

本署檔號 Our Ref.: CAB D2/18/6
來函檔號 Your Ref.: CB2/PL/HA

電話 Tel: 2810 2852
圖文傳真 Fax: 2840 1976

19 October 1999

Clerk to Panel
(Attn : Miss Flora TAI)
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Miss TAI,

LegCo Panel on Home Affairs
Follow-up to Special meeting on 12 October 1999

Thank you for your letter of 16 October 1999. I am writing in reply to item (c) of your second paragraph.

The Secretary for Constitutional Affairs spoke on the factors to be taken into account when deliberating on the number of directly elected seats during the motion debate on "Direct Elections" at a LegCo meeting on 15 July 1998. A copy of the speech, in both Chinese and English, is attached with the relevant parts sidelined. Members may also wish to note that similar points were raised by the Secretary on a number of occasions including the motion debate on "Executive-Legislature Relationship" on 23 September 1998 and the closing ceremony of the Harvard Project for Asian and International Relations 1999 Conference on 8 June 1999.

Yours sincerely,

(Bassanio SO)
for Secretary for Constitutional Affairs

c.c. SHA (Attn : Mr John Dean)

Motion Debate on “Direct Elections”
Speech by Secretary for Constitutional Affairs
at the Legislative Council Meeting on 15 July 1998

Madam President,

First of all, I have to thank honourable members for their various views on the motion debate. I have listened very carefully to the speech of each and every member.

On 24 May, the people of Hong Kong once again created history. In the first Legislative Council (LegCo) election of the Hong Kong Special Administrative Region (HKSAR), about 1.49 million people braved the wind and rain to cast their votes. The turnout rate was as high as 53%, far exceeding past records.

After the election, there have been different interpretations on the high turnout rate. More people are of the view that this indicates the ever increasing sense of civic responsibility of the citizens. This is also clearly reflected in a number of opinion polls conducted after the election. However, opinions differ as to whether this indicates that Hong Kong people have aspirations for a faster pace of democratic development. Government has reservation about this interpretation. However but this does not mean that Government accepts that Hong Kong people are politically immature with no aspiration for democracy.

Just now both the Honourable Ms Christine Loh and Mr Martin Lee coincidentally mentioned my “Letter from Hong Kong”. I feel that they have rather arbitrarily concluded that I have some negative opinions about democracy. During the break just now, I took the opportunity to ask the Honourable Mr Martin Lee whether he had read my letter. He honestly admitted that he had only read newspaper reports.

This election is a very important and successful first step of the HKSAR in the development of democracy in accordance with the Basic Law. Our ultimate aim is very clear, that is, to fully implement universal suffrage as stipulated in the Basic Law.

I have to point out very clearly that Hong Kong is already implementing universal suffrage. The law already provides protection to citizens’ political rights. The number of directly-elected seats will gradually increase. That is why I cannot agree to the criticisms that the present political system of Hong Kong is not democratic. According to the Basic Law, the

second LegCo election in the year 2000 and the third LegCo election in 2004 will see an increase in the number of directly-elected seats. The ultimate aim is the election of all LegCo members by universal suffrage. Whether or not we have democracy has never been the focus of the debate. The focus is the pace of fully implementing universal suffrage. Just as the theme of today's motion debate, we are discussing whether we should immediately increase the number of directly-elected seats to 60, and whether the Chief Executive should immediately be returned by the one-person-one-vote system. In discussing whether we should have full-scale direct elections, we have to consider in parallel other important issues arising from a faster pace of democracy. Otherwise, our discussions will be lopsided and incomplete. Several Members have already touched upon this. I shall give you a more detailed explanation in a moment.

The discussion on the political development of Hong Kong has all along concentrated too much on the number of directly-elected seats, and whether we should immediately implement universal suffrage for the elections of LegCo and the Chief Executive. We should bear in mind that democracy is not merely a question of the number of directly-elected seats, or the pace of development. Equally important is the question of compatibility with the entire political system, for example, how to satisfactorily deal with the relationship between the legislature and the executive authorities, how to maintain the normal operation of the Government, and how to turn social needs and citizens' aspirations into suitable public policies. We also have to consider the present economic and social environment of Hong Kong, and to maintain the confidence of local and overseas investors in Hong Kong's future.

