



Civic Party Position Paper

The HKSAR Government's Proposals on the Arrangements for filing vacancies in the Legislative Council

1. In violation of the usual procedure and protocol, the Government of the HKSAR has decided not to conduct any public consultation on this new and important constitutional change to what amounts to a wholesale abolition of by-elections in all geographical constituencies. The Civic Party strenuously objects to such a hasty and undemocratic means of proposing such a fundamental change to the existing electoral system.
2. In the Government's paper submitted to LegCo, we note that there is no discussion whatsoever in relation to the constitutionality of these new electoral arrangements.
3. We believe that there has not been enough time to allow for sufficient discussion and in depth consideration of the constitutional implications arising from the proposed new electoral arrangements in light of the requirements under Article 25 of the International Covenant on Civil and Political Rights (ICCPR) (as entrenched into the Basic Law (BL) by virtue of Article 39 of the BL).



4. We urge the Government to carefully consider the constitutional issues raised in this paper before unilaterally proceeding with the enactment of the new electoral arrangements. Professional advice should also be sought from The Law Society and The Hong Kong Bar Association.

5. According to paragraph 21 of the *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)*¹

Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and **must guarantee and give effect to the free expression of the will of the electors**. The principle of one person, one vote, must apply, and within the framework of each State's electoral system, **the vote of one elector should be equal to the vote of another**. **The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of**

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(<http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/d0b7f023e8d6d9898025651e004bc0eb?Opendocument>)



voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.

6. It is submitted that the Government's proposal may potentially violate three of the principles set out above which are inherent in the spirit of Article 25 of the ICCPR.

7. The second 'by-election' result (i.e. the new replacement mechanism as proposed by the HKSAR Government should a LegCo vacancy becomes available in between elections) is no longer the **free expression of the will of the electors**. Indeed, the results are meaningless, for the votes have been removed from their context. If the voters were asked to vote again, with full knowledge that one of their preferred candidates are no longer standing, they would cast a completely different vote. In other words, the second stage 'by-election' result is not the free expression of the will of the electors.

8. The result of the second 'by-election' **renders the vote of the electors unequal**. For while the vote of those whose preferred candidate was not returned in the first round is still accounted for in the second round, the vote of those whose preferred candidate succeeded in the first round carries no weight in the second round. The successful first round voters, have their vote extinguished in the second round. Overall, their right to choose a representative is



weakened, should they happen to pick the successful candidate in the first round.

9. The method of reallocating votes therefore **distorts the distribution of votes and unreasonably restricts the right of citizens to choose their representatives freely**. Taking into account votes which were cast under completely different circumstances in order to select a new representative is a distortion of the will of the electors. The absence of a genuine, fair election, when circumstances clearly necessitate it, just because they have cast votes in the past, is an unreasonable restriction.

10. It should be noted that Article 68 of the Basic Law mandates that “The Legislative Council of the Hong Kong Special Administrative Region shall be constituted by election” and that the “The ultimate aim is the election of all the members of the Legislative Council by universal suffrage”. That ultimate aim has yet to be achieved and while Hong Kong continues to strive for full universal suffrage, our residents hold their rights to vote dearly. This has been recognized by the Honourable Cheung J in his judgment on the prisoners’ right to vote:

“In so far as universal suffrage is already allowed in the election of LegCo members for geographical constituencies, the presumption must be in favour of inclusion and the aim must be directed at identifying the



will of people through universal suffrage. One could indeed argue that, where only 50% of the LegCo members are elected by universal suffrage, that makes the right to vote doubly important and precious.” (per 106 Chan Kin Sum v Secretary for Justice HCAL 79/2008)

11. By failing to hold a genuine election when there is a vacancy, it effectively dilutes voters’ already limited participation in constituting LegCo. In the case of those who successfully returned their preferred candidate in the ordinarily scheduled election, their vote no longer carries any weight in deciding the replacement legislator – they have effectively been disenfranchised.
12. This is a massively retrogressive step in Hong Kong’s journey towards universal suffrage, and is inconsistent with the Government’s professed dedication towards achieving that ultimate aim.
13. Monetary considerations should never be a reason for the dilution of civil and political rights.

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Civic Party

Constitutional and Governance Policy Branch