

立法會
Legislative Council

Ref : CB2/PL/CA

LC Paper No. CB(2)1022/06-07
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 18 December 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 Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
- Hon CHEUNG Man-kwong
- Hon CHAN Yuen-han, JP
- Hon LEUNG Yiu-chung
- Dr Hon Philip WONG Yu-hong, GBS
- Hon WONG Yung-kan, JP
- Hon Jasper TSANG Yok-sing, GBS, JP
- 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 Timothy FOK Tsun-ting, GBS, JP
- Hon Abraham SHEK Lai-him, JP
- Hon LI Fung-ying, BBS, JP
- Hon Audrey EU Yuet-mee, SC, JP
- Hon WONG Kwok-hing, MH
- Hon LEE Wing-tat
- 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
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KWONG Chi-kin

**Members
absent** : Hon Margaret NG
Hon Bernard CHAN, GBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Daniel LAM Wai-keung, SBS, JP
Hon MA Lik, GBS, JP

**Public Officers
attending** : The Administration

Item III

Miss Elizabeth TSE
Director of Administration

Mrs Susan MAK
Deputy Director of Administration

Miss Shirley YUNG
Assistant Director of Administration

Item IV

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

Mr Ivanhoe CHANG Chi-ho
Principal Assistant Secretary for Constitutional Affairs

Mr LAM Man-ho
Chief Electoral Officer

Item V

Mr Stephen LAM Sui-lung
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

Action

I. Confirmation of minutes of meeting
(LC Paper No. CB(2)538/06-07 - Minutes of meeting on 16 October 2006)

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

II. Items for discussion at the next meeting
(LC Paper No. CB(2)630/06-07(01) - List of outstanding items for discussion)

2. The Chairman informed members that the next meeting originally scheduled for 15 January 2007 had to be cancelled because he and the Deputy Chairman would be out of town. He would work out a meeting date with the Administration and the Clerk after the meeting and informed members in due course.

3. Members agreed that the following items would be discussed at the next meeting -

- (a) Practical arrangements for the election of the third term Chief Executive

The item was proposed by the Secretary for Constitutional Affairs (SCA);

Action

(b) Relationship between the Executive and the Legislature

The item was proposed by Ms Emily LAU. Ms LAU said that issues relating to constitutional development such as relationship between the Executive and the Legislature and political party development were interrelated and should be discussed as a package. SCA said that some written submissions received on possible models for universal suffrage might contain views on the relationship between the Executive and the Legislature. The Administration would provide a paper for reference of the Panel; and

(c) Offices set up by the Central People's Government in the Hong Kong Special Administrative Region under Article 22 of the Basic Law

The item was proposed by Mr Martin LEE. The Administration was requested to provide information on the number of offices set up in the Hong Kong Special Administrative Region (HKSAR) under Article 22 of the Basic Law (BL 22) and the approval procedure for setting up these offices.

(Post-meeting note : The next meeting has been rescheduled to 23 January 2007 at 8:30 am. As the duration of the meeting is two hours only, the Chairman has instructed that only items (a) and (b) above should be included in the agenda. As regards item (c), the Administration has been requested to provide an information paper for the consideration of the Panel (paper issued to members vide LC Paper No. CB(2)898/06-07(02) on 17 January 2007). The Panel will decide whether the issue should be discussed at a future meeting.)

III. Prevention of Bribery (Amendment) Bill

(LC Paper No. CB(2)629/06-07(01) - Background brief prepared by the LegCo Secretariat on "Application of certain provisions of the Prevention of Bribery Ordinance to the Chief Executive"

LC Paper No. CB(2)629/06-07(02) - Paper provided by the Administration on "Application of Certain Provisions of the Prevention of Bribery Ordinance to the Chief Executive")

Briefing by the Administration

4. Director of Administration (D of Adm) introduced the paper which set out the Administration's response to some issues raised by members at the Panel

Action

meeting on 20 November 2006 concerning the application of certain provisions of the Prevention of Bribery Ordinance (Cap. 201) (POBO) to the Chief Executive (CE). The Administration had proceeded with the requisite drafting of the Prevention of Bribery (Amendment) Bill (the Bill) and was working towards introducing it into LegCo in February/March 2007.

