

立法會
Legislative Council

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LC Paper No. CB(2)813/06-07
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

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

Members present :

- Dr Hon LUI Ming-wah, SBS, JP (Chairman)
- Hon TAM Yiu-chung, GBS, JP (Deputy Chairman)
- Hon James TIEN Pei-chun, GBS, JP
- Hon Albert HO Chun-yan
- Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
- Hon LEE Cheuk-yan
- Hon Martin LEE Chu-ming, SC, JP
- Hon Margaret NG
- Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
- Hon CHEUNG Man-kwong
- Hon CHAN Yuen-han, JP
- Hon Bernard CHAN, GBS, JP
- Hon LEUNG Yiu-chung
- Hon Howard YOUNG, SBS, JP
- Dr Hon YEUNG Sum
- Hon LAU Kong-wah, JP
- Hon Emily LAU Wai-hing, JP
- Hon CHOY So-yuk, JP
- Hon Abraham SHEK Lai-him, JP
- Hon Audrey EU Yuet-mee, SC, JP
- Hon WONG Kwok-hing, MH
- Hon LEE Wing-tat
- Hon Daniel LAM Wai-keung, 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 Ronny TONG Ka-wah, SC
- Hon CHIM Pui-chung
- Hon KWONG Chi-kin

- Members absent** : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon MA Lik, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
- Public Officers attending** : Item III
- Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs
- Mrs Cherry TSE LING Kit-ching
Permanent Secretary for Constitutional Affairs
- Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs
- Mr Gary POON Wai-wing
Principal Assistant Secretary for Constitutional Affairs
- Mr LAM Man-ho
Chief Electoral Officer
- Item IV
- Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs
- Mrs Cherry TSE LING Kit-ching
Permanent Secretary for Constitutional Affairs
- Mr Joseph LAI Yee-tak
Deputy 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

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)123/06-07 - Minutes of meeting on 12 October 2006)

The minutes of the meeting held on 12 October 2006 were confirmed.

II. Items for discussion at the next meeting

(LC Paper No. CB(2)376/06-07(01) - List of outstanding items for discussion)

LC Paper No. CB(2)376/06-07(02) - Background brief prepared by the LegCo Secretariat on "The question of 'important bill' under Article 50 of the Basic Law")

2. Members agreed that the following items would be discussed at the next meeting on 18 December 2006 -

- (a) Printing of names, emblems and photographs on ballot papers for the District Council (DC) elections

The item was proposed by the Secretary for Constitutional Affairs (SCA). The Administration was exploring the feasibility of printing of names and emblems of political parties or organisations or candidates' photographs on ballot papers for the 2007 DC elections and would report the outcome to the Panel;

- (b) Models for selecting the Chief Executive (CE) by universal suffrage

The item was proposed by members. The Administration was requested to provide the latest discussion papers of the Commission on Strategic Development (CSD) to facilitate the Panel's discussion at the next meeting; and

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(c) Prevention of Bribery (Amendment) Bill

Members expressed concern about the timing for the Administration to introduce a bill on the application of the Prevention of Bribery Ordinance (POBO) to the CE. Members agreed that the Administration should be requested to report progress to the Panel (paragraphs 30 to 35 below are relevant).

Nature of LegCo membership

3. Ms Emily LAU said that when the Finance Committee discussed the proposal to increase the annual accountable allowance for Operating Expenses Reimbursement for Members of the Legislative Council (LegCo) at its meeting on 3 November 2006, the nature of LegCo membership was raised. According to the Director of Administration (D of A), the Independent Commission on Remuneration for Members of the Executive Council and the Legislature of the Hong Kong Special Administrative Region (the Independent Commission) had recommended that the review on whether LegCo membership should be recognised as a job vs public service should be set aside for the comprehensive review for the remuneration package for the fourth-term LegCo (2008-2012). Ms LAU pointed out that as the nature of LegCo membership was a policy issue, it should not be decided by the Independent Commission. She was of the view that the issue should fall under the policy purview of SCA and should be followed up by this Panel.

