

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

**Minutes of special meeting
held on Friday, 5 October 2007, at 9:30 am
in Conference Room A 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 CHAN Yuen-han, SBS, JP
Hon Bernard CHAN, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, 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 CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Prof Hon Patrick LAU Sau-shing, SBS, JP

- Members absent** : Hon CHEUNG Man-kwong
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LEUNG Yiu-chung
Dr Hon YEUNG Sum, JP
Hon CHOY So-yuk, JP
Hon LEUNG Kwok-hung
Dr Hon KWOK Ka-ki
Hon CHIM Pui-chung
Hon KWONG Chi-kin
- Public Officers attending** : Item II
The Administration

Mr Stephen LAM Sui-lung
Secretary for Constitutional and Mainland Affairs

Ms Joyce HO Kwok-shan
Principal Assistant Secretary for Constitutional and Mainland Affairs
- Clerk in attendance** : Mrs Percy MA
Chief Council Secretary (2)3
- Staff in attendance** : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Ms Eleanor CHOW
Senior Council Secretary (2)4

Mrs Fanny TSANG
Legislative Assistant (2)3

Action

- I. Models, roadmap and timetable for selecting the Chief Executive and for forming the Legislative Council by universal suffrage**
LC Paper No. CB(2)2766/06-07(01) - Administration's paper on "Green Paper on Constitutional Development"
- (issued to all Members on 11 July 2007) - Green Paper on Constitutional Development
- (issued to all Members on 11 July 2007) - Statement by Chief Secretary for Administration on Green Paper on Constitutional Development at the Council meeting on 11 July 2007

Action

LC Paper No. CB(2)2471/06-07(01) - Transcripts of remarks made by the Chief Executive, the Chief Secretary for Administration and the Secretary for Constitutional and Mainland Affairs to the media on the Green Paper on Constitutional Development on 11 July 2007

LC Paper No. CB(2)2664/06-07(01) - Administration's paper on "Green Paper on Constitutional Development" for the Panel meeting on 7 September 2007

LC Paper Nos. CB(2)2664/06-07 (02) - (10) - Press releases issued by the Administration concerning the Green Paper on Constitutional Development (12 July - 28 August 2007)

LC Paper Nos. CB(2)2715/06-07 (01) - (12) - Information provided by the Administration on the opinion polls on universal suffrage conducted by universities and think-tanks

The Chairman said that the Panel had held a total of six meetings in September and October before the close of the 2006-2007 Legislative Council (LegCo) session to discuss the Green Paper on Constitutional Development (the Green Paper). Three meetings were dedicated to receive views from deputations.

2. Secretary for Constitutional and Mainland Affairs (SCMA) briefed the Panel on the consultation work carried out by the Administration since 11 July 2007 as follows -

- (a) representatives of the Administration had attended meetings of the 18 District Councils (DCs) to listen to their views on the Green Paper;
- (b) representatives of the Administration had attended four regional and two open forums to listen to the views of some 1 200 members of the public and district personalities;
- (c) representatives of the Administration had attended about 30 seminars, forums and meetings organised by residents' groups, professional bodies and concerned sectors; and
- (d) representatives of the Administration attended three special meetings of the Panel held on 10, 12 and 14 September 2007 respectively to listen to the views of over 150 deputations on the issue of universal suffrage. The Administration was appreciative of the arrangements made by the Panel.

Action

SCMA said that after the close of consultation period on 10 October 2007, the Administration would summarise the views of the community on the models, roadmap and timetable for implementing universal suffrage for the Chief Executive (CE) and the LegCo. All the views received and opinion poll results published by various organisations during the consultation period would be reflected in the report on the Green Paper.

3. Mr Howard YOUNG, Ms Audrey EU and Dr Philip WONG asked how the views would be summarised.

4. SCMA responded that the Green Paper had set out the key issues that needed to be considered for electing the CE and forming the LegCo by universal suffrage. After analysing and summarising the views received on these key issues, the Administration would assess whether a mainstream view could be formed as the basis for formulating a package of proposals for universal suffrage. He explained that the package of proposals to be formulated had to satisfy two objective criteria. First, the proposals should receive support from a two-thirds majority of all the LegCo Members. Second, the findings of opinion polls conducted by independent organisations should indicate that the proposals were supported by at least 60% of the public. The Administration intended to summarise the views into three categories -

- (a) views of the community as reflected in opinion polls conducted by independent organisations;
- (b) views of political parties and LegCo Members; and
- (c) views of individuals and organisations.

