

立法會
Legislative Council

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LC Paper No. CB(2)1615/07-08
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 21 January 2008, at 2:30 pm
in the Chamber of the Legislative Council Building

Members present :

- Dr Hon LUI Ming-wah, SBS, JP (Chairman)
- Hon TAM Yiu-chung, GBS, JP (Deputy Chairman)
- Hon James TIEN Pei-chun, GBS, JP
- Hon Albert HO Chun-yan
- Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
- Hon LEE Cheuk-yan
- Hon Martin LEE Chu-ming, SC, JP
- Hon Margaret NG
- Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
- Hon CHEUNG Man-kwong
- Hon Bernard CHAN, GBS, JP
- Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
- Hon LEUNG Yiu-chung
- Dr Hon Philip WONG Yu-hong, GBS
- Hon WONG Yung-kan, SBS, JP
- Hon Jasper TSANG Yok-sing, GBS, JP
- Hon Howard YOUNG, SBS, JP
- Dr Hon YEUNG Sum, JP
- Hon LAU Kong-wah, JP
- Hon LAU Wong-fat, GBM, GBS, JP
- Hon Emily LAU Wai-hing, JP
- Hon Abraham SHEK Lai-him, SBS, JP
- Hon LI Fung-ying, BBS, JP
- Hon Audrey EU Yuet-mee, SC, JP
- Hon WONG Kwok-hing, MH
- Hon LEE Wing-tat
- Hon Daniel LAM Wai-keung, SBS, JP
- Hon Alan LEONG Kah-kit, SC
- Hon LEUNG Kwok-hung
- Dr Hon KWOK Ka-ki
- Hon CHEUNG Hok-ming, SBS, JP
- Hon WONG Ting-kwong, BBS
- Hon Ronny TONG Ka-wah, SC

Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KWONG Chi-kin
Hon Mrs Anson CHAN, GBM, JP

**Members
absent** : Hon Timothy FOK Tsun-ting, GBS, JP

**Public Officers
attending** : Item V

The Administration

Mr Stephen LAM Sui-lung
Secretary for Constitutional and Mainland Affairs

Mr Ivanhoe CHANG Chi-ho
Principal Assistant Secretary for Constitutional and Mainland
Affairs

Mrs Vivian TING TSUI Wai-ming
Chief Electoral Officer for Registration and Electoral Office

Item VI

The Administration

Mr Stephen LAM Sui-lung
Secretary for Constitutional and Mainland Affairs

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs

Ms Joyce HO Kwok-shan
Principal Assistant Secretary for Constitutional and Mainland
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)844/07-08 - Minutes of meeting on 19 November 2007)

The minutes of the meeting held on 19 November 2007 were confirmed.

II. Information paper issued since last meeting

(IN05/07-08 - Information Note on "Usage of electoral register" prepared by the Research and Library Services Division)

2. Ms Emily LAU said that the Information Note on "Usage of electoral register" prepared by the Research and Library Services Division (RLSD) indicated that some countries had used electors' information to carry out activities not related to election. In Canada, electors' names and addresses could be used by parties and members of the House of Commons for making communications with electors for purposes such as soliciting contributions and recruiting members. In Australia, electors' information could be released to a prescribed authority, or an organisation which conducted medical research or provided health screening programmes with proper approval from the relevant government departments. She asked whether the Administration had information on other overseas jurisdictions for members' reference.

3. Secretary for Constitutional and Mainland Affairs (SCMA) said that the Administration had indicated its position when the issue was discussed at the meeting on 19 November 2007. He would forward a copy of the Information Note prepared by the RLSD to the Electoral Affairs Commission (EAC) and the Registration and Electoral Office (REO) for reference.

4. Ms Emily LAU suggested and members agreed that the Panel should discuss the issue at the next meeting on 18 February 2008.

III. Items for discussion at the next meeting

(LC Paper No. CB(2)846/07-08(01) - List of outstanding items for discussion

LC Paper No. CB(2)846/07-08(02) - List of follow-up actions)

5. Members agreed to discuss the following items at the next meeting on 18 February 2008 -

- (a) Election expense limits for the 2008 Legislative Council (LegCo) election - proposed by SCMA;
- (b) Mechanism for amending the Basic Law;

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- (c) System of declaration of investments and interests by Principal Officials under the Accountability System - deferred from the last meeting;
- (d) Usage of electoral register (paragraph 4 refers); and
- (e) Proposed research outline on "Regulation of exit polls in selected places" (paragraph 12 refers).