Problems in drafting the Bill

5. Dr YEUNG Sum, Chairman of the former Subcommittee on Application of Certain Provisions of the Prevention of Bribery Ordinance to the Chief Executive (the Subcommittee) formed under the Panel, referred to the background brief prepared by the Secretariat and said that the Administration had advised the Subcommittee that it would introduce the Bill into the LegCo by May 2006. He expressed regret that the introduction of the Bill had been unduly delayed and asked about the difficulties encountered in drafting the Bill.

6. D of Adm responded that the CE had clearly indicated in his Policy Address in October 2005 that he accepted the need for his office to be subject to anti-corruption regulation. The Administration had subsequently put forward a legislative proposal in November 2005 for the consideration of the Subcommittee. In considering how certain provisions under the POBO should apply to the CE, the Administration had taken into account the existing regulatory measures for prescribed officers (including principal officials and civil servants) as well as public servants. The Administration had also considered how certain provisions should be adapted to reflect the unique constitutional status of CE as the head of the HKSAR, who was accountable to the Central People's Government (CPG) and the HKSAR in accordance with the provisions of the Basic Law.

7. D of Adm said that the policy and technical issues arising from the preparation of the draft legislation were more complicated than envisaged. By way of illustration, she explained that section 8 of the POBO provided that "any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the Government through any department, office or establishment of the Government, offers any advantage to any prescribed officer employed in that department, office or establishment of the Government, shall be guilty of an offence." As the CE was the head of the HKSAR and its Government, if section 8 was directly applied to cases of offering of advantages to the CE, it could subject all persons having dealings of any kind with any Government department (e.g. persons applying for driving licences or other permits, and someone filing a tax return) to a strict offence whenever they offered an advantage to the CE. If so, the scope would be much wider than the existing section 8 which covered only the department in which the prescribed officer was employed. This would also be unduly harsh as some well-intentioned individuals might genuinely want to offer souvenirs or mementos to the CE during his official visits. Therefore, in considering the

Action

exact wording of the provisions in the Bill, the Administration had to examine the implications carefully to avoid the provisions being too loose or too draconian. D of Adm assured members that the Administration would honour its undertaking to put in place a legislation to apply certain POBO provisions to the CE.

8. Mr TAM Yiu-chung said that to his understanding, administrative measures were put in place to provide effective control of acceptance of gifts by the CE. He asked whether the Administration had encountered difficulties in incorporating the existing administrative measures in the Bill.

9. D of Adm affirmed that under the established system, the CE could not accept gifts for personal retention unless he had paid for them. Moreover, the gift register of the CE was available for public inspection. These administrative measures had effectively ensured the transparency and accountability in the acceptance and disposal of gifts presented to the CE. The main concern of the Administration, however, was that the CE, given his unique constitutional status as the head of the Government, should not be subject to legal proceedings lightly because this would impact on the operation of the Government. At the same time, he should be subject to certain provisions of the POBO in order to maintain Hong Kong's reputation of a clean government.

10. Mr Martin LEE asked whether the CE would be bound by section 10(1)(b) of the POBO, if he was in control of an unexplained property located outside Hong Kong, e.g. in the Mainland. Assistant Director of Administration said that the Administration would respond in writing after seeking legal advice.

(Post-meeting note : The Administration's reply was issued to members vide LC Paper No. CB(2)1011/06-07(01) on 2 February 2007.)

Legislative timetable

11. Mr CHEUNG Man-kwong said that ten years had lapsed since the change of sovereignty in 1997 and yet the CE was still not bound by the POBO. As the Bill might not be enacted before the CE election in March 2007 or 1 July 2007 when the new CE assumed office, it would therefore not apply to the third term CE-designate should he commit a bribery offence between March and 1 July 2007. He asked whether the Bill, if passed, would apply to the CE-designate in future elections. He held the view that the CE-designate should be subject to the POBO once he was declared elected.

12. D of Adm explained that the subject of applying certain provisions of the POBO to the CE was first raised in 1999 in LegCo. In the past years, the Panel and the Administration had explored appropriate statutory framework of bribery prevention for application to the CE, including the proposal to deem the CE as "government officer" or "public servant" for the purpose of the POBO and the

Action

proposal to codify the common law offence of bribery. At the end, it was concluded that the POBO should be amended to subject the CE to certain provisions. D of Adm added that at present, the CE was subject to other anti-corruption measures under the existing legal framework -

- (a) under BL 47, CE must be a person of integrity, dedicated to his or her duties;
- (b) the CE was bound by other provisions of the POBO (save for those which were applicable to "prescribed officers" or "public servants") as applied to any persons in Hong Kong; and
- (c) the CE was bound by the common law offence of bribery.