5. Mr Howard YOUNG and Ms LI Fung-ying asked about the time required to summarise the views collected. Ms LI asked whether the Administration would formulate a final model for universal suffrage after consultation, or formulate two to three models for another round of consultation.

6. SCMA said that the time required for analysing and summarising the views collected would depend on the number of submissions received. If the Administration continued to receive submissions at the existing rate, i.e. a few hundred per day, the additional number of submissions received before the close of the consultation period would amount to several thousand. In 2005, the Task Force on Constitutional Development (the Task Force) had received about 450 submissions on its Fourth Report and it took about three months to prepare the Fifth Report which put forth a package of proposals for the methods for selecting the CE in 2007 and for forming the LegCo in 2008 (the 2005 proposed package). Based on previous experience, the Administration expected to complete the report on the Green Paper at the end of 2007.

Action

7. SCMA said that in the course of analysing the views collected, the Administration would have an idea on the extent of differences in views on the models, roadmap and timetable for implementing universal suffrage for the CE and LegCo. He would not rule out the possibility for conducting another round of consultation if the views were diverse. In that case, it would take a longer time to formulate a package of proposals. In the case of the Task Force, it had conducted several rounds of consultation before finalising the 2005 proposed package. The Administration realised that the community and the LegCo needed time to narrow differences in opinion, and therefore put forth different options for the key issues of implementing universal suffrage in the Green Paper for early consultation. It was the aim of the CE to resolve the issue of universal suffrage within this term of office.

8. Ms Audrey EU enquired about the following -

- (a) the budget for the consultation on the Green Paper;
- (b) given that the consultation was conducted during the summer when schools and tertiary institutions were in recess, how the Administration had collected views from this sector;
- (c) what were the preliminary views gathered by the Administration; and
- (d) whether the Administration had conducted opinion polls.

9. SCMA responded with the following -

- (a) the budget for the consultation was about \$3 million which included, among others, the expenses for publishing the Green Paper, rental expenses for holding forums, etc;
- (b) representatives of the Administration had attended forums organised by tertiary institutions and listened to the views of this sector. The Administration expected to receive some submissions even after the close of the consultation period;
- (c) the Administration had received over 3 000 submissions so far; many of them were received in the past few days which amounted to several hundred per day. The Administration had yet to analyse the views collected; and
- (d) the Administration attached importance to the results of opinion polls on the Green Paper conducted by the various organisations. The opinion polls conducted by the Administration were for internal reference only.

Action

10. Mr Howard YOUNG enquired about the number of identical submissions received. Dr Philip WONG asked whether there were views not in support of certain options or the timetable for universal suffrage. SCMA said that he did not have the information of identical submissions on hand. At this stage, the Administration did not know the preferred options of the public.

11. Mr TAM Yiu-chung asked whether the proposals put forth by individuals and organisations were specific or general, and asked the Administration to give examples of any innovative proposals that it had received.

12. SCMA said that many of the submissions had yet to be analysed and summarised. For the time being, he had the following observations -

- (a) among the 18 DCs, more than two-thirds supported that universal suffrage should comply with the requirements in the Basic Law and follow the direction of "resolving the simple issues before the difficult ones". They supported that universal suffrage for the CE should precede that for the LegCo, and universal suffrage for the CE should be implemented no later than 2017;
- (b) in discussing the future of functional constituency (FC) at forums, many attendees had expressed the views that the principle of balanced participation should be maintained and the FC system should be retained. The Administration had clarified on each of those occasions that in implementing Article 68 of the Basic Law, the electoral method for forming the LegCo must comply with the principle of "universal" and "equal" suffrage; and
- (c) a member of a chamber of commerce did not support the proposal to allow FCs to nominate candidates for election by all voters, as many voters would not know the background of the candidates.

13. Mr Martin LEE said that based on recent press reports, it appeared that the Chief Secretary for Administration (CS) had ruled out implementing dual universal suffrage in 2012. SCMA responded that the Administration would not comment on press reports. In his conversation with reporters, CS was merely saying that the community held diverse views on the future of FCs. The Administration would consider all the views received during consultation and had not formed its view on the matter.

14. Mr Albert HO said that the CE had remarked during the election that if a mainstream proposal had received support from not less than 60% of the public, he would persuade other parties, including the Central Authorities and LegCo Members, to accept that proposal. Mr HO asked whether the CE would use a proposal with 60% public acceptance as the premise for lobbying support and narrowing differences in opinion among Members.