First of all, we have to look clearly at the blueprint mapped out by the Basic Law for the future political development of the HKSAR. The number of seats returned by geographical constituencies through direct elections will increase gradually in the coming few years. The number of directly-elected seats will increase from 20 to 24 in the second term in 2000, and further increase to 30 in the third term in 2004. It is clearly provided in Article 68 of the Basic Law that all LegCo members will be returned by universal suffrage ultimately. Annex II clearly provides that, with regard to the method for forming the LegCo of the HKSAR and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of the Annex, such amendments must be made with the endorsement of a two-thirds majority of all the Members of the LegCo and the consent of the Chief Executive, and they should be reported to the Standing Committee of the National People's Congress for the record.

As regards the method for selecting the Chief Executive, Article 45 of the Basic Law also clearly provides that it "shall be specified in the light of the

actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.” Annex I also provides that if there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the Members of the LegCo and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People’s Congress for approval.

The original motion today demands that in the year 2000 and 2002, all members of the legislature and the Chief Executive be returned by direct elections. As this involves a large number of issues which cannot be resolved in time, it is an unrealistic proposal. Why am I saying that? First of all, views are divided within and without the LegCo on the original motion and we are far from a consensus. Moreover, the discussion on how we are going to deal with the relationship between the executive authorities and the legislature, which has far-reaching implications, is yet to start, not to mention reaching a consensus that suits Hong Kong’s operation. Secondly, even if we can reach a consensus, we have to amend the Basic Law before implementation. This would involve consideration and discussion on the question of safeguarding the constitutional stability of the Basic Law. The third is a practical issue. The Constitutional Affairs Bureau (CAB) has already started preparations for the second LegCo election in 2000. Unless we can arrive at a consensus on the above two major issues in a few months’ time, it is not possible for us to implement the relevant arrangements.

Political development is not just a matter of faster implementation of full-scale direct elections. We must not forget other relevant issues. Come to think of it: if all LegCo seats are directly elected, it is highly likely that sooner or later, the legislature would have a majority party and the executive-led political system provided for by the Basic Law may be undermined. I believe nobody can guarantee that the majority party will always support the motions of the Government. If the majority party always disagrees with the administration, how will the effective operation of the administration be affected? How will the development of the entire society be affected? If the Chief Executive is to be returned by universal suffrage, how should we handle the relationship between the Chief Executive and the legislature? Moreover, there are other important issues such as the relationship between the Chief Executive and the civil service, the appointment system for the Government’s principal officials as well as party politics, etc. All these have to be studied in depth and considered carefully before making the relevant arrangements.

The CAB is duty-bound to conduct analysis and studies on these issues. A relatively obvious starting point is to make reference to the arrangements and experience in other countries and places so as to formulate a political model that best suits Hong Kong. We will study various parliamentary systems and presidential systems. For example, under the British parliamentary system, the roles of the executive authorities and the legislature overlap with each other and the real powers are concentrated in the majority party in the parliament. This is obviously in conflict with the political system laid down in the Basic Law. Under the American presidential system, the executive authorities, the legislature and the judiciary are separate and independent, but the president does not have the power to dissolve the congress. So if we adopt the same system, it will also be in conflict with the Basic Law which stipulates that the Chief Executive may dissolve the legislature. Hence we have to study the various systems in detail, analyse their pros and cons, and see whether they are in conflict with the Basic Law, and if so, how the problems are to be resolved. As the issues are very complicated and many aspects have to be considered, we anticipate that the time required for the preparation process is no less than that for formulating any major policies. In other words, it may take several years, and may go well beyond the year 2000, or even the year 2002.

The Basic Law is the most important constitutional document for Hong Kong's legal system and its stability is very important. For any countries or places, if the constitution is to be amended, there must be extensive consultation and detailed discussions. Similarly, for any suggestion to amend the Basic Law, we have to conduct in-depth and thorough study, and let all sectors of the community discuss the issue comprehensively so as to arrive at a consensus. If we were to lightly suggest amendments to the Basic Law just after one year of its implementation, it would undermine its stability. If the flood gate to amend the Basic Law is opened, it may generate other demands which have not been thoroughly discussed or those without wide support. This will not do any good to the political stability and economic development of Hong Kong. Article 159 of the Basic Law has already provided for the mechanism to amend the Basic Law. We are not saying that we cannot amend the Basic Law. But as I have just mentioned, there are considerations in amending the Basic Law, the objective of which is to maintain the stability of this constitutional document.