Admin

13. D of Adm explained that if a CE-designate was a "prescribed officer" or "public servant", he would already be bound by the POBO. As to whether the Bill should be applicable to the CE-designate, the Administration would need to consider the issue.

14. Dr KWOK Ka-ki asked whether the Administration would undertake to enact the bill before the election of the third term CE. He also asked whether the finalised legislative proposal, if different from the one previously considered by the Subcommittee, would be submitted to the Panel for consideration prior to its introduction into the LegCo.

15. D of Adm responded that the Administration would make the best endeavour to complete drafting of the Bill as soon as possible. The timing for enacting the Bill, however, would depend on the progress of scrutiny by the LegCo. The understanding reached with the Subcommittee which had deliberated the legislative proposal was that the Bill could be introduced into the LegCo for scrutiny.

Impeachment and criminal proceedings

16. Members noted that the legislative proposal put forth to the Subcommittee included, among others, the adding of a provision to provide that the Secretary for Justice (SJ) might refer to the LegCo a report of the CE suspected to have committed POBO offences for possible follow-up under BL 73(9) (the "referral provision"). BL 73(9) provided that -

"If a motion initiated jointly by one-fourth of all the members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign, the Council may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee shall be responsible for carrying

Action

out the investigation and reporting its findings to the Council. If the committee considers the evidence sufficient to substantiate such charges, the Council may pass a motion of impeachment by a two-thirds majority of all its members and report it to the Central People's Government for decision."

17. Mr Ronny TONG said that some members of the Subcommittee held the view that the "referral provision" was unnecessary and undesirable because criminal proceedings should not be mingled with political proceedings. In his view, the decision of the SJ to institute criminal proceedings and that of the LegCo to invoke BL 73(9) should be made independently. He pointed out that as a motion to impeach a CE under BL 73(9) required the support of a two-thirds majority of all LegCo Members, the impeachment proceedings and its outcome would be subject to political considerations. Given that members of the Subcommittee had expressed concern about the "referral provision", he asked about the Administration's present position.

18. Dr KWOK Ka-ki questioned the need for the "referral provision". He said that given the composition and political nature of the LegCo, a motion to impeach the CE under BL 73(9) could easily be negated. In his view, the proposed "referral provision" would put the LegCo in a difficult position.

19. D of Adm said that the Bill to be introduced into the LegCo would be based on the legislative proposal put forth to the Subcommittee. When there was a corruption complaint against the CE, he would be subject to criminal investigation by the Independent Commission Against Corruption (ICAC), which would make a report to the Department of Justice (DoJ) for legal advice and consideration of prosecution. The Administration had proposed that where, as a result of such referral, the SJ had reason to believe that the CE might have committed an offence under the POBO, he might refer the case to the LegCo and forward the findings of the ICAC's preliminary investigation to the LegCo. It was for the LegCo to decide whether to invoke BL 73(9) based on the information provided. She assured members that if there was sufficient evidence to substantiate complaints against the CE over any POBO offence, the SJ would consider instituting criminal proceedings. The proposed "referral provision" would not compromise the DoJ's constitutional function to control criminal prosecutions free from any interference under BL 63.

20. D of Adm explained that the "referral provision" was essential for the proper handling of a corruption complaint against the CE. Under section 30 of the POBO, a person who, knowing or suspecting that an investigation in respect of a POBO offence alleged or suspected to have been committed under Part II of the POBO was taking place, without lawful authority or reasonable excuse, disclosed the subject or details of the investigation committed an offence. The SJ was bound by the "non-disclosure" requirement unless it could successfully be argued that one of the exceptions in section 30 of the POBO would apply or

Action

the legislation vested the SJ with the power of referral to the LegCo. It was clearly desirable to put the legal position beyond doubt by the proposed "referral provision" so that the LegCo could obtain the essential facts of a complaint against the CE and Members could consider invoking the investigation and impeachment procedures under BL 73(9). The "referral provision" also sought to ensure that the SJ's referral to the LegCo would not contravene the restrictions imposed by the Data Protection Principle 3 in Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486).

21. Ms Emily LAU said that when there was sufficient evidence to institute criminal proceedings against a CE for bribery-related offences, referral of the case to the LegCo by the SJ would complicate and politicise the matter.

