

立法會
Legislative Council

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**Legislative Council
Panel on Constitutional Affairs**

**Minutes of meeting
held on Monday, 21 February 2000 from 2:30 pm to 4:30 pm
in the Chamber of the Legislative Council Building**

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

Members Attending : Hon NG Leung-sing
Hon Bernard CHAN

Public Officers Attending : Mr Michael M Y Suen
Secretary for Constitutional Affairs

Mr Robin IP
Deputy Secretary for Constitutional Affairs (2)

Ms Doris HO
Principal Assistant Secretary for Constitutional Affairs (4)

By Invitation : Prof Joseph Y S CHENG
City University of Hong Kong

Mr Denis EDWARDS
City University of Hong Kong

Mr Anthony M W LAW
City University of Hong Kong

Dr J T H TANG
The University of Hong Kong

Dr LO Shiu-hing
The University of Hong Kong

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr Jimmy MA
Legal Adviser

Mrs Eleanor CHOW
Senior Assistant Secretary (2)7

Action
Column

I. Development of the HKSAR's political system
(LC Paper No. CB(2) 1155/99-00(01))

Meeting with academics

The Chairman said that the purpose of the meeting was to receive views from academics on the development of the HKSAR's political system. He welcomed academics from the City University of Hong Kong and the University of Hong Kong to the meeting.

Prof Joseph Y S CHENG, Professor of Political Science, City University of Hong Kong

(LC Paper No. CB(2) 1111/99-00(02))

2. Referring to his submission, Prof Joseph CHENG elaborated his views on the executive-legislature relationship, the accountability of civil servants and the democratization in Hong Kong.

Executive-legislature relationship

3. Prof CHENG said that the roles and functions of the Chief Executive (CE), the executive authorities and the legislature were clearly provided in the Basic Law (BL). He considered that too many constraints were imposed on the legislature. The key issue in the executive-legislature relationship was that the CE and the executive authorities must ensure that they could secure a majority support in the legislature in order for the government to operate. The questions remained to be answered were how could the executive maintain a majority support, and what were the rights and duties between the executive and its supporters.

4. Prof CHENG said that he disagreed with the view that LegCo Members had votes but no power, and the executive had power but no votes. In his view, the executive enjoyed a safe majority in LegCo, as evidenced by the voting results of LegCo in the past. Many Members of the Democratic Alliance for the Betterment of Hong Kong (DAB), the Hong Kong Progressive Alliance and the Liberal Party as well as some independent Members often voted in favour of the government. The reason for them to do so was because they supported the Central Peoples' Government's (CPG) policy on Hong Kong, the CE's policy programmes and the executive-led system of government. These supporters did not demand much from the government in return. However, things had taken a different turn recently. Mr TSANG Yok-sing, Chairman of the DAB, had warned that the existing relationship between the executive authorities and the legislature would lead to Hong Kong ruled by mediocre people.

5. Prof CHENG considered that a political party or a coalition of political parties which could control a majority in the legislature had both votes and power. It could dictate government's policies and even had a say on the appointment of principal officials. It would be difficult for the government to refuse its request. Take the case of the DAB for example, if the DAB felt that it had not been given a chance to be involved in the process of formulation of government policies, it could make such a demand. Given the existing voting pattern, if the DAB refrained from voting in favour of the government, it would be difficult for many of the government's legislation to get passed in LegCo. Viewing from this angle,

the pro-government Members could play a significant role in influencing the formulation of the government's policies, although they might not have the political will to exercise that power.

6. Prof CHENG said that the issue about the rights and duties between the two branches of the government should be considered in greater detail with a view to identifying solutions to resolve the problems in the existing system. Otherwise, the CPG and the "parties with vested interests" under the executive-led system would not support further democratization in LegCo.