I have to emphasize that Government has never said that the pace of democracy cannot be speeded up, or that the Basic Law cannot be amended. Annexes I and II of the Basic Law have provided a mechanism to elect the Chief Executive and the whole legislature by universal suffrage after 2007. Article 159 of the Basic Law also provides a mechanism to amend the Basic Law. We consider that the crux of the matter is whether the time is ripe, whether the

whole society is well-prepared, and whether the whole society has arrived at a consensus on the suggestions for amending the Basic Law which will have far-reaching implications.

The consensus should cover the whole system of political development in Hong Kong, including elections of the Chief Executive and the legislature, and the other related issues which I have just mentioned. As regards the Honourable Mr Cheng Kai-nam's proposal, Government will conduct a comprehensive and in-depth political review, after which we will propose practicable options for achieving the aim of direct elections of all LegCo members, and will widely consult the public at an appropriate time. We hope that through comprehensive and in-depth discussions, all sectors of the community can arrive at a consensus on this important issue, so that we can decide the pace of democratic development after 2007 in accordance with the mechanism set out in the Basic Law. At this moment, we cannot fix a timetable because a lot of work has yet to be started. As I have just mentioned, the work will be very complicated and it will take a long time.

As regards the Honourable Ms Christine Loh's proposal to establish a constitutional convention to study the related issues, we have not made any decisions on how to discuss our political development or how to conduct the consultation at this stage. So far as constitutional convention is concerned, different countries and places such as Australia, South Africa, Scotland and Northern Ireland, have adopted different models. However, it generally takes a long time for detailed planning and thorough preparation to set up a constitutional convention. Take Australia as an example, after some organizations proposed to establish a Republic of Australia in 1991, the Government established committees to study the related issues and start the preparatory work for setting up a constitutional convention, including drawing up the agenda for the convention, formulating the procedures for debates, and selecting convention members by appointment and elections. After many years of preparation, the constitutional convention was formally convened in early 1998. After the convention has indicated its inclination on whether or not a republic should be set up, it is understood that they will make a decision by referendum by the end of 1999 at the earliest. After that, they will have to go through the procedures for amending the constitution. It can be seen that any preparation for constitutional amendments, from consultation to implementation, will take quite a long time. All these procedures cannot be completed in a few years' time. No matter what, we will actively study a set of suitable methods to allow members of the public to discuss the issues and express their views. We shall make detailed plans on all the preparation work and proceed in a gradual manner.

In the coming few years, we shall have more elections, including the elections for district organizations next year, LegCo elections in 2000 and 2004, and the election for the second term Chief Executive in the year 2002. We will continue to promote civic education, appeal to members of the public to register as electors, and step up publicity to encourage more electors to cast their votes and exercise their political rights, with a view to getting them familiar with the process. We hope that in the coming few years, members of the public will understand more about elections and the political system. At the same time, we will gather more operational experience in handling the relationship between the executive authorities and the legislature. By then, the conditions will be more mature for deciding how to implement universal suffrage and straightening out the relationship between the executive authorities and the legislature.

In the coming 2 to 3 years, the CAB will be very busy dealing with matters on elections and political development. Of course, we will try our best to study and consider all sorts of arrangements for handling the relationship between the executive authorities and the legislature for public discussion. However, according to the present circumstances, it is unrealistic to expect that we can come up with a well-conceived proposal before the elections in the year 2000. Finally, I think you will all agree with me that the first LegCo election has already laid a sound foundation for the gradual development of democracy in Hong Kong to enable us to attain the ultimate aim of elections of the Chief Executive and all LegCo members by universal suffrage in accordance with the provisions in the Basic Law in the quickest timetable after the community reaches a consensus.

Today's motion debate is a good start to discuss these important issues. I have already listened very carefully to Members' views and will seriously consider them. At the same time, Government will continue to do its utmost to resolutely develop democracy according to the blueprint of the Basic Law, and encourage citizens to actively participate in the electoral activities in the coming few years. By doing so, we hope to enable the whole community to acquire more experience, so as to get well-prepared for future discussion on political development, and to lay a solid foundation for implementing universal suffrage in the future.

Thank you Madam President.