

House Committee of the Legislative Council

Work Progress of the Constitutional Development Task Force

Introduction

This paper informs Members of the progress of work of the Constitutional Development Task Force.

Background

2. The Chief Executive announced in his Policy Address the establishment of the Constitutional Development Task Force headed by the Chief Secretary for Administration, with the Secretary for Justice and the Secretary for Constitutional Affairs as members. The Task Force is charged with the responsibilities of examining in-depth the issues of principles and legislative process relating to constitutional development in the Basic Law, consulting the relevant departments of the Central Authorities, and listening to the views of the public on the relevant issues.

Discussion Paper Issued to Constitutional Affairs Panel

3. On 14 January, the Task Force issued a discussion paper to the Constitutional Affairs Panel of the Legislative Council (LegCo), outlining the issues of principles and legislative process relating to constitutional development in the Basic Law. The three-member Task Force attended the Panel meetings on 15 and 28 January respectively to listen to Members' views on these issues.

Meeting with Different Sectors of Community

4. The Task Force has been meeting with different organisations and individuals since 15 January to listen to their views on the issues of principles and legislative process as set out in the Panel paper referred to in paragraph 3 above. As at 20 February, the Task Force has had a total of 26 meetings with 53 organisations and individuals from different sectors of the community, including the Legislative Council, District Councils, political parties and groups, the legal profession, the academia, trade unions as well as chambers of commerce. Details are at **Annex A**.

Visit to Beijing

5. Through arrangements made by the Hong Kong and Macao Affairs Office (HKMAO) of the State Council on 9 and 10 February, the Task Force met with the HKMAO and the Legislative Affairs Commission of the Standing Committee of the National People's Congress to exchange views on the issues of principles and legislative process relating to constitutional development in the Basic Law, and had discussions with a group of Mainland legal experts. On 11 February, the Chief Secretary for Administration made a statement in the LegCo to inform Members of the visit of the Task Force to Beijing. A copy of the statement is at **Annex B**. On 16 February, the Secretary for Constitutional Affairs, on behalf of the Task Force, attended the meeting of the Constitutional Affairs Panel to answer Members' questions on the Beijing visit and other related matters.

Website on Constitutional Development

6. On 19 February, the Task Force launched its official website on constitutional development. Information relevant to the work of the Task Force may be found on the website. We have also posted on the website the issues of principles and legislative process in the form of questions, and invited views from members of the public on these questions.

Way Forward

7. The Task Force will continue its meetings with various organisations and individuals to listen to their views on the relevant issues, particularly on the issues of principles. We will also liaise with the Central Authorities at an appropriate time, to report on the progress made and to reflect the views of the public. We will make reports to the Constitutional Affairs Panel from time to time to keep Members informed of progress.

Constitutional Development Task Force Secretariat
Constitutional Affairs Bureau
February 2004

**Groups / Individuals Met by the
Constitutional Development Task Force
(as at 20 February 2004)**

Annex A

<u>Group / Individual</u>	<u>Meeting Date</u>
1. Democratic Party	16.1.2004
2. Democratic Alliance for Betterment of Hong Kong	17.1.2004
3. Prof Albert Chen, University of Hong Kong	17.1.2004
4. Article 45 Concern Group	19.1.2004
5. The Hong Kong General Chamber of Commerce	20.1.2004
6. Chairmen and Vice-chairmen of District Councils	20.1.2004
7. Hong Kong Progressive Alliance	21.1.2004
8. One Country Two Systems Research Institute	27.1.2004
9. The Frontier	29.1.2004
10. Hong Kong Democratic Development Network	29.1.2004
11. Hon David Li Hon Margaret Ng Hon Albert Chan Hon Frederick Fung Hon Audrey Eu	31.1.2004
12. Hong Kong Policy Research Institute	31.1.2004
13. Dr Song Sio-chong Dr Zhou Ba-jun Dr Priscilla Leung Mr Gu Min-kang	31.1.2004
14. New Century Forum	3.2.2004
15. Liberal Party	11.2.2004
16. Members of Basic Law Committee Mr Ng Hong-mun Mr Wong Po-yan Dr Raymond Wu Ms Maria Tam	12.2.2004

