- Hon LI Fung-ying, BBS, JP
- Hon Audrey EU Yuet-mee, SC, JP
- Hon LEE Wing-tat
- Hon MA Lik, GBS, 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 Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Patrick LAU Sau-shing, SBS, JP
Hon KWONG Chi-kin
Hon TAM Heung-man

**Members
absent** : Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon WONG Yung-kan, JP
Hon LAU Chin-shek, JP
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP
Hon Daniel LAM Wai-keung, BBS, JP
Dr Hon Fernando CHEUNG Chiu-hung

**Public Officers
attending** : Item IV

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Gary POON Wai-wing
Principal Assistant Secretary for Constitutional Affairs

Mr LAM Man-ho
Chief Electoral Officer
Registration & Electoral Office

Item V

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Ms Joyce HO Kwok-shan
Principal Assistant Secretary for Constitutional Affairs

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

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

Ms Elyssa WONG
Deputy Head, Research and Library Services Division

Mr CHAU Pak-kwan
Research Officer 5

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Confirmation of minutes of meeting

(LC Paper No. CB(2)1398/05-06 – Minutes of meeting on 16 January 2006)

The minutes of the meeting held on 16 January 2006 were confirmed.

II. Information papers issued since the last meeting

2. Members noted that the following papers had been issued since the last meeting –

(a) LC Paper No. CB(2)1171/05-06(01) – Information paper provided by the Administration on "Overseas practices regarding electoral arrangements in the event that only one candidate is validly nominated in an election"; and

(b) LC Paper No. CB(2)1191/05-06(01) – Letter dated 20 February 2006 from Dr Hon YEUNG Sum concerning the Democratic Party's proposed issues relating to the implementation of universal suffrage for discussion by the Panel.

III. Items for discussion at the next meeting

(LC Paper No. CB(2)1400/05-06(01) – List of outstanding items for discussion

LC Paper No. CB(2)1400/05-06(02) – List of follow-up actions)

3. The Chairman invited members to give views on the items for discussion at the next meeting to be held on 21 April 2006 from 8:30 am to 10:30 am.

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4. Secretary for Constitutional Affairs (SCA) said that the Home Affairs Bureau was making preparation for the review of the District Councils (DCs) and hoped, if possible, to release the consultation document at the end of April. In this connection, the issue was unlikely to be ready for discussion at the next Panel meeting. SCA suggested that the proposal on a financial assistance scheme for candidates in DC elections be discussed at the next meeting. Members agreed.

5. Referring to the five issues relating to universal suffrage proposed by the Democratic Party for discussion by the Panel, members agreed to discuss the following issues –

- (a) method for selecting CE by universal suffrage; and
- (b) review of the Chief Executive Election Ordinance (CEEEO).

IV. Amendments to subsidiary legislation for 2006 Election Committee Subsector Elections

(LC Paper No. CB(2)1400/05-06(03) – Paper provided by the Administration on "Amendments to subsidiary legislation for the 2006 Election Committee Subsector Elections")

6. Chief Electoral Officer of the Registration & Electoral Office (CEO) introduced the paper which set out the scope of amendments proposed to be made by the Electoral Affairs Commission (EAC) to the subsidiary legislation under the EAC Ordinance to prepare for the coming Election Committee (EC) subsector elections to be held in December 2006.

7. Mr Ronny TONG asked whether amendments would be made to the subsidiary legislation under the EAC Ordinance to provide that, if a person was no longer a member of DCs, or a Hong Kong member of the National Committee of the Chinese People's Political Consultative Conference (CPPCC), or the Chairman, a Vice-Chairman or a Councillor of the Full Council of the Heung Yee Kuk (HYK), should cease to be a member of EC.

8. SCA explained that the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Bill 2006 (the Bill), which was introduced into LegCo on 8 March 2006, proposed to add a new section to provide that if a person ceased to be a member of DC, a Hong Kong member of the National Committee of CPPCC, or a Chairman, Vice-Chairman or a Councillor of the Full Council of HYK, he would not be qualified to be nominated as a candidate at an election of the respective EC subsectors, or be elected as a member of the respective subsectors. Consequential to this amendment, the relevant subsidiary legislation under the EAC Ordinance would need to be amended correspondingly to require the Returning Officer to take into

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account the new section when deciding whether a nomination was valid.

