



**HONG KONG DEMOCRATIC FOUNDATION
GREEN PAPER ON CONSTITUTIONAL DEVELOPMENT
SUBMISSION TO THE PANEL ON CONSTITUTIONAL AFFAIRS**

Concept of Democracy

The fundamental underpinnings of a democratic system are the concepts of equality and fairness. These concepts are translated into the mechanism of election through universal suffrage, where each voter's vote is of absolutely equal value and no sector of society is accorded disproportionate representation.

These concepts are well recognized in the Basic Law in articles 45, which proscribes the ultimate aim of election of the Chief Executive by universal suffrage and 68 which similarly proscribes that the ultimate aim is the election of all the members of the Legislative Council by universal suffrage.

It is important, therefore, that any development of the HKSAR's present system of governance takes due account of these concepts.

Principles of Design of the Political Structure of the HKSAR

The Green Paper on Constitutional Development proposes that, in addition to the basic policies of the State, the following four principles be recognized in respect of the design of the political structure of the HKSAR:

- i) meeting the interests of different sectors of society;
- ii) facilitating the development of the capitalist economy;
- iii) gradual and orderly progress, and
- iv) appropriate to the actual situation in the HKSAR

The first two principles are common to all jurisdictions that espouse a democratic system of governance and embrace a free market economic system. The latter two principles, subjective in nature, are specific to the HKSAR situation.

Response to Green Paper Paragraphs 6.03-6.07

Para 6.03 Since the Green Paper does not set out the unique circumstances pertaining in Hong Kong which it implies might need taking into account when designing a voting system, we are unable to pass comment at this time.



Para 6.04 It is generally accepted that Universal Suffrage is the system that best enables achievement of the objective of “meeting the interests of different sectors of society” while attaining the aim of preserving stability and facilitating prosperity.

Para 6.05 Constitutions do not normally include provisions covering specific economic policies, as these are not normally regarded as being of a “constitutional” nature and the Basic Law is unique in this respect. However, Articles 105-116 and 118-119 would appear to already adequately safeguard the principle of “facilitating the development of the capitalist economy”.

Para 6.06 The question of ensuring complicity with the principle of gradual and orderly development is one that can best be answered by way of community consensus. The fact that in the 2004 LegCo elections legislators contesting on a platform including Universal Suffrage for both the Chief Executive and LegCo in 2007 and 2008 respectively received approximately 60% of the total votes cast in the Geographical Constituency elections and that subsequently credible public opinion polls regularly return results showing over 60% support for the introduction of Universal Suffrage at the earliest opportunity would appear to be a substantive answer.

Furthermore it should be noted that our system of governance introduced elected membership in 1936 in respect of the Urban Council, extended this to include direct elections to the District Boards in 1982, the Regional Council in 1986 and for some Legislative Council seats in 1991, expanding from 18 seats in that year to 20 in 1995, 24 in 2000 and 30 in 2004.

By way of comparison, the former communist East European states, with the exception of Belarus, all developed and implemented constitutions, which included directly elected seats to their legislatures, within two years of the end of authoritarian rule in their states.

Para 6.07 Judgment as to whether Hong Kong people have an adequate understanding of the concept of “One Country, Two system” and the Basic Law can be hostage to distorted subjective evaluations and therefore is an issue which should not be a test in a fair society. As to the issue of the relationship between the executive authorities and the legislature in an “executive-led” system, it is far more difficult for this to work smoothly outside a democratic system based on Universal Suffrage than within the framework of such a system.



Further Constitutional Development

The Hong Kong Democratic Foundation supports the proposals set out in the paper “Progress towards Universal Suffrage” released in March by a group of 22 legislators, proposing, in summary:

1. election of the Chief Executive in 2012 by Universal Suffrage from candidates nominated by a Nomination Committee, based on the current 800 member election Committee with the addition of the 400 directly elected District Councillors. To qualify to stand for election for the Chief Executive, each candidate will need to receive support from 50 members of the Nominating Committee.
2. election of all members of the Legislative Council in 2012 by way of a “mixed election” model in which half the seats shall be returned through geographical constituency elections by the “single seat single vote” simple majority system, with the other half of the seats returned through election by the “proportional representation system” whereby the whole of the Hong Kong SAR will form a single constituency. Under this proposal each registered voter shall be entitled to cast two votes, one in their geographical constituency and one for the territory-wide single constituency seats.

Hong Kong Democratic Foundation

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