Accountability of civil servants

7. Prof CHENG said that senior government officials were currently wearing two hats, both as civil servants to implement government policies and as policy makers. The community was increasingly concerned about the accountability of senior civil servants. It had the impression that nobody was held accountable for the recent civil service blunders and no senior civil servants had been sanctioned for serious policy or administrative mistakes. He said that there were two ways to address the problem of accountability, both of which were already in practice but not yet explored in detail. Firstly, the CE could recruit talents from outside the civil service on contract terms to fill positions at the secretary level, such as the appointment of Miss Elsie LEUNG as Secretary for Justice and Mr Edgar CHENG as head of the Central Policy Unit. Secondly, the CE could assign Executive Council (ExCo) Members with special policy responsibilities. These two measures could be adopted more extensively under the existing system as it would enhance the accountability of senior civil servants without undermining the executive-led system.

8. Prof CHENG said that although the legislature had no right over the appointment of senior government officials, it could do something to enhance their accountability. Measures such as casting a no confidence vote on any senior government officials who had made serious mistakes, staging protests and boycotting legislative procedures could exert pressure on the government. If a contract system was to be introduced for senior government officials, LegCo could consider inviting the newly appointed official to appear before LegCo to explain his/her policy portfolio and commitments.

Democratization

9. Prof CHENG said that his personal view was that Hong Kong had all the conditions for direct elections of all LegCo Members and the CE. The apparent reason for not doing so was that this would contravene the Basic Law and was

against the wishes of the CPG and the supporters of the executive-led system. As indicated in various opinion polls, the people of Hong Kong were supportive of further democratization. However, the support had never been turned into any strong aspiration. As a result, the government and "the parties with vested interests" had never felt any tremendous pressure to speed up the pace of democracy. It had been pointed out that further democratization would likely generate more difficulties for the executive branch of the government as more concessions would have to be made to facilitate successful lobbying of the legislature. In view of the resistance afore-mentioned, he suggested that a less controversial way to resolve the problem was to maintain the 30 functional constituency (FC) seats and increase the directly elected seats in the review in 2007 by 30 seats, making a total of 90 seats in the legislature. If political parties found this proposal to be agreeable, a two-thirds majority in the legislature would be easier to secure.

10. As regards direct election of the CE, Prof CHENG said that he was not optimistic about the prospect because any amendments to the method for selecting the CE must be made with the approval of a two-thirds majority of all LegCo Members and the consent of the CE, and reported to the Standing Committee of the National People's Congress (NPC). It would be very difficult for such a reform to take place without strong support from the community.

Mr Denis EDWARDS, Assistant Professor, School of Law, City University of Hong Kong

11. Mr Denis EDWARDS said that he supported all the views of Prof CHENG. He said that while as a lawyer he was not in a position to comment on the political process, he would comment on the importance of constitutional conventions in the context of political accountability. He felt that not enough work had been done by academic institutions on the development of conventions and political customs under the Basic Law. In many constitutional systems such as the British system, the whole structure of political accountability of the executive to the legislature was built upon constitutional conventions. Although constitutional conventions were not law, a breach of which could lead to political unrest. Even formal written constitutions were supplemented by conventions.

12. Mr EDWARDS further said that it was often assumed in Hong Kong that the Basic Law was both the floor and the ceiling of the constitutional system. He believed that the acknowledgment of the importance of conventions required one to regard the Basic Law as a political document only as a floor but not as a ceiling. He said that academic institutions should study constitutional conventions relating

to political accountability in other systems and see which of them were applicable to Hong Kong.

13. Mr EDWARDS said that the fact that the wrongful prosecution and imprisonment of Miss LIN Qiaoying took so long to come to light gave an impression that the government took a slack attitude to deal with the problem. Mr EDWARDS said that it was a primary requirement in many countries that the head of the government should come to the legislature to answer questions on events of the last couple of weeks. To comply with the requirement of accountability to the CPG and HKSAR under Article 43 of the Basic Law, he opined that the CE should come to LegCo to answer the concerns of the legislature on a very regular basis and not just three or four times a year.

Mr Anthony M W LAW, Lecturer, School of Law, City University of Hong Kong
(LC Paper No. CB(2) 1155/99-00(02))

14. Mr Anthony M W LAW briefed members on his views as set out in his submission. In gist, he held the view that -

- (a) the CE should be elected by universal suffrage in 2008, using a simple majority system;
- (b) reforms to the existing composition of LegCo should be introduced as soon as possible. The FC system should be reformed or abolished;
- (c) implementation of a ministerial system should be carefully considered; and
- (d) LegCo Members might be appointed as ExCo Members.