9. Mr Ronny TONG asked (a) if an EC member was disqualified under the new provision at a time very close to the CE election, whether it would be practical or meaningful to conduct a subsector by-election to fill such vacancy; and (b) if such vacancy in the EC came up two or three years before the CE election, whether the subsector by-election would take place immediately or at a time nearer to the CE election.

10. SCA explained that section 10(2) of CEEO provided that if CE died or the Central People's Government (CPG) removed CE from the office in accordance with the Basic Law, the date of the poll at an election to return a candidate for appointment to fill the vacancy of CE had to be conducted on the 120th day after the date on which the office became vacant if it was a Sunday; or if not, the Sunday immediately following that day. SCA affirmed that under CEEO, an EC subsector by-election would be conducted to fill vacancies in the EC only before the EC elected a candidate to fill the vacancy of CE under such circumstances. The Administration would ensure that any EC subsector by-election required would be conducted in time within the 120-day period to fill any such vacancy in the EC, in order that a poll would be held on the day to return a CE in accordance with the statutory requirement.

11. Mr MALik said the term “香港地區委員 (a Hong Kong member)” of the National Committee of CPPCC was unfamiliar to him. SCA explained that the term was used in CEEO to define the constituents of the CPPCC subsector.

12. Mr James TIEN asked about the commencement and end dates of the term of the new EC. SCA said that the Bill proposed that the EC should be constituted on 1 February in the year in which the term of office of CE was to expire. The EC subsector elections would be held in December of the preceding year. Subject to the passage of the Bill, the next term of EC would commence on 1 February 2007 and end on 31 January 2012. The polling of the third term CE election would be held on 25 March 2007, which meant that there was about seven weeks' lead time for nomination and canvassing.

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13. In further response to Mr James TIEN, SCA said that the Administration would give a written response on whether Hong Kong members of committees under CPPCC were eligible to be registered as voters of the CPPCC subsector of EC.

(Post-meeting note : The Administration's response was issued to members vide LC Paper No. CB(2)1595/05-06 on 30 March 2006.)

14. Mr Howard YOUNG asked whether the principle governing substantial connection applicable to DC, CPPCC and HYK subsectors of EC would also apply to other EC subsectors. SCA explained that the Bill proposed that only

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persons who were members of DC, Hong Kong members of the National Committee of CPPCC, or the Chairman, Vice-Chairman or a Councillor of the Full Council of HYK could be members of the respective EC subsectors, and that when they ceased to hold such positions, they would also cease to be members of the respective EC subsectors. As regards other EC subsectors, the principle of substantial connection would continue to apply, and persons were eligible to remain as “voters” of certain subsectors if they maintained substantial connection with their respective subsectors.

15. Members present at the meeting raised no objection to the legislative proposal. SCA informed members that after the passage of the Bill, the relevant amendment regulations would, subject to approval by EAC, be published in the Gazette and tabled in the Council for vetting in May 2006. Hopefully, the vetting procedure could be completed by July 2006, so as to allow sufficient lead time for EAC and the Registration and Electoral Office to prepare for the EC subsector elections in December 2006.

V. Methods for electing the head of state/government and members of legislature in some foreign countries

(IN19/05-06 – Information Note on "Summary of Electoral Systems in Selected Places" prepared by the Research and Library Services Division

LC Paper No. CB(2)1307/05-06 – Paper for the Committee on Governance and Political Development under the Commission on Strategic Development on "Adoption of the Principles of Universal Suffrage and Balanced Participation – Practices in Some Democratic Countries")

Information Note prepared by the Research and Library Services Division (RLSD)

16. Deputy Head of RLSD (DH/RLSD) briefed members on the Information Note which summarised the electoral systems in Singapore, New Zealand, Germany, the United Kingdom (UK), Japan, France and the United States (US) (the selected places).