Action

15. SCMA responded that Mr HO had interpreted only part of the CE's remarks. The models for universal suffrage were premised on their compliance with the Basic Law. As set out in Annex I and Annex II to the Basic Law, any changes to the electoral methods would require tri-partite support, i.e. the endorsement of a two-thirds majority of all LegCo Members, the consent of the CE, and the approval of the Standing Committee of the National People's Congress. The CE attached importance to the aspiration of the community and therefore considered it also necessary for the proposal to receive support from at least 60% of the public. SCMA stressed that the views of members of the public, LegCo Members and the Administration were interactive. Under the Basic Law, the Administration had the constitutional responsibility to formulate a package of proposals for implementing universal suffrage for the consideration of the public and LegCo. He urged LegCo Members to adopt a pragmatic approach and seek common ground with a view to reaching consensus on the early implementation of universal suffrage.

16. SCMA explained that three stages of work were involved -

- (a) stage 1 - public consultation to collect views and narrow differences on the specific issues raised in the Green Paper. The views received would be summarised and the Administration would assess whether a mainstream view could be formed as the basis for formulating a package of proposals. The CE would submit a report to the Central Authorities to reflect faithfully any mainstream views formed during the public consultation and other views expressed;
- (b) stage 2 - the Administration would propose amendments to Annex I and Annex II to the Basic Law after a package of proposals was formulated; and
- (c) stage 3 - the Administration would propose amendments to the relevant local legislation to effect the changes.

17. Mr LEE Cheuk-yan said that the Administration's approach was illogical. As a start, the CE should have indicated his support for a people-based proposal, e.g. implementation of dual universal suffrage in 2012, and made the best endeavour to lobby support from Members and the public, instead of placing the responsibility to seek common ground on the various options for universal suffrage on the public and LegCo Members. By not indicating its stance and evading its responsibility, the Administration was stalling the implementation of universal suffrage. Mr LEE asked whether the Administration would conduct another round of consultation, in the form of a green paper, after a final proposal was formulated.

18. SCMA responded that Mr LEE's remarks were unfair and had disregarded constitutional principles and political reality. He queried the possibility of gaining support from 40 Members to implement dual universal suffrage in 2012, when the

Action

views on the future of FCs were diverse. He said that the Administration was acting in a responsible manner by putting forth options to facilitate public understanding of the issues involved, to broaden the scope for discussion, and to narrow differences in opinion before formulating a package of proposals. If the Administration wished to stall the implementation of universal suffrage, it would not have published the Green Paper within 11 days after the commencement of the new term Government. In his view, the steps taken by the opposition camp in respect of constitutional development were illogical. Had the opposition camp not acted against public opinion, it would have supported the package proposed in 2005 and democratic development would have moved forward. He urged Members to learn from the past experience, to keep an open mind and be accommodating. It was only through rational and pragmatic public discussions that consensus on the future constitutional development of Hong Kong could be forged. When there was a basis to formulate a final proposal, which would be a product of concerted effort, the Administration would propose amendments to Annexes I and II to the Basic Law and consult the LegCo.

19. Ms Emily LAU said that the political structure of Hong Kong was distorted because of the inadequacy of the present system. For instance, pan-democratic Members had received over 62% of the votes in the 2004 LegCo election and should have taken up 62% of the LegCo seats, but the fact was that only 25 pan-democratic Members were returned by direct election. Had the political system been different, pan-democratic Members would not have difficulty in securing 40 votes to implement dual universal suffrage in 2012. As regards the 2005 proposed package, Ms LAU said that pan-democratic Members did not have a chance to exchange views with the CE.

20. SCMA said that the CE had exchanged views with Members of the opposition camp at different forums and different times on the 2005 proposed package. Having reviewed the situation at that time, the Administration had made a concession that if the LegCo supported the 2005 proposed package, appointed DC seats would be abolished in two to three phases. The adjustments to the proposed package, however, were not supported by the opposition camp. SCMA further said that the 50:50 ratio between members returned by FC and Members returned by GCs through direct election was a historical reality. Whether one liked it or not, one had to follow the constitutional requirement to secure a two-thirds majority of LegCo Members on any electoral proposal.