22. D of Adm responded that the Administration had examined the interface between impeachment and prosecution in respect of the Heads of States in the United Kingdom, the United States, South Korea and Singapore, and the findings were set out in a paper provided to the Subcommittee (LC Paper No. CB(2)691/05-06(01)). The experience in these overseas jurisdictions illustrated that it was common for impeachment proceedings to precede any criminal trial. However, the Administration did not propose to make any stipulation in this regard in the Bill and would leave the need and timing for prosecution to the discretion of the SJ.

23. Ms Emily LAU pointed out that the CE was not the Head of State and queried whether it was appropriate to equate CE with the Heads of States of the overseas jurisdictions. D of Admin explained that the relevance of these examples was the way the heads of governments, whether at State or other levels, would be treated. Referring to the advice of D of Adm that impeachment proceedings would precede criminal trial in these overseas jurisdictions, Ms LAU asked whether there had been any exception. D of Adm replied that according to the research conducted by the Administration, it was a common arrangement in overseas countries that it would be necessary to first remove the head of government from his office before any criminal proceedings could be instituted against him.

24. Ms Emily LAU commented that on the one hand, the Administration considered it more appropriate for impeachment proceedings to precede criminal proceedings as in the case of some overseas countries, and on the other hand, it did not propose to make any stipulation in this regard in the Bill and would leave the need and timing for prosecution to the discretion of the SJ. She considered the situation undesirable and urged the Administration to take note of members' concern about the "referral provision".

25. Referring to the Research Report on Prevention of Corruption and Impeachment of Head of State/Government in the United Kingdom, the United States and Korea prepared by the Research and Library Services Division of the

Action

RLSD

LegCo Secretariat (RLSD) (RP01/05-06), Ms Emily LAU requested the RLSD to provide supplementary information on the interface between impeachment and prosecution in these countries, to facilitate future scrutiny of the Bill by Members.

26. Mr Martin LEE asked that if the CE had resigned after BL 73(9) was invoked by LegCo, whether criminal proceedings would be instituted against the CE immediately. D of Adm responded that the DoJ would deal with the matter on a case-by-case basis.

IV. Printing of names, emblems, and photographs on ballot papers for the District Council elections

(LC Paper No. CB(2)615/06-07(01) - Paper provided by the Administration on "Printing of Names, Emblems, and Photographs on Ballot Papers for the District Council Elections")

Briefing by the Administration

27. SCA said that the Electoral Affairs Commission (EAC) had proposed to extend the arrangement to allow the printing of names, emblems and photographs on ballot papers, adopted in the LegCo elections since 2004, to the District Council (DC) elections. The arrangement would help voters identify candidates and facilitate candidates and their supporting organisations to conduct electioneering activities. In the long run, the arrangement would also facilitate the development of political parties in Hong Kong.

28. Chief Electoral Officer (CEO) introduced the paper which set out details of the arrangement and the proposed legislative timetable to amend the Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulation (Cap. 541M) (the Regulation). The amendment Regulation would provide that the names, abbreviations of names and emblems already registered with the EAC under the existing Regulation in relation to the LegCo election to be deemed to have been registered in relation to both the LegCo and DC elections. The legislative amendment to be made by the EAC was expected to be tabled at the LegCo in late March 2007.

Application for registration of emblems

29. Mr CHEUNG Man-kwong asked about the application procedure for changing the design of a registered emblem. SCA responded that an application could be made to the EAC for the registration of a revised emblem before the relevant cut-off date of an annual registration cycle. The EAC would process the application in accordance with the framework laid down in the Regulation.

30. In response to Ms Audrey EU concerning the printing of emblems on ballot papers already registered with the EAC under the existing Regulation,

Action

SCA explained that a candidate was required to obtain the consent of the prescribed body for printing its emblem registered with the EAC on ballot papers. The EAC could refuse to grant an application made by another organisation or individual for registering an emblem if it was identical to or so closely resembled an emblem which had already been registered. However, the applicant could make representations to the EAC on the refusal of the application.

Particulars relating to candidates on ballot papers

31. Mr Ronny TONG asked whether candidates would be allowed to print a simple political platform on ballot papers. He said that he had made the same proposal in respect of the Election Committee (EC) subsector elections held on 10 December 2006, to facilitate voters to identify the possibly large number of candidates. He also pointed out that it would have facilitated voting if polling staff had been more proactive in making available the information leaflets on candidates for reference by voters at the EC subsector elections.