17. Dr KWOK Ka-ki said that the paper prepared by the Administration for discussion by the Committee on Governance and Political Development under the Commission on Strategic Development (CSD) entitled "Adoption of the Principles of Universal Suffrage and Balanced Participation – Practices in Some Democratic Countries" had placed emphasis on the principle of balanced participation in implementing universal suffrage. Dr KWOK asked whether any of the selected places, which implemented universal suffrage, had failed to adhere to the principle of balanced participation.

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18. DH/RLSD said that each place had developed its own system based on its historical, social, cultural and economic background. It was difficult to say whether the electoral systems adopted in the selected places were in contravention of the principle of balanced participation.

19. Mr LEUNG Kwok-hung said that it would be useful if a research could be conducted on the electoral system of China. Referring to the selected places which adopted the bicameral system, Mr LEUNG asked whether the abolition of appointed membership in the upper chamber was the international trend. He also sought clarification on whether the upper chamber, whose members were mostly hereditary or appointed, had no power to veto the decision of the lower chamber whose members were returned by universal suffrage.

20. DH/RLSD explained that the Information Note sought to provide a summary of the electoral systems in the selected places on the basis of a series of research reports previously prepared for Members. Hence, the Information Note did not provide a comparison on the power of the upper chamber vis-à-vis that of the lower chamber. DH/RLSD pointed out that in Germany, all members of the Bundesrat and Bundestag were returned by appointment and election respectively. In UK, members of the House of Lords were hereditary, appointed or elected, while those of the House of Commons were all elected. She could only advise that the lower chamber generally had more power than the upper chamber. In US, the Senate and the House of Representatives served different functions and the question of whether one chamber was more powerful than the other did not arise.

21. Mr Ronny TONG asked whether it could be concluded from the research studies that irrespective of whether these places were operated under a bicameral or unitary system, the head of government was elected by universal suffrage in one form or the other. For instance, in conservative countries such as Japan, the decision of the House of Representatives would prevail if the two Houses had chosen different individuals to be the Prime Minister.

22. Research Officer 5 (RO5) affirmed that the head of government in the selected places were usually returned by universal suffrage in one form or the other. With the lower chamber having the mandate of the people, it had the power to remove the head of government. DH/RLSD supplemented that in the event that the head of government was appointed and not returned by direct election, he was likely to be the person who could command majority support in the lower chamber.

23. Dr YEUNG Sum pointed out that in Germany and Japan, each voter has two votes to return members to the lower chamber. In New Zealand which operated under a unitary system, each voter was also entitled to two votes. He asked about the implication of the “one person, two votes” system on the composition of the parliament.

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24. RO5 explained that the concept behind the “one person, two votes” system was to prevent major political parties from controlling the seats in the parliament. The system provided opportunities for small political parties and small sectors of the community to win a seat in the parliament in an election.

25. Dr YEUNG Sum said that the Democratic Party had proposed a “mixed system” for forming LegCo in 2012. Under the proposal, each registered voter was entitled to two votes, one for returning half of the Members of LegCo through the “single seat, single vote” system, and the other for returning the remaining Members through the proportional representation system on a territory-wide basis. He said that the proposal sought to ensure balanced participation and address the concern of small sectors, such as the business and professional sectors, that their interests could no longer be represented in LegCo after the implementation of universal suffrage.

26. Mr Jasper TSANG pointed out that the type of electoral system adopted by a country would impact on its political structure. He asked whether the world trend was the adoption of a “mixed system” to ensure balanced participation, or the traditional “first-past-the-post” system which usually resulted in the emergence of two major political parties to provide stability in the political system. Mr LEE Cheuk-yan asked how Hong Kong could strike the right balance between the two systems.

