

**Commission on Strategic Development  
Committee on Governance and Political Development**

**Strategic Issues to be Discussed**

**Purpose**

This paper invites Members to note the priority strategic issues to be discussed at future meetings of this Committee.

**Background**

2. At the first meeting of this Committee held on 29 November 2005, Members discussed Paper Ref. CSD/GC/3/2005 on “Strategic Issues that may be Discussed at Future Meetings”. In concluding the discussion, the Chairman said that the Secretariat would consolidate Members’ views and prepare a list of priority issues that should be tackled by this Committee.

**Priority Strategic Issues to be Discussed at Future Meetings**

3. Having carefully considered Members’ views and the Chairman’s suggestion at the last meeting, we have drawn up the following strategic issues, in descending order of priority, for discussion at future meetings :

- (a) principles and concepts of universal suffrage
- (b) design of the universal suffrage system for both the Chief Executive and the Legislative Council
- (c) nurturing political talent
- (d) development of political parties
- (e) review of the role, functions and structure of the District Councils

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**Constitutional Basis of  
Basic Law Provisions Regarding "Universal Suffrage"**

**Introduction**

The political structure of the Hong Kong Special Administrative Region (“HKSAR”) is prescribed in Chapter IV of the Basic Law and Annexes I and II.

2. Article 45 of the Basic Law provides :

“The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government.

The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region 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.

The specific method for selecting the Chief Executive is prescribed in Annex I: 'Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region'.”

3. Article 68 of the Basic Law provides :

“The Legislative Council of the Hong Kong Special Administrative Region shall be constituted by election.

The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of

gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage.

The specific method for forming the Legislative Council and its procedures for voting on bills and motions are prescribed in Annex II: 'Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures'."

4. The above provisions clearly stipulate that the ultimate aim is the election of the Chief Executive ("CE") and all the members of the Legislative Council ("LegCo") by universal suffrage.

5. In order to understand the meaning of "universal suffrage" in the Basic Law, we must take the constitutional status of the HKSAR and the principles of design of its political structure as the starting point.

### **The Constitutional Status of the HKSAR**

6. Upholding national unity and territorial integrity, maintaining the prosperity and stability of Hong Kong, and taking account of its history and realities, the State had decided that, upon its resumption of the exercise of sovereignty over Hong Kong, the HKSAR shall be established in accordance with the provisions of Article 31 of the Constitution. Under the principle of "One Country, Two Systems", the socialist system and policies will not be practised in Hong Kong. In accordance with the Constitution, the National People's Congress has enacted the Basic Law, prescribing the systems to be practised in the HKSAR, in order to ensure the implementation of the basic policies of the State regarding Hong Kong.

7. Article 12 of the Basic Law explicitly provides :

"The Hong Kong Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government ("CPG")."

8. The People's Republic of China is a unitary state, and the HKSAR is a local administrative region under such a system. The high degree of autonomy enjoyed by the HKSAR is conferred by the NPC in accordance with the law. In other words, all powers exercised by the SAR are derived by way of authorization by the Central Authorities, and there are no "residual powers" on the part of the SAR. Furthermore, the Basic Law also provides that the HKSAR comes directly under the CPG, with no intermediate layer in between.

9. Given the above-mentioned constitutional status of the HKSAR, the Central Authorities have the constitutional powers and responsibilities to determine the model of political structure of the HKSAR. The role played by the Central Authorities in this regard is also realized in the Basic Law provisions relating to political structure. For example :