32. SCA responded that the Registration and Electoral Office had published introductory leaflets for candidates of the EC subsector elections. Candidates could make use of the leaflets to promote themselves. The ballot paper would not have enough space to accommodate the emblems, photos and political platforms of candidates, given the possibly large number of candidates involved in the EC subsector elections. In addition, the printing of candidates' political platforms on ballot papers might be regarded as a form of election advertisement. Under the existing electoral law, no election advertisement should be displayed within the boundaries of a polling station or within any no canvassing zone.

33. In response to Mr TAM Yiu-chung's concern as to whether voters should be allowed to bring along reminder notes about the candidates into polling stations in order to facilitate voting, SCA clarified that the main concern of the Chairman of the EAC was that voters should not display election advertisements in the polling stations. However, the Chairman had publicly stated, before the EC subsector elections, that if voters brought along a small piece of paper containing candidates' information for personal use, this should not pose a problem during polling. SCA added that should voters have difficulty in identifying candidates, they could obtain from the polling staff introductory leaflets of candidates which contained the photographs, names, numbers and political platforms of candidates.

Free postage of election advertisements

34. Ms Audrey EU pointed out that under the existing arrangement, a candidate was permitted to send (free of postage) one letter/leaflet to each elector of the constituency for which he was nominated. However, candidates who wished to post jointly a leaflet to voters for the sake of economy would not be entitled to free postage. As a result, voters had received leaflets from

Action

individual candidates which were sent by free postage, and joint leaflets the postage of which was paid by candidates themselves. She said that flexibility should be allowed for a group of candidates (as in the case of the EC subsector elections), and candidates of the same constituency area or neighbouring constituency areas (as in the case of the DC elections) to post jointly a leaflet to voters free of postage.

35. CEO explained that the free postage, which was the candidate's own privilege, could not and should not be used for any other purpose or any other election or for promoting or advertising any other person. The reason for the restriction was to ensure fairness of treatment for independent candidates. If a group of candidates were allowed to send jointly leaflets to electors, they would have greater exposure than independent candidates.

36. Mr TAM Yiu-chung considered that the existing arrangement was too stringent and should be reviewed. He quoted a case where a candidate was not allowed to post his leaflet as it contained a photograph of another candidate and himself. Mr TAM also queried the appropriateness for the Post Office to approve the specimens of election advertisements submitted by candidates for free postage.

37. SCA thanked members' for their views. He said that the EAC was an independent and statutory body responsible for drawing up guidelines to facilitate the conduct and supervision of an election, taking into account the operational experience of previous elections, and suggestions and views from the public and other parties concerned. The EAC would conduct a review of the recent EC subsector elections. CEO would relay members' views expressed at the meeting to the EAC for consideration.

Improvements for the EC subsector elections

38. Mr CHEUNG Man-kwong made the following suggestions relating to the EC subsector elections for the consideration of the EAC -

- (a) given the large number of candidates involved in the EC subsector elections, to allow the printing on the ballot paper of the name (not emblem) of an organisation which supported a candidate in an EC subsector election ;
- (b) to allow a group of candidates to send jointly a leaflet by free postage to voters, on the condition that these candidates would no longer be entitled to free postage for sending such leaflets on an individual basis;
- (c) to allow voters to bring along information on candidates to the polling station for the purpose of facilitating voting; and

Action

- (d) to extend the financial assistance scheme for LegCo election to candidates of the EC subsector elections.

39. SCA said that Mr CHEUNG's views would be referred to the EAC for consideration. As regards the proposal of extending the financial assistance scheme to candidates of the EC subsector elections, SCA said that it was a matter for the next term CE and his government to consider.

