

立法會

Legislative Council

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Draft report of the Panel on Constitutional Affairs for submission to the Legislative Council

Purpose

The report gives an account of the work of the Panel on Constitutional Affairs for tabling at the meeting of the Legislative Council on 7 July 1999 in accordance with Rule 77(14) of the Rules of Procedure of the Legislative Council.

The Panel

2. The Panel was formed by a resolution of this Council on 8 July 1998 for the purpose of monitoring and examining Government policies and issues of public concern relating to constitutional affairs. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 15 members. Hon Andrew WONG Wang-fat and Hon Emily LAU Wai-hing were elected Chairman and Deputy Chairman of the Panel respectively. A membership list of the Panel is in **Appendix II**.

Major work

Review of the 1998 Legislative Council (LegCo) election

4. The Panel took note of the Report on the 1998 Legislative Council Elections submitted to the Chief Executive by the Electoral Affairs Commission (EAC), and the

opinion survey on voting behaviour in the 1998 LegCo election conducted by the Administration. Members asked the EAC to consider including photographs of candidates as well as the names and logos of political parties on ballot papers, and prohibiting canvassing activities on polling day for the 2000 LegCo election.

Review of district organisations

5. The Panel discussed the review of the district organisations, i.e. the Municipal Councils (MCs) and District Boards at seven meetings, one of which was for the purpose of receiving views from academics. In addition, four meetings were held jointly with other Panels.

6. The Panel was briefed at various stages of the review. Following the publication of the Consultation Document on 1 June 1999 for public comments by 31 July 1999, the Panel was briefed on the progress of the consultation exercise on 20 July 1998. Members pointed out that the Administration's pre-determined idea about the future structure of the MCs, the limited options proposed for consultation and the short period for consultation etc. had cast doubt on whether the Administration was intent on undertaking a genuine consultation. They requested the Administration to modify its stance on the matter and the timeframe for implementing any changes having regard to Members' views expressed on the motion debate on the subject by LegCo on 29 July 1998.

7. After the publication of the "Compendium of Public Views" on the review on 8 September 1998, the Administration advised the Panel at a meeting on 21 September 1998 that the preliminary assessment of the collected views indicated that the majority view supported the Government assuming direct responsibility for food safety and environmental hygiene, although public opinion was diverse on the future of the MCs. Since these two areas of work constituted the major functions of the MCs, it was

therefore a question of whether the remaining municipal functions would justify the retention of the two MCs or a merged council. Some members expressed strong reservation about the way the Government had conducted and presented the results of the public consultation. They pointed out that the Administration had tried to influence the public towards accepting the Government's proposals through releasing information about opinions in support of the Government before the consultation came to an end. In presenting the result of the consultation, the Administration adopted a selective approach in releasing public opinion obtained during the consultation period to mislead people that public opinion was in favour of the abolition of the MCs. They criticised the proposal to abolish MCs and redistribute their functions as dismantling a well-established channel for public participation in community affairs and a retrogression in democratisation. A member also called upon the Government to conduct a referendum on the matter.

8. As agreed by the Panel, the Chairman wrote to the Chief Executive on 22 September 1998 urging him not to reach any decision in the Policy Address before the Panel had a thorough discussion with the Administration. The Private Secretary replied on his behalf saying that Members' views would be given due consideration.

9. The Chief Executive announced in his Policy Address on 7 October 1998 that there was no need to retain the Provisional Municipal Councils after the terms of office of their members expired at the end of 1999. The Consultation Report on the review, presented to the Panel on 9 October 1998, recommended inter alia that the Government should assume direct responsibility for the provision of food safety and environmental hygiene services, and that a new structure should be devised to provide policy direction and services in the areas of arts, culture, sports and recreation. On some members' suggestion that the Administration should reconsider the proposal of "one council, one department" supported by LegCo in the motion debate held on 29 July 1998, the Administration explained that the proposal was not considered feasible

as to transfer such a wide spectrum of functions to a merged MC would far exceed the current remit and scope of responsibilities of the MCs. As regards members' concern about ensuring public participation in community affairs, the Administration explained that this could be achieved by the proposal to increase the role and responsibilities of and the number of elected members to the District Councils. Some members disagreed pointing out that the decision-making powers of MCs were transferred neither to LegCo nor the District Councils under the new framework proposed.

