

立法會
Legislative Council

LC Paper No. CB(2)2936/05-06
(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 19 June 2006 at 2:30 pm
in the Chamber of the Legislative Council Building

Members present :

- Dr Hon LUI Ming-wah, SBS, JP (Chairman)
- Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)
- Hon James TIEN Pei-chun, GBS, JP
- Hon Albert HO Chun-yan
- Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
- Hon Margaret NG
- Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
- Hon CHEUNG Man-kwong
- Hon CHAN Kam-lam, SBS, JP
- Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
- Hon LEUNG Yiu-chung
- Dr Hon Philip WONG Yu-hong, GBS
- Hon Howard YOUNG, SBS, JP
- Dr Hon YEUNG Sum
- Hon LAU Kong-wah, JP
- Hon Miriam LAU Kin-ye, GBS, JP
- Hon Emily LAU Wai-hing, JP
- Hon CHOY So-yuk, JP
- Hon Timothy FOK Tsun-ting, GBS, JP
- Hon TAM Yiu-chung, GBS, JP
- Hon LI Fung-ying, BBS, JP
- Hon Audrey EU Yuet-mee, SC, JP
- Hon LEE Wing-tat
- Hon Alan LEONG Kah-kit, SC
- Hon LEUNG Kwok-hung
- Dr Hon Fernando CHEUNG Chiu-hung
- Hon CHEUNG Hok-ming, SBS, JP
- Hon WONG Ting-kwong, BBS
- Hon CHIM Pui-chung
- Hon Patrick LAU Sau-shing, SBS, JP

Hon KWONG Chi-kin
Hon TAM Heung-man

**Members
absent** : Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon Bernard CHAN, JP
Hon WONG Yung-kan, JP
Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Daniel LAM Wai-keung, BBS, JP
Hon MA Lik, GBS, JP
Dr Hon KWOK Ka-ki
Hon Ronny TONG Ka-wah, SC

**Public Officers
attending** : Item V

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Joseph LAI Yee-tak
Acting Permanent Secretary for Constitutional Affairs

Mr Gary POON Wai-wing
Principal Assistant Secretary for Constitutional Affairs

Mr LAM Man-ho
Chief Electoral Officer
Registration & Electoral Office

Item VI

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Joseph LAI Yee-tak
Acting Permanent Secretary for Constitutional Affairs

Ms Joyce HO Kwok-shan
Principal Assistant Secretary for Constitutional Affairs

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Confirmation of minutes of meeting

(LC Paper No. CB(2)2226/05-06 – Minutes of meeting on 21 April 2006

LC Paper No. CB(2)2328/05-06 – Minutes of special meeting on 27 April 2006)

The minutes of the meetings held on 21 and 27 April 2006 were confirmed.

II. Information papers issued since the last meeting

2. Members noted that the following papers had been issued since the last meeting –

- (a) FS14/05-06 – Fact Sheet on "Nationality Requirement of Legislators in Selected Countries" prepared by the Research and Library Services Division;
- (b) FS16/05-06 – Fact Sheet on "Time limit within which the House of Lords of the United Kingdom Parliament could delay a bill passed by the House of Commons from becoming law" prepared by the Research and Library Services Division; and
- (c) LC Paper No. CB(2)2229/05-06(01) – Submissions from residents of Ma Wan and the Administration's response on membership of the third term District Council.

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III. Draft report of the Panel for submission to the Legislative Council
(LC Paper No. CB(2)2388/05-06(01) – Draft report of the Panel on Constitutional Affairs)

3. Members noted that in accordance with Rule 77(14) of the Rules of Procedure of the Legislative Council (LegCo), the Panel would submit a report to the Council on 5 July 2006. Members endorsed the draft report of the Panel. The Chairman suggested and members agreed that the report should be suitably revised to incorporate the main deliberations at this meeting for submission to the Council.

IV. Items for discussion at the next meeting

(LC Paper No. CB(2)2384/05-06(01) – List of outstanding items for discussion)

4. Secretary for Constitutional Affairs (SCA) proposed and members agreed to discuss “Proposed Guidelines issued by the Electoral Affairs Commission on Election-related Activities in respect of the Election Committee Subsector Elections” at the next meeting to be held on 17 July 2006. Members noted that the paper for the item would only be available shortly before 15 July 2006 to tie in with the public consultation period, instead of one week before the meeting as usual.