4. SCA said that the Office of the Chief Secretary for Administration was responsible for matters relating to the remuneration package for LegCo Members, and D of A had discussed the relevant issues with the LegCo Subcommittee on Members' Remuneration and Operating Expenses Reimbursement chaired by Mr Patrick LAU (the LegCo Subcommittee). The LegCo Subcommittee would be the appropriate forum for Members to discuss the issue raised by Ms LAU. Ms Emily LAU doubted whether it was within the terms of reference of the LegCo Subcommittee to discuss the policy on the nature of the LegCo membership.

5. Mr TAM Yiu-chung pointed out that the Independent Commission was of the view that the outcome of the Consultation Document on Further Development of the Political Appointment System would have a bearing on whether there was a case to adjust the established view that LegCo membership was a form of public service rather than a job. As the Administration had advised that it would report the proposed way forward on further development of the Political Appointment System to the Panel during the first half of 2007, he requested SCA to consult the Panel before the Administration finalised its proposal and to liaise with D of A on any related developments.

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6. SCA said that the Constitutional Affairs Bureau (CAB) was responsible for the proposal on further development of the Political Appointment System, and the public consultation of which would end on 30 November 2006. The CAB would analyse the views collected during the consultation period and finalise details of the proposal after the CE election on 25 March 2007. It would then revert to the Panel on the proposed way forward and listen to members' views. SCA added that the Administration would take into account the issue concerning the nature of LegCo membership when considering the proposal on further development of the Political Appointment System, and agreed to liaise with the relevant bureau/office within the Administration in this respect as and when necessary.

7. Ms Emily LAU held the view that the nature of LegCo membership and the further development of the Political Appointment System were not necessarily related issues. She said that many LegCo Members and political parties considered that LegCo membership was a job and the level of Members' remuneration and associated benefits should be adjusted accordingly. The Chairman asked the Administration to make reference to overseas practices in considering the matter.

8. Mr LEE Wing-tat said that the Administration should also assess the impact of the Political Appointment System, if implemented, on the workload of LegCo Members as they had to deal with two additional layers of political appointees.

9. Mr LEUNG Kwok-hung said that the level of the remuneration package for LegCo Members and its relativity vis-à-vis that for the new political positions proposed to be created was a separate issue. The crux of the matter was that adequate resources should be provided to LegCo for the purpose of facilitating Members to effectively perform its role in monitoring the Government.

The question of "important bill" under Article 50 of the Basic Law

10. In response to the Chairman, Ms Audrey EU said that the question of "important bill" under Article 50 of the Basic Law should be discussed by the Panel, but she had no strong view on the timing of discussion.

III. Proposed guidelines on election-related activities in respect of the Chief Executive elections

(LC Paper No. CB(2)377/06-07(01) - Paper provided by the Administration on "Proposed Guidelines issued by the Electoral Affairs Commission on Election-related Activities in respect of the Chief Executive Elections")

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Briefing by the Administration

11. SCA said that the Electoral Affairs Commission (EAC) had updated the existing guidelines for the CE elections to facilitate the conduct and supervision of the coming election in March 2007. Consultation on the Proposed Guidelines on Election-related Activities in respect of the Chief Executive Elections (the Proposed Guidelines) would last until 29 November 2006.

12. Chief Electoral Officer (CEO) briefed members on the major changes proposed in the Proposed Guidelines as set out in Annex B to the paper. He said that the EAC would take into account the views received during consultation in finalising the guidelines. The final guidelines would be issued around January 2007.

Issues raised by members

Use of "duress" and "force" against electors

13. Ms Margaret NG said that paragraphs 3.7 and 5.29 of the Proposed Guidelines referred to the legal provisions against pressuring an elector not to nominate a particular candidate and forcing an elector to vote or not to vote for any particular candidate in a contested election respectively. She asked the Administration to explain the difference between the use of "duress" or "force" against electors, and the types of conduct that would be caught under the legal provisions. She said that such types of conduct should be clearly set out so that the Proposed Guidelines would be user-friendly.

14. SCA explained that intimidation was an offence under section 24 of the Crimes Ordinance (Cap. 200). A person who forced an elector to vote or not to vote for any particular candidate committed an offence under section 13 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 541) (ECICO). It was inappropriate for the Proposed Guidelines to go beyond the provision in the relevant legislation and define the conduct that would constitute the use of "duress" or "force" against electors. Much would depend on the actual nature of the cases, and the enforcement agency would take prosecution actions against a person under the relevant statutory provisions accordingly.