Dr J T H TANG, Head of Department of Politics and Public Administration, the University of Hong Kong

(LC Paper No. CB(2) 1155/99-00(03))

15. Dr TANG said that a "ministerial system" or an "executive-led system" was not unique to Hong Kong. As a matter of fact, most government systems were "executive-led" in the sense that the executive took the lead in implementing policies. The term "ministerial system" was not commonly found in the political science literature. The notion "ministerial system" was rather unusual because governments were always run by ministers. In the case of Hong Kong, secretaries of policy bureaux who were responsible for formulating public policies in their respective areas were ministers. In fact, their positions were often recognized as

such by foreign governments when they travelled abroad for official business. At the heart of the public debate about whether Hong Kong should introduce a ministerial system of government was the relationship between the legislature and the executive. The crux of the issue was whether the executive authorities could secure enough support in the legislature to implement their policies and how the accountability of senior government officials could be enhanced.

16. Dr TANG said that there were different democratic systems and each had its strengths and weaknesses. Political systems in many liberal democracies were very different in nature when they had to take into account their own historical conditions, and also to find ways of balancing efficiency, effectiveness, political stability, accountability and representativeness. The two most common political structures governing executive-legislature relationship in democratic systems were the parliamentary and presidential models. One common characteristic of democratic systems was that senior government officials were accountable to the public.

17. Dr TANG further said that the system adopted by Hong Kong could perhaps be described as a "quasi-democracy" which sought to preserve colonial political institutions and to introduce limited democracy at the same time. The contradictions in the HKSAR's political arrangements had led to difficulties between the executive and the legislature. In the long run the best solution was for the people of Hong Kong to be able to elect all LegCo Members and the CE by universal suffrage. In the short term, the relationship between the executive and the legislature could be improved by requesting the CE to appear more frequently before LegCo and by appointing some LegCo Members to be members of advisory bodies to assist in the formulation of public policies. Dr TANG said that unless political reforms were to take place a pattern of confrontation between the executive authorities and the legislature was likely to emerge. Hong Kong's reputation as a place which was liberal and administered judiciously by an efficient and well-managed government would be damaged.

Dr LO Shiu-hing, Associate Professor, Department of Politics and Public Administration, the University of Hong Kong
(LC Paper No. CB(2) 1155/99-00(04))

18. Dr LO Shiu-hing briefed members on his views as set out in his submission. In gist, Dr LO held the view that the precondition of public discussion on political reform was the urgent education of the public on the current political structure and the content of the Basic Law. He suggested a three-pronged strategy to gauge public views on political reform –

- (a) The Government should set up an independent committee in 2001 to receive views on political reform with a view to producing a report in 2005;
- (b) LegCo should consider holding a series of constitutional conventions from 2001 to 2006 to discuss different topics concerning political reform (seven topics proposed in his submission); and
- (c) The Government should conduct in-depth studies on the seven topics and submit a report to the independent committee and LegCo.

19. As regards political reform, Dr LO made the following points –

- (a) The method and timing for returning the CE by universal suffrage should be a matter to be decided by the referendum to be conducted by the independent committee. The legitimacy of the CE would be maximized if he was to be elected by universal suffrage. Should the CE continue to be nominated by the Selection Committee, its composition should be democratized and should comprise people from all walks of life;
- (b) Constitutional conventions were extremely important. Hong Kong had to consider whether the conventions that were in practice before the handover should be maintained or relaxed, for instance, should ExCo Members continue to abide by the principle of collective responsibility and should the CPG maintain a relatively non-interventionist policy towards the HKSAR's political issues, etc;
- (c) LegCo's composition could have a number of models. This was also a matter to be decided by the referendum to be conducted by the independent committee; and
- (d) District Councils should be given more powers and responsibilities with a view to training and grooming District Council members with political leadership from now to 2006.