5. Referring to item 7 of the outstanding list, Ms Emily LAU asked when the Administration would issue a consultation paper on the development of a political appointment system which sought to create the new positions of assistants to Director of Bureaux. She said that the Subcommittee on Members’ Remuneration and Operating Expenses Reimbursement of LegCo had recently written to the Independent Commission on Remuneration for Members of the Executive Council and the Legislature of the HKSAR, and the letter was copied to the Director of Administration. The letter had made reference to members’ concern about a proper system for nurturing political talents. Ms LAU requested SCA to address issues such as grooming of political talents in the consultation document to be issued.

6. SCA said that he had not seen the letter referred to by Ms LAU; he would request the Director of Administration to provide a copy of the letter for reference. As further development of the political appointment system was an important issue, the Administration would listen to views from different sectors of society, including the civil service, before formulating a package of proposals. It was unlikely for the Administration to issue the consultation document before the next Panel meeting on 17 July 2006. However, the Administration would make arrangements to brief the Panel if the document was issued in the summer. Members suggested that in order to enable the majority of the members to attend the Panel meeting to discuss the issue, the Administration should consider issuing the consultation document, for example, in September 2006 or thereafter.

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7. Ms Audrey EU and Dr YEUNG Sum said that the election of the third term Chief Executive (CE) was imminent, and the Administration had yet to introduce a bill on the application of the Prevention of Bribery Ordinance to CE as it had earlier promised to do so. SCA said that he was aware that the Administration was following up the issue. He would relay members' concern to the Director of Administration.

V. Amendments to subsidiary legislation for the 2007 Chief Executive Election

(LC Paper No. CB(2)2384/05-06(02) – Paper provided by the Administration on "Amendments to subsidiary legislation for the 2007 Chief Executive Election")

8. Chief Electoral Officer (CEO) introduced the paper which set out the scope of amendments proposed to be made to two items of subsidiary legislation, following the commencement of the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Ordinance 2006 (the Amendment Ordinance) on 13 May 2006. The two items of subsidiary legislation were the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J) under the Electoral Affairs Commission (EAC) Ordinance (Cap. 541) and the Chief Executive Election (Election Petition) Rules (Cap. 569E) under the Chief Executive Election Ordinance (CEEO) (Cap. 569). The amendments would be tabled in the Council for vetting in October 2006. These included –

- (a) amendments consequential to the Amendment Ordinance (including amendments to provide for the electoral arrangements in the event that only one candidate was validly nominated at the close of nominations for a CE election); and
- (b) amendments to align electoral procedures for CE election with those for LegCo election.

9. Mr Howard YOUNG said that when members scrutinised the Amendment Ordinance, they had expressed concern that in the absence of an arrangement to ensure finality to the electoral process, whether a CE could be elected in time to fill a vacancy if the sole candidate could not receive the required number of votes on successive occasions. He asked whether the proposed amendments would address the issue of appointments of acting CE and principal officials in the event that a CE could not be elected in time.

10. SCA responded that if a CE could not be elected in time, the duties of CE should be temporarily assumed by the Chief Secretary for Administration, the Financial Secretary and the Secretary of Justice in this order of precedence under Article 53 of the Basic Law. The amendments to be introduced to Cap. 541J consequential to the Amendment Ordinance were to provide for the arrangements in the event that only one CE candidate was validly nominated.

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11. Ms LI Fung-ying said that several rounds of election might take place in the absence of an arrangement to ensure finality to the electoral process. She expressed concern whether it was justified to conduct several rounds of election, as it involved the use of public money. She asked about the expenses involved in each round of election.

12. SCA said that the Administration's policy was that if only one candidate was validly nominated, election proceedings should continue. It would go against the Administration's policy if a sole candidate was allowed to be returned *ipso facto* after the first (or subsequent) round of election. The financial consideration for the additional rounds of election that might be required was only of secondary consideration.