15. Regarding paragraph 5.29 of the Proposed Guidelines, CEO explained that members of the Election Committee (EC) were responsible for nominating CE candidates and for electing a CE. The ECICO had provisions to deal with corrupt and illegal conduct in elections. In response to media enquiries on legal provisions against pressuring electors not to nominate a particular candidate, the EAC had sought legal advice, and gave its reply on 31 May 2005. The reply, as set out in Appendix C to the Proposed Guidelines, made clear that intimidating subscribers of a CE election was an offence under section 24 of the Crimes Ordinance and bribing them was a common law offence.

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Subscribers

16. Ms Margaret NG queried why the names of the subscribers to candidates of the CE election were required to be published in the Gazette, given that the electoral base of the CE election was very small. As the nomination of a CE candidate must be subscribed by not less than 100 EC members, she suggested that it was not necessary to publish in the Gazette the names of those subscribers who were in excess of the requirement of 100. She also requested the Administration to consider amending the law to impose a limit on the number of subscribers for nominating candidates in a CE election, so as to be in line with the practice of the LegCo and DC elections.

17. SCA explained that it had been a well established practice of local elections that the names of subscribers to candidates were made public. As regards the suggestion to impose a limit on the number of subscribers for nominating candidates in a CE election, SCA said that it had been discussed thoroughly in the last LegCo session.

18. Ms NG said that the practice of the CE election was different from that of the LegCo and DC elections. The names of the subscribers to candidates of the CE election were required to be published in the Gazette, and there was no cap on the number of subscribers. As regards the LegCo and DC elections, while the names of subscribers were made available for public inspection, there was no requirement for them to be published in Gazette. In addition, a cap was imposed on the number of subscribers.

Nomination and electioneering activities

19. Ms Emily LAU said that she opposed any kind of "small circle" election. She sought information on the polling date, the time allowed for nomination and electioneering activities for the third term CE election.

20. SCA responded that the polling day for the CE election was 25 March 2007. CEO supplemented that, according to electoral law, the nomination period for candidates for the office of the CE should not be less than 14 days, and should terminate on a date earlier than the 21 day before the polling date. On the basis of these parameters, the nomination period would start around mid-February 2007.

21. Ms Emily LAU held the view that more time should be allowed for electioneering activities for the CE election, given that the candidates had to promote their political platform on a territory-wide basis.

22. SCA responded that the Chief Executive Election Ordinance, which set out the above parameters for fixing the nomination period, was passed by LegCo in 2001. If a candidate wished to have a longer period for electioneering

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activities, he was free to declare his candidacy in advance of the nomination period. However, election expenses would start to count upon the declaration of his intention to stand for election.

Political affiliation of the CE

23. Dr YEUNG Sum noted that the requirement that the CE-elect should relinquish his political affiliation was maintained at the coming CE election. He asked whether the Administration would consider changing the policy with a view to promoting political party development.

24. Dr KWOK Ka-ki said that the existing policy was not conducive to promoting party politics. He was not aware of any democratic countries in the world which prohibited the leader of the government from having any political affiliation. He asked the Administration to explain why it considered the development of political parties in Hong Kong was not mature, and how long political parties had to wait before they could assume the role of a ruling party.

25. SCA said that the political system in Hong Kong was at the developmental stage, and the electoral system was evolving in tandem. In the first term CE election, candidates with political party background were prohibited from running in the election. In the second term CE election, a candidate with political party background was allowed to run in the election, although he was required to relinquish his political affiliation once elected. The electoral arrangements for the CE election had become more and more open, e.g. EC members were required to vote in the third term CE election even if only one candidate was validly nominated at the election.

26. SCA further said that the Administration had taken a number of measures to facilitate greater participation in the political system, including participation by political parties -

- (a) the Administration was exploring the feasibility of printing of names and emblems of political parties on ballot papers for the 2007 DC elections;
- (b) the Administration had proposed to extend the existing financial assistance scheme applicable to candidates in the LegCo elections to candidates in the 2007 DC elections, i.e. candidates who were elected or who received 5% of valid votes or more would be given financial assistance of \$10 per vote;
- (c) the Administration had put forth a proposal for further development of the Political Appointment System by creating two additional layers within the Government, namely Deputy Directors of Bureau and Assistants to Directors of Bureau, in order

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to provide more room for public spirited individuals with or without political background to pursue a broader political career; and

- (d) the Administration was exploring possible models for selecting the CE and forming the LegCo by universal suffrage in order to open up the political system to create more room for participation in public affairs.