<u>Group / Individual</u>	<u>Meeting Date</u>
<p>17. Dr James Tang Dean, Faculty of Social Sciences University of Hong Kong</p> <p>Dr Timothy Wong Research Officer, Asia Pacific Research Institute The Chinese University of Hong Kong</p> <p>Dr Kenneth Chan Assistant Professor, Department of Government and International Studies, Hong Kong Baptist University</p> <p>Mr Ivan Choi Senior Instructor, Department of Government and Public Administration The Chinese University of Hong Kong</p>	12.2.2004
18. The Chinese General Chamber of Commerce	13.2.2004
<p>19. Civic Exchange Hong Kong Democratic Foundation Power for Democracy SynergyNet</p>	13.2.2004
<p>20. Prof. Francis Lui Professor, Department of Economics Hong Kong University of Science and Technology</p> <p>Prof Richard Y K Ho Professor, Department of Economics and Finance City University of Hong Kong</p> <p>Prof Y K Fan Vice President (Development) Hong Kong Baptist University</p> <p>Prof Ho Lok-sang Head, Department of Economics Lingnan University</p> <p>Prof Richard Wong Dean, Faculty of Business and Economics University of Hong Kong</p>	14.2.2004

Group / Individual

Meeting Date

Prof Chan Ka-keung
Dean, Faculty of Business and Management
Hong Kong University of Science and Technology

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| 21. Federation of Hong Kong Industries | 18.2.2004 |
| 22. Heung Yee Kuk | 19.2.2004 |
| 23. The Chinese Manufactures' Association of Hong Kong | 20.2.2004 |
| 24. Hon Eric Li
Hon Ng Leung-sing
Hon Raymond Ho
Hon Lui Ming-wah
Hon Lo Wing-lok
Hon Abraham Shek
Hon Bernard Chan | 20.2.2004 |
| 25. Mr Simon Li | 20.2.2004 |
| 26. Mr Cha Chi-ming | 20.2.2004 |

**The Constitutional Development Task Force's Visit to Beijing:
Chief Secretary for Administration's Statement at LegCo
(11 February 2004)**

Madam President,

Introduction

The Constitutional Development Task Force was in Beijing yesterday and the day before to have meetings with the Hong Kong and Macao Affairs Office (HKMAO) and the Legislative Affairs Commission (LAC) of the Standing Committee of the National People's Congress. As arranged by HKMAO, the Task Force also had a discussion meeting with a group of Mainland legal experts.

2. During our stay in Beijing, the Task Force has, in the interest of time, briefly mentioned to the media the outcome of the relevant meetings. I also hope to inform Members in detail about such meetings. I have undertaken to ensure high transparency of our overall work, and to maintain mutual communication, and that is to understand the views of the Central Authorities on the one hand, and to reflect the views of the Hong Kong community to the Central Authorities on the other.

3. The Task Force came back from Beijing last night. I would like to thank Madam President for allowing me to take the opportunity of today's Regular Sitting to inform Members of the first visit of the Task Force to Beijing.

Reflecting the views of Hong Kong People

4. At the meeting with HKMAO, I indicated that the Task Force had already set out a number of Basic Law issues on principles and legislative process relating to constitutional development in a discussion paper issued to the Legislative Council. The Task Force had also started collecting views from various organizations and individuals. I also mentioned to HKMAO that there were different agencies in Hong Kong conducting opinion polls on Hong Kong's future constitutional development, and the media had reported the results of these polls. HKMAO indicated that they were also fully in the picture.

5. Regarding the organizations and individuals that we have received, I mentioned to HKMAO that the Task Force had met 14 individuals and organizations and received ten submissions, and forwarded the relevant information in their entirety to HKMAO. I also pointed out that the public had generally accepted certain principles, including :

- that the Central Authorities had constitutional powers and responsibilities to oversee the constitutional development in the SAR;
- that any amendments to the methods for selecting the Chief Executive and for forming the Legislative Council must accord with the Basic Law and the principle of “One Country, Two Systems”; and
- that the development of the political structure shall be in the light of the actual situation in Hong Kong, and in accordance with the principle of gradual and orderly progress.

6. I pointed out to the relevant departments of Central Authorities that there was quite a common expectation in the community that there should be improvements in constitutional development, and so we needed to handle the matter in a timely manner. I also mentioned to HKMAO the general wish of Hong Kong people that the entire discussion process should be highly transparent. The public have enormous trust in the Central Authorities, and expect the Central Authorities to listen to their aspirations.

7. I mentioned to HKMAO that, in order to make the best use of time before we met with the Central Authorities, we had submitted a discussion paper to this Council on 14 January, and had started our meetings with several organizations and individuals, to discuss a number of Basic Law issues on principles and legislative process relating to constitutional development that the SAR Government had identified so far. There are three main areas on principles, i.e. (i) issues on principles relating to the relationship between the Central Authorities and the SAR; (ii) constitutional development should be in accordance with the “actual situation” and the principle of “gradual and orderly process”; (iii) the principles of “giving consideration to the interests of all sectors of society” and “facilitating the development of capitalist economy” as mentioned by Mr Ji Pengfei in 1990, as well as five issues on legislative process. The Central Authorities agreed that these issues should be dealt with, in particular those issues on principles which should be accorded higher priority, as they could provide a common foundation which is beneficial to our future work.