(Post-meeting note: On the instruction of the Chairman, item (b) above was further deferred to the regular meeting in March 2008.)

6. SCMA proposed that the "Review of the District Council election held on 18 November 2007" (the 2007 DC election) and "Review of the LegCo By-election for the Hong Kong Island geographical consistency held on 2 December 2007" (the 2007 LegCo by-election) (items 6 and 7 of the List of outstanding items for discussion) be discussed at the meeting in March 2008. Members agreed.

IV. Research study on "Exit poll" proposed by Hon Emily LAU

(LC Paper No. CB(2)869/07-08(01) - LegCo question raised by Hon Emily LAU at the Council meeting on 16 January 2008 and the Administration's reply

LC Paper No. CB(2)900/07-08(01) - A list of organisations and persons allowed to conduct exit poll for the 2007 District Council Election

LC Paper No. CB(2)900/07-08(02) - A letter dated 4 January 2008 from the Electoral Affairs Commission concerning exit polls conducted for the 2007 District Council election and the 2007 LegCo By-election provided by Hon Margaret NG)

7. The Chairman informed members that a list of 13 organisations and persons allowed to conduct exit polls for the 2007 DC election provided by the Administration in response to the request of Hon Emily LAU was tabled at the meeting (issued to members vide LC Paper No. CB(2)900/07-08(01) on 24 January 2008).

8. Ms Emily LAU said that on the basis of the Administration's response to the LegCo question raised by her at the Council meeting on 16 January 2008, the existing rules for regulating exit polls appeared to be rather loose. She proposed that a research be carried out to study how exit polls were regulated in overseas jurisdictions.

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9. Mr Ronny TONG expressed concern whether the 13 organisations and persons were in any way associated with the candidates of the DC election. He pointed out that if the results of exit polls were disclosed to certain candidates to facilitate them in canvassing votes during the election, it would be unfair to other candidates. He requested the Administration to provide a paper explaining the existing measures for regulating the conduct of exit polls so as to facilitate members to ascertain whether or not they complied with the principles of fairness and openness in an election. He also suggested that the Panel should follow up the matter at a future meeting.

10. Ms Margaret NG said that she had written to the EAC enquiring about the exit polls conducted for the 2007 DC election and the 2007 LegCo by-election. She would provide the reply of the EAC for reference of members (the reply was issued to members vide LC Paper No. CB(2)900/07-08(02) on 24 January 2008). Ms NG informed members that exit polls were conducted for the 2007 LegCo by-election by four organisations, and the EAC had declined to provide contact details of these organisations on the ground of protection of privacy.

11. Some members, including Mr Ronny TONG, Ms Margaret NG, Mr Albert HO, Mr LEUNG Yiu-chung, Ms Audrey EU, Mr CHEUNG Man-kwong and Mr LEUNG Kwok-hung, supported Ms Emily LAU's proposal to conduct a research study on exit polls. They suggested that the proposed research study should cover the following matters -

- (a) who were eligible to conduct exit polls, whether parties conducting exit polls were confined to academic institutions and if so, whether they had to be registered members of certain internationally recognised organisations for conducting polls;
- (b) whether candidates and political parties were prohibited from conducting exit polls;
- (c) whether applicants were required to submit application forms and declarations for the purpose of conducting exit polls, and the content of the application forms;
- (d) the regulations and guidelines imposed on the conduct of exit polls, and whether exit polls were allowed in all polling stations;
- (e) whether information obtained in exit polls could be provided to candidates/political parties for their use before the close of poll and if so, whether the expenses for conducting the exit polls were counted as election expenses of the candidates concerned;

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- (f) the regulations and guidelines imposed on the use of information collected through exit polls, and whether parties conducting exit polls were required to submit a report on the results of exit polls and the usage of the results;
- (g) what actions would be taken against those who had breached the regulations/guidelines on the conduct of exit polls and the use of information collected through exit polls, and
- (h) the research study should also cover the situation in Hong Kong.

12. Members agreed that the RLSD should propose a research outline for consideration at the next meeting, and advise when the research would be completed.