Discussion

20. Members explained to the academics that the Basic Law had provided for the constitutional system of the HKSAR to be reviewed in 2007. Since the Administration refused to take the lead in consulting the public on the matter, the Panel decided to take the first step forward.

System of government

21. Ms Emily LAU sought advice from the academics as to which country should Hong Kong's system of government be modelled on, for instance was there any country where the relationship between the executive and the legislature was similar to that of Hong Kong. She said that the Secretary for Constitutional Affairs had once mentioned about Chile. However, the President of Chile was actually elected by a coalition of political parties.

22. Dr LO opined that some provisions of the Basic Law actually leaned towards the American presidential system. For instance, the CE could return certain bills to LegCo for reconsideration. However, as the president of USA was directly elected, it was therefore more appropriate for Hong Kong to develop its own model. Dr LO said that Mr TSANG Yok-sing's suggestion of a ministerial system involving political parties was one of the systems that could be considered.

23. Dr TANG said that there was no government system in the world where the relationship between the executive and the legislature was similar to that of Hong Kong. In any form of democratic system, the head of the government and members of the parliament must be accountable to the public who had voted for them. He said that Hong Kong might make reference to the French political system under which the confrontation between the executive authorities and the legislature was less acute. The French political system was a hybrid between a presidential system and a parliamentary system. The president of France was directly elected and he also appointed the prime minister who was answerable to the French parliament which was elected every five years. If the CE was directly elected, he could claim to derive political mandate and legitimacy from the public. Executive-legislature relationship would then become more balanced. If political reform was not proceeded with, tensions between the executive authorities and the legislature would only deteriorate further and the HKSAR would find it increasingly difficult to address political frustration of the people in Hong Kong.

24. Prof CHENG said that when the Basic Law was drafted, many people were thinking about the American presidential system for Hong Kong because such a system of government was efficient and stable. A presidential system which gave the CE security of tenure of five years was considered a relatively stable political system. However, unlike the CE, the president of USA was elected by universal suffrage. Given that he had the mandate of the people, he could exert pressure on the Congress. In case he did not have the majority support in both houses, he had to resolve the differences by giving in or rallying support from the public, to

ensure that he could attain majority support. The CE in Hong Kong faced similar situation. The question was how the CE could secure a majority support in LegCo.

25. Prof CHENG further said that while the French political system was worth exploring, it might involve substantial amendments to the Basic Law, including for example the creation of a post that was similar to that of the prime minister of France. Prof CHENG pointed out that unlike the CE, the president of France was directly elected and was heavily involved in the making of foreign policies for the country, and the prime minister he appointed was answerable to the parliament.

26. Mr SZETO Wah disagreed to the view that Hong Kong's system of government was modelled along the line of the American system because the president of USA and members of the Congress were directly elected. The Congress had the right to introduce bills and it did not have a bicameral voting system. He said that the purpose of LegCo's bicameral voting system was to ensure the safe passage of government bills.

27. The Chairman agreed with Mr SZETO that Hong Kong's political system was very different from that of the USA. Under the American system, there was a clear separation of powers between the executive authorities, the legislature and the judiciary to ensure checks and balances. The president, being the head of government, did not have the power to introduce bills. However, under the executive-led system in Hong Kong, the executive not only had the power to introduce bills, the Basic Law also provided the CE the power to dissolve LegCo under special circumstances. The Chairman opined that Hong Kong's political system resembled more of the French system of government. Concerning Prof CHENG's point about the absence of a post of prime minister in Hong Kong, he said that consideration could be given to changing the post of the Chief Secretary for Administration to such a post. In addition, like the Hong Kong system, a legislator of France could not concurrently be appointed a minister. If appointed, he had to resign from the French parliament. The Chairman further said that Hong Kong needed not adopt a particular overseas system of government in totality. It should develop a system that was most suitable to its circumstances.

28. Prof CHENG said that he agreed with Mr SZETO's views. When comparing the parliamentary and presidential models, the two most common political structures in democratic systems, he considered that Hong Kong's system was more similar to the latter. He clarified that his earlier comment was made in that context only.