V. Models for selecting the Chief Executive by universal suffrage

(LC Paper No. CB(2)2835/05-06 - Paper on "Possible Models for Selecting the Chief Executive by Universal Suffrage" prepared by the Administration for the fifth meeting of the Committee on Governance and Political Development of the Commission on Strategic Development on 28 July 2006

LC Paper No. CB(2)436/06-07 - Papers on possible models for selecting the Chief Executive and forming the Legislative Council by universal suffrage prepared by the Administration for the seventh meeting of the Committee on Governance and Political Development of the Commission on Strategic Development on 23 November 2006

LC Paper No. CB(2)445/06-07 - Summary of the views expressed at the sixth meeting on 22 September 2006 and workshops on 14 September and 3 October 2006 of the Committee on Governance and Political Development of the Commission on Strategic Development

LC Paper No. CB(2)630/06-07(02) - Submissions from guest speakers attending the two workshops held by the Commission on Strategic Development on 14 September 2006 and 3 October 2006: Sir David Akers-Jones of the Business and Professionals Federation of Hong Kong (Annex I), Professor WANG Ka-ying of the Chinese University of Hong Kong (Annex II), Mr LUNG Ka-lun and Mr George Cautherley of the Hong Kong Democratic Foundation (Annex III) and Mr Ivan CHOY of the Chinese University of Hong Kong (Annex IV)

LC Paper No. CB(2)630/06-07(03) - Response of the Secretary for Constitutional Affairs to the motion on "Electing the Chief Executive by universal suffrage" at the Council meeting on 22 November 2006

LC Paper No. CB(2)630/06-07(04) - Transcript of a media briefing given by the Secretary for Constitutional Affairs after attending the motion debate on "Electing the Chief Executive by universal suffrage" at the Council meeting on 22 November 2006

Action

LC Paper No. CB(2)630/06-07(05) - Transcripts of a media briefing given by the Secretary for Constitutional Affairs after attending the seventh meeting held by the Committee on Governance and Political Development of the Commission on Strategic Development on possible models for selecting the Chief Executive and forming the Legislative Council by universal suffrage on 23 November 2006)

40. Members noted that BL 45 provided that -

"The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government.

The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures."

41. Members noted that according to BL 45, the selection and appointment of the CE involved three steps when universal suffrage was attained -

- (a) nomination by a broadly representative nominating committee in accordance with democratic procedures;
- (b) selection by universal suffrage following nomination; and
- (c) appointment by the CPG.

42. SCA said that in the past six months, the Committee on Governance and Political Development of the Commission on Strategic Development (CSD) had held two meetings in July and November 2006 to discuss the possible models for selecting the CE by universal suffrage. Progress had been made to narrow differences among different political parties and members of the CSD through discussions. Two workshops had also been organised in September and October 2006 to receive views from organisations and academics and their submissions had been provided for the Panel's reference. SCA said that the CSD had discussed the following key issues relating to possible models for selecting the CE by universal suffrage -

(a) Size of the nominating committee

Members of the CSD generally agreed that a broadly representative nominating committee should be established in accordance with BL 45. Most members of the CSD had suggested

Action

that the size of the nominating committee range from 800 to 1 600 members. Mr LEE Wing-tat who represented the Democratic Party (DP) had suggested that the nominating committee be formed by 60 LegCo Members;

(b) Method of nomination

On the number of subscribers required for nominating a candidate, many members of the CSD had suggested that the nomination threshold should be set in the range of 12.5% to 25% of the membership of the nominating committee. Mr LEE Wing-tat had proposed that a person with subscription of five LegCo Members could become a CE candidate; and

(c) Membership of the nominating committee

In the event that the size of the nominating committee exceeded 800 members, there were views that the additional seats should be allocated to DC members or sectors which were currently not represented in the EC.

43. Mr Martin LEE sought the views of the Administration on the "non-exclusive" principle raised by Mr Ivan CHOY of the Chinese University of Hong Kong (Annex IV to LC Paper CB(2)630/06-07(02)) in respect of the method of nomination, i.e. the method of nomination should not exclude certain persons from being nominated because of political consideration. He recalled that the Democratic Alliance for the Betterment of Hong Kong (DAB) had previously proposed a model for selecting the CE as follows: to turn the EC into the nominating committee; to set the nomination threshold at not less than 100 subscribers; to limit the number of CE candidates to three; the nominating committee to elect three candidates by majority vote if the number of contenders exceeded three; and the election of CE by universal suffrage. Mr LEE expressed particular concern about the proposal for contenders to go through a preliminary selection process whereby members of the nominating committee could have the power to veto contenders as candidates. He pointed out that under the proposal, contenders from the democratic camp who were not supported by the CPG would be excluded from running in the CE election. Referring to the point raised by Professor WANG Ka-ying of the Chinese University of Hong Kong (Annex II to LC Paper CB(2)630/06-07(02)) that the CPG would accept a model which could provide a predictable result in an election, Mr LEE expressed concern about the possible attempts of the CPG to control the outcome of the CE election. In his view, the Liaison Office of the CPG in the HKSAR could pressure certain sectors, e.g. the business sector, of the nominating committee not to support the nomination of certain persons. In addition, the CPG had the ultimate power not to appoint the CE-elect.