27. Mr LEE Cheuk-yan said that while the Administration appeared to have taken a number of initiatives to promote political party development, it had dragged its feet when it came to crucial issues such as the CE's political background. He asked whether it was the position of the Central People's Government (CPG) that the CE-elect should relinquish his political affiliation, and whether the CE would be allowed to have political affiliation when universal suffrage was implemented.

28. Mr LEUNG Kwok-hung held the view that it was against the wish of the CPG for a political party to be the ruling party if its leader had won in a CE election. Against this background, the CE-elect was required to relinquish his political affiliation.

29. SCA responded that the requirement that the CE-elect should relinquish his political affiliation was a provision in the Chief Executive Election Ordinance (CEEEO), which was introduced by the Government of the HKSAR, endorsed by the Executive Council, and scrutinised and passed by LegCo in 2001. The Administration held the view that the existing requirement, which enabled a CE to go beyond partisan considerations and to take into account the views of LegCo Members, political parties and groups, and different sectors of the community when making important policy decisions, should be maintained for the third term CE. As regards whether the requirement might be changed in the longer run, the Administration was prepared to listen if members had any views.

Application of the POBO to the CE

30. Mr CHEUNG Man-kwong noted that the penalty for unauthorised filming, photographing, audio/video recording within the polling station would be increased. He said that the proposed measure to safeguard secrecy of votes was a minor one as compared with the public demand for the CE to be subject to the statutory framework of bribery prevention. Given that the CE was elected by a "small circle" election which was susceptible to corrupt and illegal conduct such as vote planting and transfer of benefits, he was concerned whether a bill on the application of the POBO to the CE could be enacted before the CE election on 25 March 2007. He asked whether the Administration would accord priority to the introduction of the bill.

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31. Mr LEUNG Kwok-hung said that the impeachment process prescribed in the Basic Law alone was inadequate to regulate the conduct of the CE. If the CE was subject to the POBO, criminal proceedings could be instituted against him for corruption-related offences after the impeachment proceedings.

32. SCA said that the CE election was subject to the ECICO and the Administration would ensure that the election was conducted in an open, fair and honest manner. In addition, the CE would continue to be liable to prosecution under the common law offence of bribery. In addressing members' concern about the progress of the bill on the application of the POBO to the CE, SCA said that the CE had undertaken to introduce such a bill in his 2005-2006 Policy Address. Last year, the Subcommittee on Application of Certain Provisions of the POBO to the CE formed under this Panel held a number of meetings to discuss the legislative proposal put forth by D of A. SCA was aware that the D of A and the Department of Justice had been working on the preparation of the legislative amendments.

33. Mr Albert HO and Mr Martin LEE said that the CAB should be the relevant bureau in charge of the bill. Mr HO requested SCA to give an undertaking to the effect that the bill would be enacted before the third term CE assumed office on 1 July 2007.

34. SCA responded that the distribution of responsibilities among bureaux was a matter for the Government. There were some 600 ordinances in Hong Kong and they were assigned to respective bureaux depending on the nature of the subject matter. For instance, the CAB was responsible for election-related legislation. As regards laws concerning corruption and bribery prevention, they applied to all citizens and were not confined to election-related activities. SCA further said that the Independent Commission Against Corruption (ICAC) was the enforcement authority of the POBO, and the Office of Chief Secretary for Administration was responsible for any legislative proposals relating to the work of ICAC. He noted that the D of A had indicated that the bill would be introduced within the current session and the Department of Justice was giving technical assistance to ensure that the drafting of the bill was legally in order. He would relay members' concern to them. SCA further said that the timing for enacting the bill would depend on the progress of scrutiny by Members after the bill was introduced into LegCo.

35. Mr LEUNG Yiu-chung suggested and members agreed that the Director of Administration should be invited to attend the next Panel meeting to -

- (a) clarify whether a bill would be introduced into the LegCo in the current session;
- (b) explain the difficulties in drafting the bill, if any; and

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- (c) provide a specific time frame for the introduction of the bill.