- (i) According to the Interpretation by the Standing Committee of the National People's Congress ("NPCSC") on 6 April 2004, as regards whether there is a need to make an amendment to the method for the selection of the CE and that for the formation of the LegCo for the terms subsequent to the year 2007 as stipulated in Annexes I and II to the Basic Law, the CE shall make a report to the NPCSC for it to make a determination. According to the Interpretation, after an amendment has been endorsed by the LegCo and has received the consent of the CE, it will still require the approval or acceptance for the record by the NPCSC before it may take effect. This realizes the ultimate power of the Central Authorities to determine the constitutional development of the HKSAR, including the timetable for attaining universal suffrage and the model and design of the universal suffrage system. Unlike sovereign states, the HKSAR cannot decide the political structure on its own.
- (ii) Article 45 of the Basic Law provides that the CE shall be selected by election or through consultation conducted locally and be appointed by the CPG. Article 43 provides that the CE shall be accountable to the CPG and the HKSAR. The appointment made by the CPG is substantive and not a formality. It may make the appointment or it may not. This arrangement realizes the fact that the State is a unitary state, and that the HKSAR is an integral part of the State with the constitutional status of a local administrative region which comes directly under the CPG and which enjoys a high degree of autonomy through authorization. Thus, irrespective as to how the CE is selected, including by means of universal suffrage ultimately, there can be no deviation from the constitutional requirement that a candidate winning an election must be appointed, in a substantive manner, by the CPG before assuming office.

## **Principles of Design of the Political Structure of the HKSAR**

10. When submitting the draft Basic Law and related documents at the Third Session of the Seventh NPC on 28 March 1990, Director JI Pengfei made the following explanations on the political structure of the HKSAR :

“The political structure of the Hong Kong Special Administrative Region 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 reality should gradually be introduced.”

11. From the above Explanations of Director JI on political structure and the provisions in Article 45 and Article 68 of the Basic Law, four principles on constitutional development can be summarized :

- (i) meeting the interests of different sectors of society;
- (ii) facilitating the development of the capitalist economy;
- (iii) gradual and orderly progress; and
- (iv) appropriate to the actual situation in the HKSAR.

12. The considerations of four principles above have been elaborated in the paper entitled “An Overview of the Political Structure of the Hong Kong Special Administrative Region” (CSD/GC/1/2005) submitted at the last meeting.

### **Conclusion**

13. Having regard to the constitutional basis and the principles of design of the political structure mentioned in this paper, members may further discuss the Basic Law provisions relating to universal suffrage.

The order in which the last three items, i.e. (c) to (e), are to be discussed by this Committee should be determined around the end of 2006, when discussion on the first two items on universal suffrage is about to finish, having regard to the circumstances at that time.

### **Advice Sought**

4. Members are invited to note the list of strategic issues for this Committee's discussion as set out in paragraph 3 above.

Secretariat to the Commission on Strategic Development  
January 2006

**Commission on Strategic Development  
Committee on Governance and Political Development**

**General Understanding on the Concept of “Universal Suffrage”**

**Introduction**

This paper gives a brief account on how the concept of “universal suffrage” is generally understood internationally.

**International Covenant on Civil and Political Rights**

2. Article 39 of the Basic Law provides that the provisions of the International Covenant on Civil and Political Rights (“the Covenant”) as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

3. Article 25 of the Covenant stipulates that:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2<sup>Note 1</sup> and without unreasonable restrictions:

- (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;”

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Note 1 Article 2(1) states that each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

4. Upon ratification of the Covenant in 1976, the British Government made a reservation, reserving the right not to apply subparagraph (b) of Article 25 in so far as it might require the establishment of an elected Executive or Legislative Council in Hong Kong. After the reunification, in accordance with the Central People's Government's notification to the United Nations Secretary-General in June 1996 and Article 39 of the Basic Law, this reservation continues to apply to the HKSAR.

5. Under the Hong Kong Bill of Rights Ordinance (Chapter 383), Article 21 of the Hong Kong Bill of Rights provides that every permanent resident of Hong Kong shall have the right to participate in elections. At the same time, Section 13 of the Ordinance, a saving clause, provides that Article 21 does not require the establishment of an elected Executive or Legislative Council in Hong Kong.