13. SCA further explained that according to CEEO, if an election was to be held to fill a vacancy arising from the expiry of the term of office of CE and if the number of "support votes" obtained by a sole candidate fell short of more than half of the total valid votes, the election would be terminated and a new round of election should be held on the first Sunday 42 days after the election had been terminated. Taking the 2007 election to return a new term CE as an example, the polling date would be on 25 March 2007. Assuming that there was only one validly nominated candidate, and that he was unable to obtain the requisite number of support votes, two further rounds of elections could be held before the expiry of the term of the incumbent CE on 1 July 2007. If no candidate could be returned after these three rounds of election, the election process would continue after 1 July 2007, and four more rounds of election could be held during the six-month period between 1 July 2007 and 31 December 2007. In other words, a maximum of seven rounds of election could be held before 31 December 2007. It was estimated the third term CE election to be held would cost about \$16 million. In the event that a CE could not be returned in the election, the cost involved in conducting another round of election would be about \$8 million.

14. Mr CHAN Kam-lam asked whether the interval between two rounds of election could be shortened, so that a CE could be elected as soon as possible. SCA explained that a new round of election would be held 42 days after the election had been terminated. The 42-day period was considered a practical arrangement, as the minimum time required by law for nomination and canvassing was two weeks and three weeks respectively.

15. Dr YEUNG Sum sought clarification on the meaning of "material irregularity" referred to in paragraph 5 of the Administration's paper and asked about the authority for determining whether material irregularity had occurred in the election.

16. SCA and CEO explained that CEEO had specified the grounds for lodging an election petition against the result of a CE election. Following the enactment of the Amendment Ordinance, an additional ground for petition had been provided for,

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i.e. a sole candidate declared by the Returning Officer as not returned in an election because material irregularity had occurred in the election. Consequential amendments were required for Cap. 569E to include this additional ground for election petitions. It was for the court to decide whether material irregularity had occurred in an election when determining the petition.

17. Mr LEE Wing-tat referred to paragraph 6 of the Administration's paper and asked whether all the electoral arrangements for the CE election would align with those for LegCo election, e.g. whether the financial assistance scheme implemented for the LegCo election would be extended to the CE election.

18. SCA clarified that the financial assistance scheme for candidates in LegCo elections, i.e. a subsidy of \$10 per vote, was proposed to be extended only to candidates in the next District Council elections and not the CE election. CEO supplemented that electoral arrangements of the CE election which would be aligned with those for LegCo election included, among others, arrangements which facilitated the keeping of order within the polling station on polling day and counting of votes, and increase in the penalty for unauthorized filming, photographing, audio/video recording within a polling station. The main amendments were set out in Annex B to the Administration's paper.

19. Mr Albert HO said that a small circle election would produce a distorted result in an election. Quoting the last CE election as an example, over 700 Election Committee (EC) members had nominated the same candidate. Peer group pressure had prevented EC members from making nominations freely. In the circumstances, the election result could not reflect the wish of the people. In order to encourage competition in an election, Mr HO said that an upper limit should be set on the number of subscribers required for nominating candidates for the office of CE.

20. SCA said that the issue raised by Mr HO had been deliberated upon during the scrutiny of the Amendment Ordinance. The Administration held the view that setting an upper limit would unduly restrain EC members from exercising their right to nominate candidates. The Administration also envisaged that there would be a lot of interest in the EC subsector elections and the CE election, judging from the response of the recent elections. To address members' concern that EC members had no chance to express their views in case only one candidate was validly nominated in an election, amendments had been made to CEEO and consequential amendments would be made to Cap. 541J to enable EC members to cast a "support" or "not support" vote in the CE election under such circumstances.

21. Mr James TIEN noted that the ballot paper would be designed in such a way that an elector could choose to tick either a "support" or "not support" box on the ballot paper. He asked whether the number of "support" and "not support" votes, as well as unmarked ballot papers, would be made public, and how to ensure that the number of votes cast tallied with the number of ballot papers issued.

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22. SCA said that unmarked ballot papers were invalid. The number of “support” votes, “not support” votes, and invalid votes would be announced. In verification of the ballot paper count, the guiding principle was that the number of ballot papers cast should not exceed the number of ballot papers issued.