29. On an academic's earlier comment that the HKSAR's political system could be regarded as "three-unlikes", Mr TSANG Yok-sing queried whether the system

in Hong Kong must be modelled on any overseas political system. Mr SZETO Wah opined that irrespective of the system to be adopted, the basic principle was that the system must be democratic. Prof CHENG said that he personally advocated a democratic system of government for Hong Kong. Dr TANG said that both the western democratic systems and the Hong Kong's existing system had many problems that remained to be resolved. Hong Kong could work out a system that would best suit its circumstances. Dr LO also agreed that Hong Kong could develop its own system of government.

30. Mr EDWARDS agreed that Hong Kong's constitutional system was not like that of the USA. He said that comparing the two systems would only lead to misunderstanding. He pointed out that the American constitutional system was designed to frustrate the government and not to enhance it. The American politics operated at many sophisticated levels. The president, the federal system and the entrenched nature of the judiciary were all players of the political system. If there was a problem between the president and the executive authorities, the judiciary would resolve it. The decision of the judiciary was binding unless there was a constitutional amendment. He added that the problem in Hong Kong was that the decision of the Court of Final Appeal might not be binding on the government.

31. Relating to Mr EDWARD's comment in paragraph 30 above, Mr LAW said that under common law, the court had the power to hear cases relating to constitutional issues. He gave a few examples. In Hong Kong an organization had previously challenged in court the constitutionality of the FC election. At present, litigation was on-going regarding the voting right of non-indigenous villagers in elections of village representatives. In overseas jurisdictions, cases concerning the electoral system such as "one seat, one vote", "multi-seats, multi-votes", etc were heard before the court. Mr Law supplemented that seeking an interpretation from the NPC in the case of a constitutional crisis would only undermine the autonomy of Hong Kong. One also had to bear in mind that the concept of democracy differed significantly between Hong Kong courts and the Mainland, not to mention the cultural and legal differences of the two places.

32. Miss Emily LAU asked whether the future system of government to be adopted for Hong Kong should be one that would ensure that the executive had a majority support in the legislature, instead of the existing mode of operation which often required the executive to lobby for the support of the legislature by various means. Prof CHENG said that even under the existing system, the executive had a safe majority support in the legislature. The only question was that the line of responsibility and the relationship between the two was not clear. Dr TANG said that having inherited the British parliamentary system, it would be difficult for the Hong Kong government to operate without a majority support in the legislature.

Dr LO agreed that the CE should be in alliance with a major political party or a coalition of parties in order to implement his policies effectively. However, some other democratic systems could also function without guarantee of a majority support in the legislature.

Executive-legislature relationship

33. For the information of the meeting, Mr SZETO Wah said that some members of the Basic Law Drafting Committee had suggested that the term of office of the CE and the legislature should be the same, so as to facilitate the two elections to take place in the same year. It was considered that the political inclination towards the CE and the legislature would be similar when the two elections were to take place under the same political environment. This would help to improve the co-operation between the executive and the legislature. Unfortunately, the proposal was eventually not accepted.

34. Mr SZETO further said that the Basic Law provided that Members of the ExCo should be appointed by the CE from among the principal officials of the executive authorities, members of the LegCo and public figures. It was then envisaged that about one-third of LegCo Members would be appointed as ExCo Members. The fact that only one LegCo Member was at present appointed to ExCo illustrated that the CE was not concerned about factors such as work efficiency and democracy in making appointments. Rather, he would only consider how an appointment could achieve his objective.

35. Ms Emily LAU asked for Prof CHENG's opinion as to why the pro-government parties such as the DAB, the Hong Kong Progressive Alliance and the Liberal Party had not attempted to exert political influence on the Government despite the fact that they had the power to do so. Prof CHENG responded that LegCo Members knew the answer better than he did. He believed that such an action would contravene the executive-led concept and would not be favoured by the CPG.

Political reform

36. Miss Margaret NG said that Dr LO's submission had shed light on the issues to be considered in a political reform, the blueprint for democratic development and the interim measures necessary in order to achieve the blueprint. Since the Administration did not see the urgency for a political reform, she sought advice from the academics as to the ways and means to involve the community in such a constitutional reform and to ensure that it was carried out in a systematic and orderly manner.