27. RO5 said that there was no definite answer to the complex questions raised by Mr TSANG and Mr LEE. He agreed that different electoral systems would affect the composition of parliament and impact on the operation of the government. It was for each country to decide on the type of electoral system that would suit its circumstances. In the case of New Zealand, it had adopted the traditional “single seat, single vote” system for years and the political system had been stable with two major political parties controlling the seats in the parliament. Following the introduction of a “mixed system” in recent years, small political parties had been able to win seats in the parliament. Similar to some European countries which operated under a coalition government where no single party controlled the majority of the seats in the parliament, New Zealand was experiencing an increasing need to enhance co-operation among the different parties.

28. Mr CHAN Kam-lam asked whether under the “mixed system”, the votes won by members of a political party in a single member constituency would be directly in proportion to the votes won by the party in the party list. Mr CHAN also asked whether persons of foreign nationality were allowed to run in a parliamentary election in the selected places.

29. RO5 responded that a political party which had obtained a large number of votes in a district reflected that the political party was popular in that district.

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It was, however, difficult to tell whether a voter would cast his two votes to both the political party and its member, or would strategically cast one vote to the political party and the other vote to a candidate not belonging to the political party. He further said that in the selected places, there was stringent requirement that a candidate running for a parliamentary election should be a national of that country. RO5 undertook to provide a summary of the nationality requirement of candidates running for parliamentary elections in the selected place.

RLSD

30. Mr Ronny TONG said that in Germany and New Zealand which adopted the “one person, two votes” system, the second vote was to be cast on a party list. He pointed out that if a candidate was not affiliated to any political party, voters would be deprived of the right to vote for him. He held the view that this would contravene Article 25(2) of the International Covenant on Civil and Political Rights (ICCPR) which provided that every citizen should have the right and the opportunity to vote at elections by universal and equal suffrage. In this connection, the electoral systems of New Zealand and Germany might not be appropriate reference for Hong Kong. In addition, he did not see the need for adopting a “mixed system” for the purpose of safeguarding the special interest of the business and professional sectors.

RLSD

31. Mr Jasper TSANG requested RLSD to find out whether New Zealand and Germany were the signatory states to ICCPR and if so, whether the electoral systems in the two countries complied with Article 25(2) of ICCPR. If the answer to the second question was negative, there was no point for Hong Kong to make reference to their electoral systems. Mr TSANG asked whether the electoral systems in the selected places had any particular developments in recent years.

32. DH/RLSD said that the research studies on the electoral systems in the selected places were conducted in 2000, and in the course of updating the relevant information of these places for the purpose of preparing the Information Note, it was noted that in Japan, the number of members in the House of Representatives had been reduced because of the re-delineation of geographical constituency. In France, the number of seats in the Senate had progressively been increased because of the change in population. The electoral systems of the two places, however, had remained unchanged.

33. RO5 supplemented that UK, New Zealand and Singapore had experienced more changes prior to 2000. In UK, while elected membership was introduced into the House of Lord, there was no change in its power in the parliament. In New Zealand, the electoral system had changed from a “single seat, single vote” system to “one person, two votes” system. In Singapore, the President was directly elected by a simple majority vote.

34. Mrs Selina CHOW said that the situation of Hong Kong was unique. The models and timing for implementing universal suffrage for returning CE and

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forming the legislature had to take into account the requirement of the Basic Law and the relationship with CPG. She doubted whether there was any place in the world with historical and political development similar to that of Hong Kong, and questioned whether it was appropriate to take a snapshot of the electoral systems in the selected places for reference of Hong Kong. In addition, these countries had a mature political system and a long history in developing democracy, whereas Hong Kong had just got started in the pursuit of democracy. In her view, it would be more useful to study how democracy had developed in these places. She further pointed out that countries which had successfully operated a democratic system did not achieve universal suffrage overnight.

35. RO5 responded that the pace of democratic development varied from place to place. Some places took 100 to 200 years to achieve democracy and in some places this could happen overnight. It was difficult to identify a suitable place to conduct a research on its democratic development with a view to using it as a reference for Hong Kong.

36. Dr KWOK Ka-ki asked about the places which had adopted the FC system and whether the abolition of the FC system was the international trend. He stressed that Hong Kong should make reference to progressive electoral systems of other places when developing its own system.