Concerns of the Central Authorities

8. During the meetings, I asked the relevant departments of the Central Authorities about their specific areas of concerns. They expressed that the Central Authorities had serious concern over Hong Kong's future constitutional development because the matter would affect the implementation of the principle of "One Country, Two Systems" and the Basic Law, the relationship between the Central People's Government (CPG) and the SAR, the interests of various strata and sectors of the community, and the long term prosperity and stability of Hong Kong.

Implementation of "One Country, Two Systems" and the Basic Law

9. The relevant departments of the Central Authorities emphasized that "One Country" was the pre-requisite for "Two Systems" in "One Country, Two Systems" and that the concept of "One Country, Two Systems" cannot be segregated. In accordance with the Basic Law, Hong Kong is an inalienable part of China, and is a local administrative region of China which shall come directly under the CPG. The principles of "Hong Kong people ruling Hong Kong" and "high degree of autonomy" are implemented in Hong Kong.

10. They indicated that Hong Kong's constitutional development must accord with the principle of "One Country, Two Systems", the national interests, and should also accord with the legal status of Hong Kong. The SAR should respect the sovereignty of the State.

11. The relevant departments of the Central Authorities reiterated that in the 1980s, China had set out the basic policies for Hong Kong, and that was that the people who manage the affairs of Hong Kong should be those Hong Kong people who love their country, who love Hong Kong.

Relationship between the Central Authorities and the SAR

12. The relevant departments of the Central Authorities indicated that the relationship between the Central Authorities and the SAR was a major component of the Basic Law. Hong Kong is a special administrative region with a high degree of autonomy. The executive, legislative and judicial powers exercised by the SAR are derived from authorization by the Central Authorities, and there is no "residual power" for the SAR. Hong Kong's political structure was established by the NPC through the Basic Law in accordance with the Constitution. In studying the methods for electing the Chief Executive and the Legislative Council, the SAR must listen to the views

of the Central Authorities. Hong Kong's constitutional development involves the relationship between the Central Authorities and the SAR. As this relates to the systems used to implement "One Country, Two Systems" and the Basic Law, it is not a matter entirely for the SAR. The SAR must fully consult the Central Authorities and obtain their consent.

Interests of the different sectors of society

13. The relevant departments of the Central Authorities pointed out that when submitting the Basic Law (Draft) and its relevant documents to the Seventh National People's Congress (NPC) on 28 March 1990, the Chairman of the Drafting Committee for the Basic Law, Mr Ji Pengfei made the following explanation: "The political structure of the HKSAR should accord with the principle of "One Country, Two Systems" and aim to maintain stability and prosperity in Hong Kong in line with its legal status and actual situation. To this end, consideration must be given to the interests of the different sectors of society and the structure must facilitate the development of the capitalist economy in the Region. While the part of the existing political structure proven to be effective will be maintained, a democratic system that suits Hong Kong's situation should gradually be introduced."

14. The relevant departments of the Central Authorities indicated to the Task Force that although the above explanation had not been written into the provisions of the Basic Law, it was one of the important principles. When studying the constitutional development in Hong Kong, this principled consideration should not be overlooked. They also indicated that the original intention to include functional constituencies in the current political structure of Hong Kong was to give consideration to the interests of the different sectors of society, to ensure balanced participation by all sectors, and to facilitate the development of the capitalist economy. They pointed out that the future constitutional development must give consideration to these principles.

Prosperity and stability of Hong Kong

15. The relevant departments of the Central Authorities emphasized to the Task Force that Hong Kong's constitutional development must ensure stability and prosperity in Hong Kong, must accord with the provisions on the methods for electing the Chief Executive and the Legislative Council as contained in Article 45 and Article 48 of the Basic Law, and must accord with the actual situation in Hong Kong and the principle of gradual and orderly progress. They indicated to us that it had only been over six years since Hong Kong's reunification with China. As "One Country, Two Systems" is newly introduced, it was inevitable that there were difficulties which would have to be

dealt with collectively during the course of implementation. In view of this, constitutional development must be commensurate with Hong Kong's actual situation and experience.

16. The relevant departments of the Central Authorities emphasized that one of the important principles of the design of the Basic Law is to have an "executive-led" system. This is to maintain effective governance in Hong Kong. According to the Basic Law, the Chief Executive shall be accountable to the Central People's Government and to the SAR. In order to achieve both, we must follow the "executive-led" principle. The future methods for electing the Chief Executive and the Legislative Council must be in accordance with the relevant provisions of the Basic Law, and be conducive to strengthening and improving the "executive-led" system.