37. Mr SZETO Wah asked about the sort of pressure that could be exerted on the government in order to expedite the pace of political reform.

38. Dr LO said that the driving force for major constitutional reform would have to come from the people of Hong Kong. If the reform was not radical, the government could put it into implementation easily. Before the setting up of an independent committee as he had proposed, Dr LO suggested that the following interim measures could be introduced -

- (a) To relax the principle of collective responsibility of ExCo Members in order to allow more people with different political views to join the ExCo;
- (b) To appoint retired civil servants as ministers. It was not uncommon in the USA for the president to appoint ministers from the private sector;
- (c) To request the CE to attend more LegCo sessions. This arrangement was not expressly provided under the Basic Law and could be regarded as a form of constitutional convention; and
- (d) LegCo Members could do their part in promoting the civic-mindedness of the public.

39. Prof CHENG said that the CPG, the CE and the HKSAR government did not feel the pressure nor the urgency to bring in any major political reform. The initial stage of further democratization would probably lead to more problems than solutions to the government. He said that he had made two suggestions in his written submission which could be pursued by the existing government. Firstly, the CE could allow pro-government political parties to introduce important bills, so that they would be seen as making constructive policy for the betterment of Hong Kong instead of acting frequently as an opposition party to the government, although the drafting of the bill and its implementation would still be done by the government. In doing so, the relationship between the executive and the legislature would be improved and a positive image could also be projected on the two bodies. Secondly, newly appointed senior officials should appear before LegCo to explain their policy programmes and commitments to enhance accountability.

40. The Chairman pointed out that the proposal for pro-government parties to introduce private Member's bill to LegCo would not serve Professor CHENG's purpose as they were severely restricted by Article 74 of the Basic Law. An

alternative was for a party member to be appointed as an ExCo Member who would then introduce a public bill on behalf of the executive authorities on the instruction of the CE. Prof CHENG clarified that under his proposal, the bill to be introduced by a pro-government party would still require the written approval of the CE as required under the Basic Law. What he was suggesting was that the CE should make use of this power to establish a relationship with the pro-government Members of LegCo.

41. As regards incentive to reform, Prof CHENG said that if the public considered political reform to be a significant issue, they would strive for it. However, the situation faced by Hong Kong was that the public was on the whole satisfied with the performance of the government, there was no danger of a constitutional crisis, and those in power did not feel any pressure for further democratization. Prof CHENG cautioned that the conservatism of the business community and the lack of a strong sense of civic-mindedness of the community towards political reform would never make Hong Kong a world-class city.

42. Mr LEE wing-tat asked the academics whether there were any overseas examples whereby political reform was initiated by non-governmental organizations (NGOs), and if so, how were they carried out. Mr EDWARDS said that the most instructive political development in the UK in the last 20 years was in Scotland and Wales where the pressure to bring about a regional parliament in 1999 was the result of –

- (a) the people voting overwhelming in those two places against the government of London;
- (b) culture, in particular youth culture, in favour of change; and
- (c) a feeling of distinctiveness.

On the last point, Mr EDWARDS said that if Hong Kong people felt strongly that they were sufficiently different from the people in the Mainland or they needed a political institution developed at their own pace, then reform would be unavoidable.

43. In response to Mr NG LEUNG-sing's question, DR LO clarified that the independent committee proposed by him was unlike the Basic Law Consultative Committee or the Basic Law Committee. The independent committee was set up for the sole purpose of receiving views on political reform and was not a power centre. The committee would be dissolved once the reform was completed.

44. Mr NG Leung-sing said that under the existing political system, many people had benefited from the government's policies, some of which were implemented by way of legislation. These people included those who were in various businesses and trades, i.e. "parties with vested interests" as referred to by Prof CHENG. If a major political reform was to be introduced, these people might be concerned that their interests would no longer be safeguarded. This could in turn result in an outflow of capital. Since Hong Kong was a business oriented city, he said that this was a cause for concern.