37. DH/RLSD responded that in a separate research conducted by RLSD in 2003-04, Ireland, Slovenia and France were the places which had functional representation in their national legislature or consultative body with constitutional status.

38. Mr CHEUNG Man-kwong recalled that the Senate in Ireland had limited legislative role. For instance, it could not initiate legislation dealing with taxation, public money, the raising of loans by the state and matters incidental to these subjects, and could only make recommendations but not amendments to such bills. In addition, it could not delay indefinitely legislation which had been passed by the House of Representatives and could not initiate bills to amend the Constitution. As there was the proposal to abolish functional representation in the Senate in 2002, Mr CHEUNG requested RLSD to provide an update on the situation in Ireland, including the timing and process in abolishing functional representation. In response to Mr CHEUNG, DH/RLSD undertook to provide an update on the situation in Ireland as well as Slovenia.

RLSD

39. Mr LEUNG Kwok-hung said that he was not aware of any country adopting corporate voting as their electoral system after World War II. Neither was he aware of any democratic countries taking a backward step to resort to authoritarianism. In some southern European countries which had experienced Fascism and Marxism, they had adopted the proportional representation system to prevent dictatorship. He also wondered whether there was any place in the world that had adopted the split voting system as in Hong Kong.

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40. DH/RLSD said that the split voting system was also practised by the parliament of Singapore which consisted of elected and appointed members. RO5 supplemented that different era had different considerations in choosing the electoral methods. For instance, New Zealand had included the element of proportional representation in its electoral system due to the consideration of “balanced participation”.

RLSD

41. In further response to Mr LEUNG Kwok-hung, DH/RLSD undertook to provide information on the time limit within which the House of Lords could delay a bill from becoming law once it was passed by the House of Commons in UK.

42. Mr LEUNG Yiu-chung expressed concern that the issue under discussion was too broad and suggested that there should be a direction on the scope of discussion. He noted that the Administration had provided a framework for discussion by CSD.

Response of the Administration

43. In response to the members’ views, SCA made the following points –

- (a) the research reports prepared by RLSD were useful. The electoral systems in the selected places could serve as reference for Hong Kong to develop its own system. Subject to the Panel’s agreement, the relevant research reports prepared by RLSD would be made available to CSD for reference;
- (b) as far as democratic development was concerned, Hong Kong was not taking any backward step. This was evidenced from the package of proposals put forth in the Fifth Report of the Constitutional Development Task Force (the Task Force) which would have enhanced substantively the democratic elements in the electoral system. Regrettably, the package of proposals was not endorsed by the Council;
- (c) the Administration had not formed any view on the long-term formation of the legislature. The bicameral system was one of the suggestions received by the Task Force during public consultation. The Task Force had also received a proposal to implement the “one person, two votes” system in Hong Kong. The Administration was exploring room to further democratic development;
- (d) according to the various cases covered by the RLSD reports, some countries had adopted the proportional representation method in addition to the first-past-the-post method, but no country had

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replaced the proportional representation method with the first-past-the-post method;

- (e) corporate voting was part and parcel of the FC system which had been implemented in Hong Kong for over 20 years. The future of FC was a subject for discussion. At present, LegCo comprised 30 geographical constituency seats and 30 FC seats. It was necessary for a consensus to be reached before the composition of the legislature could be amended. Meanwhile, the Administration was monitoring the development in Ireland which had intended to abolish functional representation in the Senate;
- (f) Hong Kong was implementing the list voting system by proportional representation. The system reflected the principle of balanced participation as opportunities were provided to different political parties and individual candidates to win a seat in LegCo; and
- (g) it was necessary for the Government to secure support from Members of LegCo in order to ensure that public policies could be implemented effectively. In democratic countries such as France and US, the head of government and members of the parliament were elected by different electoral systems. Their democratic process had a long history and was instigated by major political parties. The Administration held the view that the establishment of political parties was conducive to democratic development in Hong Kong. But some room should be left for independent candidates to stand in elections.

VI. Any other business

44. The meeting ended at 4:25 pm.

Council Business Division 2
Legislative Council Secretariat
10 May 2006