#### **Views Stated in Relevant UN Publication**

6. In a 1994 UN publication entitled “Human Rights and Elections, A Handbook on the Legal, Technical and Human Rights Aspects of Elections”, it is stated that,

“United Nations human rights standards relating to elections are broad in nature and thus may be achieved through a variety of political systems. United Nations electoral assistance **does not seek to impose any given political model.** Rather, it is based upon **a realisation that there is no single political system or electoral methodology which is appropriate for all peoples and states.** While comparative examples provide useful guidance for the construction of democratic institutions that both respond to domestic concerns and conform to international human rights norms, **the best formulation for each jurisdiction will ultimately be shaped by the particular needs, aspirations and historical realities of the people involved, taken within the framework of international standards.**”<sup>Note 2</sup>

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Note 2 Office of the High Commissioner for Human Rights, United Nations, *Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Election*, paragraph 17.



7. To further elaborate on the implementation of Article 25 of the Covenant, the UN Human Rights Committee has endorsed General Comments No. 25 in 1996. Although the document has not clearly defined “universal and equal” suffrage, it states that “no distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (paragraph 3). The General Comments also point out that it is unreasonable to restrict “the right to vote on the ground of physical disability or to impose literacy, educational or property requirements” (paragraph 10).

### **Different Systems Permitted under the Principle of Universal Suffrage**

8. As pointed out by the UN Human Rights Committee in its General Comments on Article 25, the Covenant does not seek to impose any specific electoral system. The Handbook of the UN has also stated that the system for each jurisdiction should be shaped by the particular needs, aspirations and historical realities of the people involved.

9. The Covenant does not prescribe which model should be adopted in returning a legislature. We note that, among the countries which practise a bicameral system, either the whole or part of the membership of the upper houses in Canada and the United Kingdom are returned by appointment. In the Irish Senate, members are returned from universities and panels representing specified vocational interests. According to information available to us, although the upper houses in Canada, the United Kingdom and Ireland are not returned by universal suffrage, the UN Human Rights Committee has not made any criticism recently on these methods. We also note that there are scholars who hold the view that in a bicameral parliamentary system, at least the chamber with the main legislative authority should be returned by universal suffrage<sup>Note 3</sup>.

10. In addition, there are also scholars who consider that the Covenant has not specified whether universal suffrage should take the form of direct or indirect election. For example, the presidential election in the United States is a form of indirect election, and this is also compatible with Article 25 of the Covenant<sup>Note 4</sup>.

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Note 3 Manfred Nowak. *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 1993, P.443

Note 4 Ditto, p.444

## Conclusion

11. On the basis of the above background information, we may make the following summary :

1. The concept of “universal suffrage” includes the principles of “universal” and “equal”. However, the right to vote can be subject to restrictions, but any such restrictions should be “reasonable” restrictions established under the law. For example, most places, including Hong Kong, require their citizens to have reached a certain age or to have satisfied a specific period of residency before they can register as electors. These age and residency requirements can be viewed as reasonable restrictions on “universal suffrage”.
2. “Universal suffrage” is about who has the right to vote. It is generally recognized that all citizens have the right to take part in elections conducted in their own community and be represented by the elected legislators of the constituencies to which they belong. In regard to the Hong Kong Special Administrative Region (“HKSAR”), the Basic Law provides that permanent residents of the HKSAR shall have the right to vote and the right to stand for election in accordance with the law.
3. “Equal suffrage” does not require that each vote should have the same effect on the outcome of the election. For example, in geographical constituency elections, there can be reasonable variations amongst the constituencies in respect of the ratio between the number of seats and the size of registered voters.
4. The international community recognizes that there is no single electoral system that suits all places, and would not seek to impose any single political model or electoral system on any place. Different jurisdictions have adopted, respectively, direct or indirect elections and different models of unicameral or bicameral legislature. As far as an individual jurisdiction is concerned, while conforming to the general understanding of universal suffrage held internationally, it may also develop its electoral system having regard to the particular needs and aspirations of its people, and its historical realities.