45. Dr LO said that the concern raised by Mr NG was valid. The question was whether the business community was able to adjust itself to the democratization process.

46. Prof CHENG said that the term "parties with vested interests" did not carry a negative connotation. He said that what was best for Hong Kong should be decided by the people of Hong Kong, and not by any leaders of the business sector. He firmly believed that the people of Hong Kong had the right and wisdom to decide on the question of political reform.

47. Dr TANG said that if the issue of political reform was muddle through, it was like building a time bomb. In addition, a community mainly interested in the pursuit of stability and prosperity without paying regard to the intrinsic value of life would not be beneficial to the future of Hong Kong. As regards the resistance of the "parties with vested interests" towards democratization, Dr TANG said that Amartya ZEN, winner of the Nobel Prize in economics, had pointed out that apart from facilitating people to express their political aspiration, democracy would also enhance their claims to economic needs.

48. Mr NG Leung-sing said that as some appointed DC members were successfully elected as chairmen of DCs, one could say that appointed members were also very popular and had high credibility. Prof CHENG said that in the political arena, it was not uncommon for a minority party to be benefited as a result of the loggerheads of two major political parties. Both Prof CHENG and Dr LO pointed out that whether the appointed DC members had a popular mandate was another question.

Constitutional conventions

49. Mr LEE Wing-tat asked how constitutional conventions were established in western countries. Mr EDWARDS responded that the long practice of conventions in the British system had brought about collective responsibility, assent to bills,

weekly exchange with the House of Commons, etc. However, conventions could be developed very quickly. Experiences in Canada and Australia showed that traditions being essential could be created and developed very quickly.

50. Dr LO said that the case of whether the Canadian government should first consult the provinces on constitutional amendment was heard by the Supreme Court of Canada in 1992. The Court ruled that while there was no statutory requirement for the government to do so, the established convention was legally binding on the government. He considered that the question of constitutional conventions should be further explored and discussed. For example, the HKSAR government should consider developing a convention whereby a senior civil servant who had made a serious mistake should be dismissed. Dr LO said that the Administration should take the matter forward by preparing a document on constitutional conventions for consideration by LegCo and the public.

Written submissions

(LC Paper Nos. CB(2) 1076/99-00(01)-(03), 1111/99-00(02)-(04), 1130/99-00(01), 1133/99-00(01)-04), 1144/99-00(01)-(08) and 1155/99-00(02)-(04))

51. Miss Margaret NG said that Miss Eliza LEE, Associate Professor of the Department of Government and Public Administration of the Chinese University of Hong Kong, had given a detailed analysis on the functions of a ministerial system in her submission (LC Paper No. CB(2) 1111/99-00(03)). Miss LEE had pointed out that whether the adoption of a ministerial system could enhance executive leadership, political accountability and political neutrality depended on the kind of political institutions the ministerial system operated under, and that a ministerial system was an indispensable part of the further development of a democratic system. Hence, a ministerial system adopted under a wholly democratic system or the present government system could achieve different purposes.

52. Prof CHENG responded that the subject of ministerial system was of secondary importance. What was important was the accountability of civil servants and their source of power. Dr TANG supported the view.

53. The Chairman suggested and members agreed that the written submissions should be discussed at the next meeting on subject basis.

54. The Chairman thanked the academics for sharing with members their views on political reform.

II. Items for discussion at the next meeting on 4 March 2000
(LC Paper No. CB(2) 1111/99-00(01))

55. The Chairman advised that the Hong Kong Bar Association and the Law Society of Hong Kong had been invited to the meeting on 4 March 2000 to give views on the development of the HKSAR's political system. The Chairman instructed the clerk to circulate to members relevant press reports on the issue.

56. Members agreed that the following items should be discussed at the meeting on 20 March 2000 -

- (a) Development of the HKSAR's political system;
- (b) Independence of Audit Commission;
- (c) Article 50 of the Basic Law; and
- (d) Review of certain provisions of the Prevention of Bribery Ordinance to the CE and related issues, if the Administration was ready to report progress.

57. The meeting ended at 4:35 pm.

Legislative Council Secretariat
13 April 2000