17. The relevant departments of the Central Authorities expressed their wish to the Task Force that the various sectors of the Hong Kong community should discuss these principles rationally and thoroughly and strive for consensus. They also emphasized that when considering these issues, a wide perspective should be adopted, taking into account in a holistic manner the national interests, the long-term interests of the SAR, the legal status of Hong Kong, the economic development in Hong Kong, the implementation of the Basic Law and its actual operation, and the interests of the various strata and sectors of the Hong Kong community.

Discussion with Mainland legal experts

18. The Task Force held a discussion meeting with a group of Mainland legal experts on 9 February. They included Prof Xiao Weiyun of the Law Faculty of the Peking University, Mr Shao Tianren, (former) legal adviser of the Ministry of Foreign Affairs, Prof Xu Chongde of the Law Faculty of the Renmin University of China, Mr Chen Xinxin, Secretary of the Hong Kong, Macao and Taiwan Law Research Centre, Chinese Academy of Social Science and Prof Wang Zhenmin, Deputy Dean of Law Faculty of the Tsinghua University. At the meeting, the Mainland legal experts explained to us the drafting history of the relevant provisions of the Basic Law, and expressed their personal views on the Basic Law issues on principles and legislative process for the Task Force's reference. They thought that the issues of principles and legislative process were interlinked in the context of constitutional development. They believed that the issues on legislative process were easier to resolve, whereas the issues on principles were more complicated and more important. They needed to be clarified as they formed an important foundation.

Next Step

19. Regarding the issues on legislative process, the LAC indicated to us that they needed to study them further as the Mainland legal experts had different views on these issues. They would discuss these issues with us in future.

20. In order to facilitate more in-depth discussion by the Hong Kong community on issues on principles and legislative process relating to constitutional development, the Task Force would put these issues, in the form of questions, onto the website to be set up by the Task Force next week, to enable a more focused and widespread discussion by the public and different organizations. The Task Force will continue its meetings with various organizations and individuals to listen to their views on these issues, particularly on the issues on principles. We would also liaise with the Central Authorities at an appropriate time, to report on the progress made, and to reflect the views of the public.

Conclusion

21. As a conclusion of this report, I wish to share some personal views with Members. First, I think the Task Force has faithfully played a bridging role this time. On the one hand, we have faithfully reflected the views of the Hong Kong community on constitutional development to the Central Authorities. On the other hand, we have faithfully reflected the concerns of the Central Authorities to Hong Kong people. We believe that this mutual communication is very important.

22. Second, during our stay in Beijing, we have separately met with officials of HKMAO and LAC, as well as a group of Mainland legal experts, some of whom have participated in the drafting of the Basic Law and were very much fond of Hong Kong. I can see that they share the same mission as we do, and that is to maintain the stability and prosperity of Hong Kong, and to ensure the successful implementation of "One Country, Two Systems".

23. In the three sessions of working meetings and discussion held in the past two days, we have had very friendly, open and constructive exchanges with the Central Authorities as well as the legal experts. We all agreed that the issues on principles and legislative process should be further discussed. I and other Task Force members believe that such exchanges are conducive to a better understanding of the issues by both sides, and would facilitate our work in handling constitutional development on the basis of a common foundation.

24. Honourable members, the relevant departments of the Central Authorities have confirmed that the issues on principles that we have set out in the paper submitted to this Council on 14 January form the foundation for the future development of Hong Kong's political structure, and must be handled as a matter of priority. The Central Authorities have further elaborated on their areas of concern.

25. I believe this is an important step for Hong Kong's constitutional development. Now that we have a clear platform, Members and different sectors of the community can then focus our discussion on how to realize these principles in the "two methods". The Hong Kong community must have a common understanding with the Central Authorities on this foundation, so as to have a constructive discussion on the specific proposals.

26. The Central Authorities are concerned and do care about Hong Kong. They hope Hong Kong could maintain its prosperity and stability. The exchanges with the Central Authorities have been open.

27. Similarly, Hong Kong people have a depth of feelings towards the Central Authorities. They are grateful for the support of the Central Authorities in times of difficulties. They understand that the Central Authorities have all along been strictly adhering to the principle of "One Country, Two Systems" since reunification. Hong Kong people also understand the importance of prosperity and stability.

28. On the basis of common interests between the Central Authorities and the SAR, I wish that different sectors of the community would discuss the principles relating to the future development of Hong Kong's political structure rationally and thoroughly. We know there are different views in the community. But the important thing is that we can better understand each other and do away with unnecessary allegations and speculation. We should seek to maximize the overall interests of our country and the SAR, and to strive for consensus on Hong Kong's constitutional development.

29. Thank you, Madam President.