VI. Models for selecting the Chief Executive and forming the Legislative Council by universal suffrage

(LC Paper No. CB(2)2386/05-06(01) – Background brief prepared by the LegCo Secretariat on "Models for selecting the Chief Executive and forming the Legislative Council by universal suffrage")

23. Ms Emily LAU said that a recent opinion poll had indicated that over 60% of the public was supportive of expeditious implementation, instead of ultimate implementation, of dual elections by universal suffrage. The Administration should reflect public’s aspiration to the Central Authorities. Ms LAU further said that the Administration had repeatedly stressed that any electoral models had to safeguard the interests of small sectors such as the business sector to ensure “balanced participation”. She asked whether it was the Administration’s view that a universal suffrage system would fail to do so. She questioned the representativeness of the 800-member EC which had an electorate size of 200 000 voters only, and asked the Administration whether the composition of EC would achieve “balanced participation”. In her view, the third term CE who would not be returned by universal suffrage lacked the mandate of the people.

24. In response to Ms Emily LAU, SCA made the following points –

- (a) both the Central Authorities and the Hong Kong Special Administrative Region (HKSAR) Government were fully aware of the community’s aspiration for universal suffrage. The ultimate aim of attaining universal suffrage was also recognized by all parties concerned. The Administration considered that it was important to take into account public opinion in formulating any proposal for constitutional development. Last year, the Administration had proposed to open up the electoral methods for selecting CE and forming LegCo in 2007/08 with an enhanced element of democracy. The proposal was supported by the general public but did not gain its passage in LegCo;
- (b) given that the HKSAR was not an sovereign entity, its constitutional development must be in accordance with the Constitution of the People’s Republic of China and the Basic Law. One of the important requirements was that progress on constitutional development was dependent on whether a consensus could be achieved among the Central Authorities, the HKSAR Government, LegCo, and different sectors of the community. Irrespective of the electoral models to be

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adopted, they could be implemented only with the support of the general public; and

- (c) although EC consisted of 800 members only, it represented 38 subsectors which came from different sectors of the community. According to the latest registration figures, the number of voters of EC had increased to 220 000. The composition of EC had realised the principle of “balanced participation”. The method to return the third term CE would be consistent with the Basic Law.

25. Dr YEUNG Sum said that the background brief prepared by the Secretariat revealed some directions on how universal suffrage could be attained. He highlighted them as follows –

- (a) the model for selecting CE by universal suffrage was relatively straightforward as compared with the one for electing Members of LegCo. The key factor was the formation of a broadly representative nominating committee in accordance with democratic procedures;
- (b) on the model for forming LegCo, the majority view was in support of the retention of the unicameral system. There were few voices advocating a bicameral system, having regard to the fact that such a proposal would involve amendments to the Basic Law; and
- (c) the majority view supported the abolition or phased abolition of the functional constituency (FC) system in order to implement universal suffrage. There were also views that the FC system should be retained by way of a bicameral system.

26. In response to Dr YEUNG Sum, SCA made the following points –

- (a) the Committee on Governance and Political Development under the Commission on Strategic Development (CSD) had an preliminary discussion on possible models for implementing universal suffrage. The general view was that the model for selecting CE by universal suffrage was relatively less complicated as compared with the model for implementing universal suffrage for LegCo. As the Basic Law had already provided clearly that the nominating committee should be broadly representative, there was a higher chance of the community reaching consensus on the way forward for selecting CE by universal suffrage, and hence, the issue could be explored first;
- (b) as regards the models for forming LegCo by universal suffrage, a bicameral legislature was one of the proposals received by the Constitutional Development Task Force during consultation. The Administration had not formed any view in this regard. When the

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issue was discussed in CSD, there was a view that a bicameral system might be inconsistent with the Basic Law, or it would involve amendments to the Basic Law, which could not be accomplished easily. There was also a view that a bicameral system might undermine the efficiency of the executive authorities and make governance by the executive authorities more difficult. The Administration would continue to listen to views on this subject;

- (c) on the FC system, there was a view that FCs should be replaced by geographical constituencies (GCs). There was also a proposal to allow members of FCs to nominate candidates for election by universal suffrage; and
- (d) CSD would discuss possible models for selecting CE and LegCo by universal suffrage in the coming six months.

