

立法會
Legislative Council

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Bills Committee on Legislative Council (Amendment) Bill 2007

Background Brief

Purpose

This paper provides background information on the past discussion of Members on the proposed arrangements for updating the electorate of the functional constituencies (FCs) for the 2008 LegCo election.

Background

2. On 21 December 2005, two motions to, respectively, amend Annexes I and II of the Basic Law regarding the methods for selecting the Chief Executive (CE) in 2007 and the Legislative Council (LegCo) in 2008 were presented by the Government to the LegCo for endorsement (the motions). The motions did not receive the two-thirds majority support of all LegCo Members as stipulated in Annexes I and II of the Basic Law.

3. In accordance with the Interpretation made by the Standing Committee of the National People's Congress (NPCSC) on 6 April 2004, if no amendment is made to the methods for selecting the CE and for forming the LegCo as stipulated in Annexes I and II of the Basic Law, the two methods in Annexes I and II of the Basic Law will still be applicable.

Discussion of the Panel on Constitutional Affairs

4. The Panel on Constitutional Affairs was consulted on the proposed arrangements for updating the electorate of the FCs for the 2008 LegCo election at its meeting on 19 November 2007.

5. While some members supported the proposed arrangements, some other members gave the following views -

- (a) the proposed amendments were technical in nature and did not serve any meaningful purpose. The FC system, which was inconsistent with the principles of equal and universal suffrage enshrined in Article 25(b) of the International Covenant on Civil and Political Rights (ICCPR), should be abolished as soon as possible;

- (b) the Administration should at least strive to propose amendments to broaden the electorate of the FCs as an interim measure, if the FCs could not be abolished in 2008; and
- (c) the issue of FCs was complicated and should be further explored. There were views in the community that the FCs should not be abolished lightly, and there were also views that the FCs should be retained, but changes could be made to the electoral system so that it would be consistent with the principles of equal and universal suffrage.

6. The Administration advised that as the motions could not pass through the LegCo in 2005 and in accordance with the Interpretation made by the NPCSC on 6 April 2004, the 2008 LegCo election would be held on the basis of the existing arrangements, i.e. the electorate of the FCs would remain unchanged except that minor technical updating would be made. As regards the proposal to broaden the electorate of the FCs, it was a wider issue concerning the future of the FCs which was being dealt with under the Green Paper on Constitutional Development.

7. The Administration explained that upon ratification of the ICCPR in 1976, a reservation had been made reserving the right not to apply Article 25(b) of the ICCPR to Hong Kong. Before 1997, the then Supreme Court had delivered a judgment on the legality of the FCs. The Letters Patent also allowed the FCs to exist in the electoral system of Hong Kong. After the establishment of the Hong Kong Special Administrative Region, in accordance with the Central People's Government notification to the United Nations Secretary-General in June 1996 and Article 39 of the Basic Law, that reservation continued to apply to Hong Kong.

8. Some members pointed out that the aspiration of the public to abolish the FC system was very clear. 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, which provided that every citizen should have the right and opportunity to vote and be elected at genuine periodic elections. The reservation should cease to apply to Hong Kong, following the return of LegCo Members by election in 1985.