IV. Models for forming the Legislative Council by universal suffrage

(LC Paper No. CB(2)3062/05-06 - Paper on "Possible Models for Forming the Legislative Council by Universal Suffrage" prepared by the Administration for the sixth meeting of the Committee on Governance and Political Development of the Commission on Strategic Development on 22 September 2006

LC Paper No. CB(2)376/06-07(03) - Paper on "Possible Models for Forming the Legislative Council by Universal Suffrage" prepared by the Administration - proposals from the Business and Professionals Federation of Hong Kong and Mrs Regina IP for the workshop held by the Commission on Strategic Development on 6 November 2006

LC Paper No. CB(2)402/06-07(01) - Transcript of a media briefing given by the Secretary for Constitutional Affairs after attending the workshop held by the Commission on Strategic Development on possible models for forming the Legislative Council by universal suffrage on 6 November 2006)

36. Dr YEUNG Sum expressed strong objection to the proposal of the Business and Professionals Federation of Hong Kong which advocated a bicameral system for Hong Kong. He pointed out that the Basic Law Drafting Committee had vetoed the proposal for a bicameral legislature and the Basic Law did not provide for a bicameral system unless it was amended. In his view, the bicameral system which sought to retain the functional constituency (FC) system was against the principle of equal and universal suffrage. It was the position of the Democratic Party (DP) that all FCs should be abolished. For the model for forming the LegCo by universal suffrage, the DP had proposed a mixed system of a "single seat, single vote" system and a proportional representation system under which each elector was entitled to two votes. The 60 LegCo seats would be divided into two groups of 30 seats each. The first group would be returned on a "single seat, single vote" system based on geographical constituencies (GCs). The second group would be returned by a proportional representation system based on a single territory-wide constituency. The electoral system for the first group would reflect the preference of electors as only popular candidates would be elected. The electoral system for the second group would provide opportunities for small sectors to win in an election so as to ensure balanced participation. He invited members to give views on the DP's proposal.

37. Ms Emily LAU said that she did not support the proposed bicameral system. She considered that the DP's proposal for each voter to have two votes,

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i.e. one for returning a GC candidate and one for returning a "list system" candidate under the territory-wide list, was acceptable in principle. However, she pointed out that the proposal mentioned by SCA i.e. voters could have multiple votes: one for returning a GC candidate, and one for returning candidates nominated by FCs had distorted the meaning of equal and universal suffrage. She also pointed out that the concept of universal suffrage included the right for all citizens to nominate, and to be nominated as, a candidate at an election.

38. Ms Emily LAU further said that she opposed the proposal put forth by the Liberal Party (LP) to abolish FCs by three phases at the meeting of the CSD. The timing of implementation and the FCs to be abolished in each phase would give rise to disputes. She held the view that all FCs should be abolished in 2012 the latest. Ms LAU further said that there was consensus in the community that FCs should be abolished, although certain sectors such as the rich and the business sector continued to speak against it in order to protect their vested interests. Last month, the Chief Secretary for Administration had, in his speech made at the annual dinner of the Hong Kong Trade Development Council in London, said that the Administration had to achieve a meaningful consensus with the LegCo on electoral arrangements for 2012. She questioned how such a consensus could be achieved in the absence of any forum for discussion by LegCo and the Administration, as most LegCo Members were not members of the CSD.

39. Mr LEE Cheuk-yan, who was a member of the CSD, said that there was no consensus in the CSD on how universal suffrage should be implemented. He recalled that the CSD had considered two models for forming the LegCo by universal suffrage, namely a legislature with FCs and a legislature without FCs. Mr LEE said that apart from the proposal of "one person, two votes" put forth by the DP, there was another proposal which allowed the first vote to return a GC candidate and another vote to return candidates nominated by constituents of FCs. He pointed out that while the electoral method of this proposal was universal because each voter was given two votes, it was by no means a popular and fair election because the nomination was controlled by and restricted to a small group of people. In his view, the FC system which allowed a small group of people to cling to their vested interests did not comply with the principle of universal suffrage. Mr LEE further said that SCA had the responsibility to announce to the public that the FC system should be abolished when the ultimate goal of universal suffrage was attained, but he had not done so. Instead, SCA had given the false impression that the retention of the FC system was also an acceptable form of universal suffrage.