10. On implementational aspects of the review, the Panel noted that some 150 ordinances and by-laws would need to be amended or repealed in order to transfer authority or functions from the MCs to the Government or any public body. Panel members expressed concern as to whether the legislative work could be completed before the end of 1999 to give effect to the proposed changes. Some members requested the Administration to consider introducing an omnibus bill on all legislative proposals arising from the review to facilitate the consideration of LegCo.

11. The Panel also held four meetings with the Panels on Health Services and Environmental Affairs to discuss the Consultancy Study on Food Safety and Environmental Hygiene commissioned by the Government and other related issues.

Relationship between the Hong Kong Special Administrative Region (HKSARG) and the Central People's Government (CPG)

12. The Panel was briefed on the working relationship between the HKSARG and the Hong Kong and Macau Office, the Commissioner's Office of the Ministry of Foreign Affairs and the Hong Kong Garrison.

13. Members noted that Xinhua News Agency (Hong Kong Branch) was one of the three "State" organs stationed in Hong Kong, while the Chinese Communist Party (CCP) was not. However, the contact of Xinhua with the HKSARG was infrequent

and on a one-off basis after the reunification. Some members were concerned about whether Xinhua represented the CCP in Hong Kong, and if so, the exemption granted to Xinhua as a “State” organ under the Interpretation and General Clauses Ordinance (Cap. 1) would be extended to the CCP. The Administration advised that there was no information on whether Xinhua represented the CCP, nor was there any evidence of the CCP engaging in any open activities in Hong Kong. Members were assured that any organisations in the HKSAR had to abide by the laws of the HKSAR under Article 22 of the Basic Law.

Constitutional conventions

14. The Panel requested the Administration to consider establishing an open process, namely, the holding of constitutional conventions to discuss major issues concerning constitutional development in Hong Kong with a view to arriving at a consensus with the public.

15. Members noted the Administration’s advice that the Basic Law had already laid down the blueprint for constitutional development in Hong Kong. The Administration would comply with the Basic Law provisions and come up with a suitable model for Hong Kong, with a view to progressing towards the ultimate aim of universal suffrage in the elections of the Chief Executive and LegCo.

“Direct elections” and “Ministerial system of government”

16. Despite the Panel’s repeated requests, the Administration advised that it was impossible for a detailed discussion paper to be prepared on the above two topics for consideration of the Panel before completion of the 2000 LegCo election. As the Government had been operating well under the current system, the Administration did not consider the issue of a ministerial system of government as a matter of urgency.

As regards future development of the political system of the HKSAR, Article 68 of the Basic Law stipulated that the ultimate aim was the election of all LegCo Members by universal suffrage and Annex II to the Basic Law provided for the mechanism for proposing amendments to the method of forming LegCo and its voting procedures after 2007. The Administration considered that to start discussion on the topics in the year 2000 was appropriate.

17. Some members disagreed with the Administration and opined that discussion on the subjects should commence as soon as possible so that there would be adequate time for arrangements for any possible change of political system in 2007. Members were assured by the Administration that it had been gathering information on the different systems of government and a discussion paper would be prepared after a comprehensive analysis of the information collected.

Electoral arrangements for the 2000 LegCo election

18. The Panel was briefed on the electoral arrangements for the 2000 LegCo election. On the proposal to allow paid election advertisement on TV and radio, many members expressed concern about the implications of the proposal and the danger of money politics. They pointed out that the proposal would put independent candidates or political parties with less financial resources at a disadvantaged position. The Panel requested the Administration to take into account members' views before finalising its proposals.

19. Noting that the Legislative Council (Amendment) Bill proposed to replace the Urban Council and Regional Council Functional Constituencies (FCs) by one new FC for the 18 District Councils and one for the catering sector, some members maintained that procedure-wise, this Bill should be introduced after passage of the Provision of Municipal Services (Reorganisation) Bill, and not vice versa.

20. The Panel requested the Administration to consider other proposals made by members, e.g. subsidy of election expenses incurred by candidates who had secured votes up to a prescribed threshold by the Government, banning all canvassing activities on polling day and automatic registration of voters.

Mechanism for amending the Basic Law

21. Noting that the Administration had identified eight issues for further detailed study before a Basic Law amendment mechanism could be put in place, members agreed that the Panel should consult the public on the basis of these issues, before having further discussions with the remaining two parties in the amendment process, i.e. the Chief Executive who was represented by the Secretary for Constitutional Affairs and the local deputies to the National People's Congress (NPC).

