

(English translation prepared by the
Legislative Council Secretariat
for Members' reference only)

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To : Legislative Council Panel on Constitutional Affairs
From : People's Constitutionalist Society

**Proposals on the amendment of
Article 159 of the Basic Law**

(A) Comments on Article 159 of the Basic Law:

1. Under Article 159, amendment to the Basic Law can be proposed after obtaining the consent of two-thirds of the local deputies to the National People's Congress (NPC), two-thirds of all the members of the Legislative Council (Legco), and the Chief Executive (CE). With these stringent requirements, the opinions of Hong Kong people can hardly be reflected. As a matter of fact, only the Central People's Government (CPG) is in a position to exercise the right to amend the Basic Law.
2. At present, the CE, the Legco, local deputies to NPC and the Standing Committee of NPC are all lacking in public acceptability because they are not returned by universal suffrage. Therefore, it is inappropriate for them to be given the important task to amend the Basic Law.

(B) We are of the view that the power to amend the Basic Law should be vested in the people of Hong Kong and the representatives whom they elected. We, therefore, propose that:

1. a Constitutional Assembly should be established with all its members directly elected by universal suffrage. The Constitutional Assembly is responsible for matters relating to the review and amendment of the Basic Law. The amendment proposals passed by the Assembly should be put to a vote by all the people of Hong Kong on a clause- by-clause basis and require the approval of, for example, more than half of the voters or two-thirds of them.

2. the people's power to formulate their constitution should be established. Legislation should be enacted to provide that any amendment proposal jointly endorsed and submitted by a certain percentage of people (for example, it is 5% in California, USA) can be tabled in the Constitutional Assembly for a vote. If the number of people who endorsed the amendment proposal exceeds a certain percentage (for example, 8% in California, USA), the proposal can directly be put to a vote by all the people of Hong Kong on a clause- by-clause basis.
 3. all provisions in the Basic Law must be put to a vote for approval by all the people of Hong Kong before they can come into effect. Provisions approved by the people should be observed and implemented by the Hong Kong Government. The CPG and the Standing Committee of NPC do not have the power to raise objection or intervene in this regard.
 4. other than the mechanism proposed above, no authorities (be they in Hong Kong or in the Mainland) can have the power to amend the Basic Law.
- (C) Even though the CE and the Legco are to be given full power to amend the Basic Law, in which case obstructions from CPG in the procedure of constitutional amendment may be removed, given that neither the CE nor the Legco is returned by universal suffrage, the anti-democratic nature of CE and Legco is certainly a hindrance to the introduction and implementation of direct election in future. On the contrary, if the power to amend the Basic Law is vested in a Constitutional Assembly returned by universal suffrage and also in all the people of Hong Kong (who can participate in the formulation of constitution through the joint submission of amendment proposals), even though such power is limited to amending one single Article 159 of the Basic Law, significant improvement can still be made in the development of democracy in Hong Kong's constitutional system.
- (D) The Constitutional Assembly is not a governing authority. Its functions are restricted to the formulation of the Constitution - the Basic Law. The Constitutional Assembly has no executive power and its status overrides that of the powers that be. Therefore, the Assembly is not a redundant mechanism and its establishment is worthwhile and justified.

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