40. Mr LEE Cheuk-yan was glad that the LP had indicated its support for the ultimate abolition of FCs, although it had proposed to implement that in phases. He would like to know the transitional arrangements of the LP's proposal. Mr LEE said that Miss Maria TAM Wai-chu, a member of the CSD and the

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Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), had suggested that FCs could nominate candidates for election by universal suffrage. He sought clarification as to whether Miss TAM's view represented that of the DAB. If not, he asked about the DAB's position on the future of FCs. He recalled that the DAB had previously advocated dual elections by universal suffrage in 2007 and 2008.

41. Dr KWOK Ka-ki queried whether consensus could be reached in the CSD and whether the consensus reached reflected public aspiration, given that its members were not elected by the people. He did not support the proposal to abolish FCs by phases. He expressed dissatisfaction that the public was still deprived of the right to have equal votes after protracted discussions on the future of FCs for some 20 years. He said that the Medical FC supported the implementation of universal suffrage in 2012 on the basis of "one person, single/multiple vote(s) with equal value" and the abolition of all FCs.

42. Mr Albert HO said that Article 45 and Article 68 of the Basic Law clearly provided for the selection of the CE and the formation of the LegCo by universal suffrage. Article 39 also provided that the provisions of the International Covenant on Civil and Political Rights (ICCPR) should apply to Hong Kong. The guiding principle for universal suffrage was "universal" and "equal" suffrage. "Equal" suffrage meant that the vote(s) cast by each elector was of equal value. An electoral system which allowed certain sectors to have more votes than the others departed from the principle of universal suffrage. It would be a shame to Hong Kong if attempts were made to distort the meaning of universal suffrage by institutionalising the FC system on the ground of "meeting the interests of different sectors of society", which was not provided in the Basic Law. In his view, different sectors of society should strive to participate in direct elections and party politics in order for their interests to be represented in LegCo. Mr HO considered that the proposal to implement a bicameral system was unacceptable, and cautioned that the Administration should refrain from taking any backward step to stall democratic development in Hong Kong.

43. Mr LEUNG Kwok-hung said that an election which fulfilled either the principle of "universal suffrage" or "equal suffrage" but not both did not meet the requirement of universal suffrage. He further said that in order to ascertain whether any proposal put forth by the CSD could represent the wish of the people, the proposal should be subject to the test of a referendum.

44. Ms Audrey EU asked SCA to explain the meaning of "balanced participation", why "balanced participation" allowed some electors to have more votes than the others as in the case of FC elections, and why the interests of sectors with a small electorate should be protected.

45. Mr TAM Yiu-chung explained the position of the DAB as follows -

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- (a) the DAB adopted the approach of "formulating a roadmap before a timetable". A roadmap for attaining universal suffrage should be drawn up before fixing the timetable for implementing universal suffrage for the selection of the CE and the formation of the LegCo;
- (b) the DAB adopted the approach of "resolving the simple issues before the difficult ones". The models for selecting the CE by universal suffrage should be explored first, given that the models for forming the LegCo by universal suffrage were relatively complex and involved more controversial issues;
- (c) the DAB had conducted internal discussions on the future of FCs. It would study and analyse the various proposals before forming its view; and
- (d) in response to the earlier question raised by Mr LEE Cheuk-yan (paragraph 40 above), he said that Miss Maria TAM Wai-chu gave the view at the CSD workshop in her personal capacity.

46. Mr LEUNG Yiu-chung said that the stance of pan-democratic Members was very clear. They had fought for implementation of universal suffrage in 2007 and 2008 and had failed. As a result, they had resorted to pursuing universal suffrage for dual elections in 2012. The stance of the Administration and some political parties such as DAB, however, had changed with time. In view of the difficulties in grasping the stance of the Administration and some political parties, he expressed concern how differences in opinion could be narrowed and consensus could be reached.