27. Mr Albert HO said that irrespective of the electoral models to be adopted, they should aim to implement universal suffrage. According to international standard, universal suffrage had an irreducible minimal content that every citizen had the right and opportunity to take part in an election fairly, i.e. one vote per person with equal value. Any models which departed from this principle, such as the FC system or the bicameral system, would make the implementation of universal suffrage meaningless. Article 25(b) of the International Covenant on Civil and Political Rights (ICCPR) also stipulated that every citizen should have the right and opportunity to vote and to be elected at genuine periodic elections which should be by universal and equal suffrage. Upon ratification of the Covenant in 1976, the British Government made a reservation, reserving the right not to apply this provision in so far as it might require the establishment of an elected Executive or LegCo in Hong Kong. Mr HO said that he could not understand why this reservation continued to apply to the HKSAR after the reunification. The United Nations Human Rights Committee had expressed the view that the reservation would contravene ICCPR.

28. In response to Mr Albert HO, SCA made the following points –

- (a) CSD generally agreed that universal suffrage meant “one person, one vote”, which could take the form of direct or indirect election. However, the general principle of equality of voting power did not necessarily require arithmetic equality in the relative weight of each vote. For example, in GC elections, there could be reasonable variations among the constituencies in respect of the ratio between the number of seats and the size of the electorate; and
- (b) in 1976, a reservation was made not to apply Article 25(b) of ICCPR to Hong Kong, in so far as it might require the establishment of an elected Executive or LegCo. This reservation continued to apply.

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The basis for Hong Kong to implement universal suffrage came from the Basic Law, and not ICCPR. The provisions in the Basic Law represented an improvement as compared with those in the Joint Declaration in 1984, as universal suffrage was stipulated in the Basic Law as the ultimate aim for selecting CE and forming LegCo. The provisions in the Joint Declaration that the legislature should be constituted by elections and that CE should be selected by election or through consultations had already been fulfilled.

29. Mr LEUNG Yiu-chung said that almost all political parties advocated election by democratic means. It was, however, wrong to assume that democracy would be achieved with an election. In his view, democracy meant universal and equal suffrage and one vote per person with equal value. If the Administration would address public's aspiration as it had claimed, it should take the lead to formulate models for implementing universal suffrage as soon as possible.

30. Dr YEUNG Sum said that the proposal to allow members of FCs to nominate candidates for election by universal suffrage, albeit progressive, was not the way to universal suffrage. The proposal would confine the right of nomination to certain groups of people.

31. Ms Emily LAU expressed concern that universal suffrage could be deferred indefinitely if public's aspiration on expeditious implementation was not respected. She reiterated that the Administration should take into account the views of the public in determining the timing for implementing universal suffrage. Had the Administration been supportive, dual elections by universal suffrage would have been implemented in 1997 when all the political parties had reached a consensus in 1994. She said that any delay in implementing universal suffrage was against the wish of people and no political parties would support it.

32. Mr Albert HO said that the Administration should consider resorting to more objective methods, such as a referendum, to ascertain public's aspiration for universal suffrage. He asked whether the Administration would change its position only if thousands of people took to the street on 1 July 2006.

33. Mr TAM Yiu-chung considered that favourable conditions should be created for the implementation of the ultimate aim of universal suffrage in accordance with the principle of gradual and orderly progress as stipulated in the Basic Law. He said that the Democratic Alliance for the Betterment and Progress of Hong Kong would actively participate in the discussion on universal suffrage held by CSD.

34. SCA responded that the people of Hong Kong accepted the Basic Law requirement that universal suffrage was the ultimate goal. In dealing with this issue, it was necessary to reach a consensus within the community and to obtain the consent of the Central Authorities. He stressed that the discussion on universal suffrage among the Government, LegCo and the public was interactive. The

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Administration had paid and would continue to pay attention to public opinion. The Administration was well aware that constitutional development could move forward only with the support of political parties. It was, however, a political reality that any proposal to change the composition of LegCo required a two-thirds majority support of LegCo Members. In practice, this meant that the endorsement and support of Members returned by both GCs and FCs would be required. The Administration's view was that the issue of universal suffrage had to be widely discussed in the community. At present, CSD had already concluded discussion on the principles and concepts relating to universal suffrage. In the second half of 2006, CSD would discuss possible models for selecting the CE and LegCo when attaining universal suffrage and aimed to conclude discussion by early 2007. The conclusions of these discussions would form a basis for the next stage of work between 2007 and 2012. SCA thanked members for giving views on the matter in the past few months. With the Panel's agreement, he would circulate the background paper prepared by the Secretariat within the Government and to CSD for reference.

35. The meeting ended at 4:10 pm.

Council Business Division 2
Legislative Council Secretariat
16 August 2006