21. Mr Timothy FOK said that he supported that constitutional development in Hong Kong should follow the design and principles prescribed in the Basic Law. In the process of attaining the ultimate aim of universal suffrage, Hong Kong should take account of the actual situation and progress in a gradual and orderly manner in accordance with the principle of "resolving the simple issues before the difficult ones". To this end, he supported that universal suffrage for the CE should be implemented no later than 2017. Given the complexity of the composition of LegCo, universal suffrage for the LegCo should follow thereafter.

Action

22. Mrs Selina CHOW supported the views of Mr FOK. She said that the Liberal Party would also like to implement universal suffrage for the CE in 2012. Having considered the political reality, it had accepted a compromise. She urged pan-democratic Members to refrain from using simple slogans such as "universal suffrage in 2012" in disregard of the constitutional framework laid down in the Basic Law and the political reality, and from misleading the public to believe that 2012 was the only option. If pan-democratic Members continued to adopt an uncompromising attitude, universal suffrage would only become even more out of reach and their relationship with the Central Authorities would only be more apart, as evident from the experience in 2005 when the proposed package was vetoed by pan-democratic Members. She urged pan-democratic Members to review their attitude, to respect the views of others who held different views from theirs, and be receptive in discussing other options for implementing universal suffrage. She further said that the Liberal Party considered that when electing the CE by universal suffrage for the first time, a high nomination threshold should be set. The threshold could be lowered step by step at subsequent elections in the light of Hong Kong's actual situation.

23. Mr Albert HO said that pan-democratic Members had been persistent with the pursuit of dual universal suffrage in 2012 because Hong Kong was a civic society ready for universal suffrage. Pan-democratic Members was only asking for the right to exercise one-person-one-vote which the people of Hong Kong had been unreasonably deprived of for many years. If the final models for universal suffrage were unreasonable, pan-democratic Members would continue with the fight. He agreed with Mr LEE Cheuk-yan that the CE had the constitutional duty to state his position and vision for universal suffrage and lobby support from the community.

24. Ms Emily LAU said that if the public did not support the implementation of universal suffrage in 2012, they would not have voted for pan-democratic Members election after election. She expressed concern whether the implementation of universal suffrage subsequent to 2012 would meet international standards. If a high nomination threshold was imposed at the beginning to be followed by a low threshold thereafter as suggested by Mrs Selina CHOW, pan-democratic Members would like to know the timetable for introducing a low threshold. If universal suffrage was not to be achieved in 2012, the Administration should at least provide a timetable on when universal suffrage would be attained and inform members of the transitional arrangements before the ultimate aim was achieved. Ms LAU also expressed concern that the final models for universal suffrage would limit the right of people to be nominated as candidates, although the right to vote was given.

25. Ms Emily LAU further pointed out that Article 25(b) of the International Covenant on Civil and Political Rights (ICCPR) provided that every citizen should have the right and opportunity to vote and be elected at genuine periodic elections, and the Article was applicable to Hong Kong. Although the Administration had argued that a reservation had been made reserving the right not to apply the Article

Action

of the ICCPR to Hong Kong, pan-democratic Members disagreed with that view. It was also the view of the United Nations Human Rights Committee that once an elected LegCo was established, its election must conform to Article 25(b) of the ICCPR. Therefore, the reservation should cease to apply to Hong Kong, following the return of LegCo Members by election in 1985.

26. SCMA said that when the ICCPR was applied to Hong Kong in 1976, a reservation was made by the UK Government reserving the right not to apply Article 25(b) of the ICCPR to Hong Kong. After the establishment of the HKSAR, in accordance with the Central People's Government notification to the United Nations Secretary-General in June 1997 and Article 39 of the Basic Law, that reservation continued to apply to Hong Kong. Hence, the ultimate aim of universal suffrage of Hong Kong's constitutional development originated from the Basic Law, and not the ICCPR.

27. SCMA further said that the Administration had already made clear in paragraph 2.24 of the Green Paper that any universal suffrage model should comply with the principles of "universal" and "equal" suffrage. The Administration noted that the universal suffrage system commonly adopted was a one-person-one-vote system which could take the form of direct or indirect election. SCMA pointed out that all the options provided in the Green Paper were more democratic than the existing electoral system, in terms of composition of the Election Committee, nomination threshold, etc. The power of Members to examine the final proposals for the two electoral methods was substantive, as they could not be implemented without the support of a two-thirds majority of LegCo Members. The Government would make use of the next five years to forge consensus on the future constitutional development of Hong Kong.

28. The meeting ended at 11:12 am.

Council Business Division 2
Legislative Council Secretariat
5 May 2008