47. Mr James TIEN made the following points on the position of the LP -

- (a) the LP noted that the majority of the public wished to select the CE by universal suffrage as soon as practicable. If favourable conditions had been created to implement universal suffrage for selecting the CE in 2012, the LP would support the wish of the public. At this stage, political parties should make the best effort to create favourable conditions for implementing universal suffrage, such as promoting political party development and improving the relationship between the Executive and the Legislature, with a view to selecting the CE by universal suffrage in 2012;
- (b) given that half of the LegCo Members were returned by direct elections and represented the people, universal suffrage for LegCo could be implemented at a later stage. The LP held the view that introducing too many changes to the political system at one time could affect the stability of Hong Kong; and

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- (c) it was appropriate to start abolishing FCs four years after the implementation of universal suffrage for the CE. The LP suggested that FCs should be abolished by three stages so as to comply with the principle of "gradual and orderly progress". 10 FCs would be abolished at each stage. The criteria for selection of the FCs for phased abolition would take into account their chance of winning seats in a direct election, i.e. the FCs which had better chance in winning would be abolished first. For instance, the FCs in financial, commercial and professional sectors should be phased out at the last stage.

48. In response to members, SCA made the following points -

- (a) the bicameral system had been discussed by the CSD at a number of meetings and workshops and the CSD would decide whether to put aside for the time being further discussion on the subject at the coming meeting on 23 November 2006. At the workshop on 6 November 2006, some members had expressed concern that the implementation of a bicameral system would at least require amendments to Annex II to the Basic Law. They queried whether it was worth the effort to amend the Basic Law if the bicameral system was meant to be a transitional arrangement. There were also concerns that a bicameral system would impact on the operational efficiency of the Government, given that bills, resolutions and budgets would need to be passed by two chambers instead of one;
- (b) SCA disagreed that he had distorted the meaning of universal suffrage in the context of "one person, multiple votes". In the media briefing given on 6 November 2006, he had given an account of the different models discussed by the CSD, including DP's model and other models (which proposed constituents of FCs to nominate candidates for election by universal suffrage);
- (c) at this stage, the Administration had not formed any view on which universal suffrage model to be adopted. At a previous meeting of the CSD, members had generally agreed that the general principle of equality of voting power did not necessarily require precise arithmetic equality in the power of each vote. For example, in GC elections, there could be reasonable variations amongst the constituencies in respect of the ratio between the number of seats and the size of registered voters;
- (d) in 1976, a reservation was made not to apply Article 25(b) of the ICCPR to Hong Kong, in so far as it might require the establishment

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of an elected Executive Council or LegCo. This reservation continued to apply. The basis for Hong Kong to implement universal suffrage came from the Basic Law, and not the ICCPR. The relevant provisions in the Basic Law represented an improvement as compared with those in the Joint Declaration in 1984, as universal suffrage was stipulated in the Basic Law as the ultimate aim for selecting the CE and forming the LegCo. The provisions in the Joint Declaration that the legislature should be constituted by elections and that the CE should be selected by election or through consultations had already been fulfilled;

- (e) when submitting the draft Basic Law and related documents at the Third Session of the Seventh National People's Congress on 28 March 1990, Director JI Pengfei made the following explanation on the political structure of the HKSAR -

"The political structure of the Hong Kong Special Administrative Region 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."

The principle of "meeting the interests of different sectors of society" could be derived from Director JI's explanation, and reflected the legislative intent of the Basic Law. The principle was also encompassed in Article 45 of the Basic Law which provided that a broadly representative nominating committee should be formed for the purpose of selecting the CE. The composition of the current LegCo which comprised 30 Members returned by GCs and 30 Members returned by FCs was in practice a reflection of that principle;

- (f) given that 30 out of the 60 LegCo Members were currently returned by FCs and any amendment to the election method for the LegCo required the endorsement of a two-thirds majority of all the Members of the LegCo, pan-democratic Members who advocated the abolition of FCs in one go had to consider how they could convince all the 30 FC Members to give up their LegCo membership outright. This was a political reality one must face; and

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- (g) given that members of the CSD were drawn from a broad cross-section of the community, the Administration hoped that, through discussion at the CSD, different sectors of the community would be more likely to reach consensus on a proposal put forth by the CSD. The Administration was discussing these issues with LegCo through the Constitutional Affairs Panel. He hoped that LegCo Members would be willing to find common grounds and to accommodate differences, with a view to agreeing on the universal suffrage models for the CE and LegCo.

49. The meeting ended at 4:45 pm.

Council Business Division 2
Legislative Council Secretariat
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