Action

44. Dr YEUNG Sum said that 134 candidates from the democratic camp had won in the recent EC subsector elections. As the outcome of the elections had caught the CPG and its supporters by surprise, he asked whether the Administration would introduce measures to prevent candidates of the democratic camp from participating in the CE election, e.g. by increasing the nomination threshold or requiring contenders to obtain a certain number of nominations in each sector of the nominating committee before qualifying for candidacy. Dr YEUNG requested the Administration, in designing the model for selecting the CE by universal suffrage, should ensure that it complied with democratic principles i.e. the nomination threshold should be low and the nominating committee should be representative. He further said that a high nomination threshold would discourage aspiring individuals from standing for election. Regarding the nominating committee, the DP had proposed that it should comprise the 60 LegCo Members since they had the broadest electorate base and were the most representative.

45. Mr Ronny TONG asked the Administration to advise whether the DP's proposal on the composition of the nominating committee would require amendments to the Basic Law. Referring to BL 45 which stipulated that the ultimate aim was the selection of the CE by universal suffrage upon nomination by a broadly representative committee in accordance with democratic procedures, he asked whether the CSD had discussed the meaning of "democratic procedures". He also asked whether any electoral model which sought to exclude those with dissenting views from participating in the nomination and election process could be regarded as democratic. He pointed out that an electoral method which obtained the support of the LegCo did not necessarily mean that it had complied with the international standard of democracy.

46. Mr CHEUNG Man-kwong said that the submission of Mr Ivan CHOY had made two points on the method of nomination which were considered to be reasonable. The first point was the "non-exclusive" principle mentioned earlier by Mr Martin LEE (paragraph 43 above refers). The second point was that persons who had gained popular support should be given a reasonable opportunity to be nominated. He pointed out that some countries had adopted a two-track system for presidential nomination, i.e. allowing a person who had received support from a specified percentage of members of a nominating committee, or a person who had received support from a specified percentage of citizens/voters to contest in a presidential election. In Hong Kong, consideration could be given to allowing a person who had received support from 5% of registered voters to become a candidate in a CE election.

47. Mr LEUNG Kwok-hung elaborated on his view that BL 45 was full of contradictions. He said that if the CE was to be elected by universal and equal suffrage, BL 45 would need to be amended.

Action

48. Ms Emily LAU said that it was the wish of the people to participate in the nomination of CE candidacy and election of the CE. The guiding principle for universal suffrage under the International Covenant on Civil and Political Rights was "universal" and "equal" suffrage. If an electoral method restricted some people from participating in the nomination or election of the CE, it would not meet the international standard of universal suffrage. In her view, the ultimate aim of selecting CE by universal suffrage could be achieved under the existing framework of BL 45, provided that members of the nominating committee were returned by universal suffrage and the nomination threshold was set a low level. Referring to the submission of Professor WANG Ka-ying (Annex II to LC Paper No. CB(2)630/06-07(02)), she disagreed with his view that pan-democratic Members should not reject a conservative nomination threshold provided that the CE election was a contested one.

49. Mr TAM Yiu-chung clarified that the DAB had yet to form its view on the model for selecting the CE and hence the proposal quoted by Mr Martin LEE was out of the blue. It was the view of the DAB that the model for selecting the CE should comply with BL 45 which clearly stipulated the establishment of a broadly representative nominating committee, although its composition was open for discussion. Referring to the three essential steps to implement universal suffrage (paragraph 41 above refers), he asked whether the Administration had considered ways to ensure that the CE-elect would be appointed by the CPG.

