



尋道會  
**Spiritual Seekers Society**  
**Hong Kong**

**Submission to the  
Legislative Council Panel on Constitutional Affairs  
Concerning the  
Green Paper on Constitutional Development**

The Spiritual Seekers Society of Hong Kong is a religious community based on the liberal religion Unitarian Universalism. The first Principle of the Unitarian Universalist Association affirms “The inherent worth and dignity of every person.” We believe that compliance with the International Covenant on Civil and Political Rights (“ICCPR”) is an essential step to realize respect for the inherent worth and dignity of every person.

Focusing on the Green Paper on Constitutional Development (“the Green Paper”) with respect to its compliance with the ICCPR, it has failed in several aspects.

Article 25 of ICCPR provides “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;”

The principle of “directly or freely chosen representatives” in Article 25 (a) renders the existing Election Committee or the proposed “nominating committee” undesirable. Such a pre-selection process is against the spirit of free election because the candidates for Chief Executive (“CE”) are chosen only by the few sitting in the committee. The number of seats and composition of the “nominating committee” are irrelevant; existence of the “nominating committee” is a sign that Hong Kong government is reluctant to move forward in respecting the rights of Hong Kong citizens in choosing their own CE.

ICCPR Article 25 (b) provides that every citizen shall have the right and opportunity to “vote and to be elected at genuine periodic elections which shall be universal and equal suffrage.” Again, the continuation of a “nominating committee” controlled by the existing administration is violating the obligation of the Hong Kong government under

ICCPR Article 25. Every citizen shall have the right to elect and vote for the CE and not just candidates that pleased the few in the “nominating committee.” The options proposed in the Green Paper in term of altering the number of seats in the “nominating committee” is not a step forward to recognizing the right of every citizen of Hong Kong for direct election.

General Comment Number 25 of the United Nations Human Right Committee paragraph 9 further interprets that “Paragraph (b) of article 25 sets out specific provisions dealing with the right of citizens to take part in the conduct of public affairs as voters or as candidates for election. Genuine periodic elections in accordance with paragraph (b) are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the *free expression* of the will of electors. The rights and obligations provided for in paragraph (b) should be *guaranteed by law*.”

The key phrases “free expression” and “guaranteed by law” should remind the government that the current election system for CE and the proposed reformed election system in the Green Paper are still fall short of fulfilling the government’s obligation to respect the rights of Hong Kong citizens in terms of selecting their own CE by voting.

Also, General Comment Number 25 paragraph 13 provides “State reports should describe the rules governing the right to vote, and the application of those rules in the period covered by the report. State reports should also describe factors which impede citizens from exercising the right to vote and the positive measures which have been adopted to overcome these factors.”

In the Concluding Observations of the Human Rights Committee in 2006 on the second periodic report of the Hong Kong Special Administrative Region (HKSAR) submitted by the People’s Republic of China, the Committee’s recommendation to the Hong Kong government is that “All necessary measures should be taken whereby the Legislative Council is elected by universal and equal suffrage. It should be ensured that all interpretations of the Basic Law, including on electoral and public affairs issues, are in compliance with the Covenant.”

The Human Rights Committee is right to hint that it is the interpretation of the Basic Law that is the problem or potential problem in preventing universal suffrage in Hong Kong. The step in the right direction is to interpret the Basic Law in ways that not deny any Hong Kong citizen not belonging to any “nominating committee” the right to elect a CE for Hong Kong. It seems that the Green Paper is not going in the right direction when it dismissed the possible solution provided by the League of Social Democrats in Note 8.

The Green Paper paragraph 3.10 also made a mistake of suggesting the elimination of “nominating committee” system a violation of Article 45 of the Basic Law. This is simply not true.

Article 45 of the Basic Law provides “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. The specific method for selecting the Chief Executive is prescribed in Annex I: ‘Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region’.”

Referring to Annex I point 7, “If there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for approval.”

The Hong Kong present administration should aspire to fulfill its obligation under ICCPR Article 25 and look for an election system that fully recognizes the right of every Hong Kong citizen to universal suffrage by proposing a new election system which does not have any “nominating committee” to exclude qualified voters. This proposal should then be discussed and voted in Legislative Council to seek to amend Annex I of the Basic Law.

If there is a conflict between the constitutional law with government’s obligation under International Human Rights Laws, it is the government’s duty to propose amendment of the constitution.

Compliance with the ICCPR can only be achieved by eliminating the “nominating committee” and replacing with direct election which gives a vote to every registered voter in Hong Kong.

Regarding the model for formation of the Legislative Council (“LegCo”), the continual existence of Functional Constituencies (“FCs”) is incompatible with the concept of universal suffrage and should be abolished immediately. After the abolition of FCs, the seat vacancies of the LegCo thus produced should be filled by members through direct election. The other options of gradual abolition are unacceptable as it is against the principle of democracy.

As for the timetable for implementing universal suffrage, it should be implemented by 2012 the latest. There is no need for any transition phase, and the government should prepare to make any necessary changes to have universal suffrage for electing LegCo members by 2012. Any proposed date later than 2012 is not acceptable for the public as reflected in the latest survey and any delay would only bring more social unrest for Hong Kong.

The Hong Kong administration has wrongly blamed the delay in implementing universal suffrage to the LegCo for turning down in 2005 the previous proposal package

for 2007/2008. This is plainly a distortion, as the government has proposed an unacceptable proposal in 2005 and it is the duty for the LegCo to turn it down. This Green Paper is not really a big improvement from the previous unacceptable proposal for constitutional development in 2005. The government should have put forth a proposal that really moves forward in the direction in recognizing the rights of Hong Kong people for direct elections.

In conclusion, we support constitutional development towards early compliance with the principles and spirit of the International Covenant on Civil and Political Rights.

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