22. Two meetings were held in March 1999 for the Panel to receive views from individuals/organisations including academics and legal professionals. At the meeting on 17 May 1999, the Administration presented the preliminary findings of a comparative study of the experience of other countries on constitutional amendments. On the progress and timetable of its study, the Administration advised that a number of new and important issues were identified as a result of the public consultation conducted by the Panel. In order to work out an appropriate mechanism to give effect to Article 159 of the Basic Law, the Administration would need to consult all parties involved including the CPG and the Standing Committee of NPC so that their views could be taken into account in devising the mechanism. Hence, it was not possible for the Administration to provide any meaningful timetable at this stage. Members were dissatisfied with the reply and urged the Administration to provide a tentative timetable at the next meeting.

(To be finalised after the meeting on 21 June 1999)

Seeking an interpretation of provisions in the Basic Law from the Standing Committee of the National People's Congress

23. In seeking the Council's support of the Chief Executive (CE)'s decision to request the State Council to approach the Standing Committee of the National People's Congress to interpret Article 22(4) and Article 24(2)(3), the Administration had undertaken to make public the content of CE's report to the State Council and to consider whether a formal mechanism was needed for submitting future requests for interpretation of provisions in the Basic Law. The House Committee had requested the Panel to follow up these issues.

(To be finalised after the special meeting on 15 June 1999)

Relationship between the executive and legislature

24. Members made a number of proposals to enhance communication and cooperation between the executive and legislature. These included: Government's implementation of motion debates passed by LegCo, more regular meetings between LegCo and the Executive Council and the Chief Executive to discuss specific subjects and important issues, review of the working procedures for consulting Panels on legislative proposals, and Government's consideration of members' views and suggestions on major policy issues. A member was also of the view that only direct elections of the Chief Executive and LegCo could give effect to the provisions under the Joint Declaration on the accountability of the executive to the legislature. The Administration undertook to reflect members' views and suggestions to the Chief Executive for consideration.

1999 District Councils (DC) election

Electoral Affairs Commission's (EAC) proposed Guidelines

25. The Panel was briefed on the major new measures introduced in the EAC's proposed Guidelines. On the proposal to prohibit presenters, regular contributors or columnists who were candidates or members of a political party/organisation whose other members were candidates from appearing in programmes or contributing articles in the print media once the nomination period began, it was the consensus of the members present at the meeting that the prohibition, if any, should apply to candidates only. On the proposal which required electors to mark ballot papers with a standard chop (carved with a tick "✓") to be provided at the voting booth, a majority of the members present considered that the new measure was too strict and would not help reduce the amount of questionable ballot papers.

Election expenses limit, subscribers and election deposit for nominations

26. The Panel noted that preliminary proposals for the 1999 DC elections on the election expenses limit, number of subscribers required for nomination, qualification of subscribers, amount of election deposit and threshold for forfeiture of election deposit were the same as those for the 1994 District Board elections.

Other issues

27. The Panel also discussed other issues including the adaptation of laws programme, the 1998/99 voter registration exercise, review of sections 15(3) and 40(1)(b)(iii) of the Legislative Council Ordinance concerning disqualification of LegCo Members from holding office and application of the Prevention of Bribery Ordinance to the Chief Executive.

Panel meetings

28. From July 1998 to June 1999, the Panel held a total of 25 meetings, 4 of which were held jointly with other Panels.

Legislative Council Secretariat

14 June 1999

Legislative Council
Panel on Constitutional Affairs

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to implementation of the Joint Declaration and the Basic Law, relations between the HKSAR Government and the Central People's Government and other Mainland authorities, electoral matters and district organisations.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy areas prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy areas as referred by the Council or House Committee or as raised by the Panel itself.

**Legislative Council
Panel on Constitutional Affairs**

Membership List

Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon LEE Wing-tat
Hon Martin LEE Chu-ming, SC, JP
Hon Margaret NG
Hon Ronald ARCULLI, JP
Hon CHEUNG Man-kwong
Hon Ambrose CHEUNG Wing-sum, JP
Hon Christine LOH
Hon Gary CHENG Kai-nam
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon Ambrose LAU Hon-chuen, JP
Hon SZETO Wah

Total: 15 Members

Date: 9 September 1998