50. Referring to Mr TAM Yiu-chung's concern, Mr LEE Wing-tat said that at a CSD meeting, an academic had proposed that the eligibility of candidates should be verified by the CPG before the CE election by universal suffrage was held, so that the CE elected would be appointed by the CPG in a smooth manner. Mr LEE said that SCA had, however, advised that the proposal would be in breach of the Basic Law. On the nomination threshold, Mr LEE said that some CSD members had expressed concern about a high nomination threshold of say 20% of members of the nominating committee. Some CSD members had suggested that if the composition of the four sectors of the EC was to be maintained in the nominating committee, candidates should be required to obtain a certain number of nominations in each sector to ensure that they had a certain level of support from different sectors and strata of the community. He found this proposal unacceptable as it would give the four sectors of the nominating committee a veto power to disqualify a candidate. Mr LEE pointed out that the outcome of the recent EC subsector elections, albeit a small circle election, had reflected public aspiration for a faster pace of constitutional development. He remarked that the CSD's attitude towards universal suffrage would change with the political climate. Mr LEE urged the Administration to come up with a model for selecting the CE by universal suffrage as soon as practicable. In his view, when universal suffrage was implemented, voting should take place even if there was only one candidate in the CE election. He pointed out that unlike democratic countries which had at least two candidates (leaders of the ruling party and the opposition party respectively) running in a presidential election,

Action

the election of the CE in Hong Kong could be uncontested.

51. SCA said that progress had been made by the CSD in exploring the possible models for selecting the CE in the past few months. He reiterated that the Administration had not formed any view on key issues such as the composition of the nominating committee and the nomination mechanism. The Administration was in the process of collecting views before formulating its proposal. He would relay members' views expressed at this meeting to the CSD and the Administration for consideration. He made the following points -

- (a) in response to Mr Martin LEE - SCA said that where there was an election, there was no certainty of who would be elected. In his view, CE candidates would endeavour to canvass votes from members of the nominating committee which represented different sectors and strata of the community. The proposal of requiring candidates to obtain a certain number of nominations in each sector of the nominating committee was put forth by a CSD member during discussion and the Administration had not formed any view on which nomination method should be adopted. Pending the drawing up of a model for selecting the CE by universal suffrage, the concerns raised by Mr LEE were hypothetical;
- (b) in response to Dr YEUNG Sum - the position of the Administration in respect of the nomination threshold had not changed i.e. the design of the electoral system should enable more than one candidate to participate in the election. In the package of proposals for the selection of the CE in 2007 put forth by the Constitutional Development Task Force, the Administration had proposed to increase the membership of EC from 800 to 1 600 with the nomination threshold remaining at 12.5% of the EC membership;
- (c) in response to Mr Ronny TONG - any amendment to the electoral method for selecting the CE would require amendment to Annex I of the Basic Law. The DP's proposal of forming the nominating committee by 60 LegCo Members would require further study, as BL 73, which prescribed the functions of the LegCo, had not empowered the LegCo to nominate CE candidates. When a model for selecting the CE was formulated, the Administration would then consider whether the model necessitated amendments to the Basic Law. As to whether the CE would be returned by democratic procedures, SCA pointed out that any electoral method for universal suffrage had to be endorsed by the LegCo. Given that LegCo Members were returned by election and represented the public, he was confident that an electoral method which had

Action

obtained the support of a two-thirds majority of the LegCo Members would reflect the interest of the community;

- (d) in response to Mr CHEUNG Man-kwong - Mr CHEUNG's proposal would be relayed to the CSD and the Administration for consideration. Mr LEE Cheuk-yan had also proposed at a CSD meeting that a contender who had obtained the support of 50 000 or 100 000 voters should be endorsed by the nominating committee as qualified for formal candidacy;
- (e) in response to Ms Emily LAU - the design of BL 45 sought to require the CE to gain support from two fronts: firstly the nominating committee which represented the interest of the different sectors and strata of the community, and secondly, members of the public through one-person-one-vote. He would welcome further views from members on the composition of the nominating committee;
- (f) in response to Mr LEE Wing-tat - any proposal to amend Annex I to the Basic Law regarding the electoral method for selecting the CE, including the composition of the nominating committee and the nomination method for the CE candidacy, required the support of a two-thirds majority of the LegCo Members. SCA noted Mr LEE's view that when implementing universal suffrage, registered voters should be given the opportunity to vote even if there was only one candidate in the CE election. That view would be brought up when the detailed arrangements for the implementation of universal suffrage was discussed; and
- (g) in response to Mr LEUNG Kwok-hung and Mr TAM Yiu-chung - the design of any model for universal suffrage had to take account of the role and responsibility of the CPG under the constitutional framework. Any electoral method for selecting the CE by universal suffrage must comply with the Basic Law. To this end, the three steps provided in BL 45 (paragraph 41 above refers) must be adhered to.

52. The meeting ended at 5:25 pm.