13. Members agreed that the Administration should provide the following information on the 13 organisations and persons approved to conduct exit polls for the 2007 DC election -

- (a) the process of approving the applications from the 13 organisations/persons;
- (b) background of the 13 organisations/persons and whether they had any connection/association with the candidates of the DC election;
- (c) the reasons provided by the 13 organisations/persons for conducting the exit polls;
- (d) details of the guidelines for conducting exit polls provided to the 13 organisations/persons; and
- (e) the results of these exit polls and their usage.

(Post-meeting note : The Administration's response was issued to members vide LC Paper No. CB(2) 1236/07-08(01) on 29 February 2008.)

14. The Chairman said that the item would be included in the list of outstanding items of the Panel. The timing for discussing the item would be subject to the availability of the research report.

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V. Amendments to the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation

(LC Paper No. CB(2)846/07-08(03) - Administration's paper on "Amendments to the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation"

LC Paper No. CB(2)900/07-08(03) - A letter dated 5 December 2007 from the Administration concerning polling/counting staff for the 2007 District Council election)

15. Chief Electoral Officer for Registration and Electoral Office (CEO) introduced the paper which set out the proposed amendments to the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) (the Regulation) in preparation for the 2008 LegCo election.

Matters relating to electoral staff

16. Ms Emily LAU said that in its reply dated 5 December 2007 (letter tabled at the meeting and issued to members vide LC Paper No. CB(2)900/07-08(03) on 24 December 2008), the Administration advised her that the REO had recruited 14 000 civil servants to work on the polling day. In addition, the District Offices had deployed 430 staff from the Home Affairs Department (HAD), of which 50 were contract staff, to maintain order at the No Canvassing Zone and No Staying Zone. She expressed concern that the electoral staff in both the 2007 DC election and the 2007 LegCo by-election were not too familiar with the electoral legislation and guidelines and enquired about the training and guidance etc. provided to them.

17. SCMA responded that a majority of the electoral officers recruited from the civil service were experienced as they had participated in past elections. In addition, the electoral staff could seek legal advice and clarification from the REO on the polling day, in order to answer enquiries from candidates and their agents.

18. CEO supplemented that all the electoral staff were required to attend training courses and were given an operational manual and a training video in a compact disc to help them familiarise with the procedures for managing the polling and counting stations. The electoral staff would also conduct a rehearsal on the conversion of a polling station into a counting station when they were tasked to set up the polling station one day before the polling day. The REO would enhance the training programme for the 2008 LegCo election, in light of experience gained and comments received in respect of the last two elections.

19. Mr TAM Yiu-chung expressed concern about conflict of roles of electoral staff as he was told by some electors in the 2007 DC election that an electoral staff had canvassed votes for a candidate a few days before the polling day.

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20. Dr YEUNG Sum expressed similar concern. He said that it was inappropriate to deploy civil servants working in a District Office to work in the polling station of the same district. He also suggested that improvements should be introduced in polling stations such as deployment of electoral staff to take account of the long working hours, setting up a news centre to provide reporters with the latest election results, exercising better control over the hoisting of election flags and volume of loudspeakers, etc.

21. SCMA said that a central counting station would be set up to conduct counting of functional constituency (FC) votes and for announcing the results of geographical constituency (GC) and FC votes in the 2008 LegCo election. The media centre to be set up inside the central counting station would accommodate reporters to facilitate media coverage on the election.

22. CEO supplemented that arrangements had been made to avoid assigning staff to work in the polling station of their own election constituency. The Presiding Officer was responsible for the deployment of manpower in the polling station. In the 2007 DC election, the Returning Officers did receive complaints about the hoisting of election flags and volume of loudspeakers on the polling day. Most of these complaints were handled immediately and cases were referred to the Police if necessary.

23. Mr LEUNG Yiu-chung asked why the Administration proposed an amendment to the Regulation to empower the Returning Officer to vary the No Canvassing Zone and the No Staying Zone on the polling day when such zones had already been defined and made known to candidates before the polling day. SCMA explained that under the existing Regulation, the Returning Officer and the Presiding Officer could already vary the zones when the situation warranted to ensure the election could be conducted smoothly on the polling day. The amendment sought to allow the Returning Officer to display the necessary notice as required under the Regulation to be performed by the Presiding Officer.

Counting of votes

24. Mr Albert HO expressed concern that some candidates would not have the resources to deploy a sufficient number of agents to monitor the sorting and counting of ballot papers conducted by different teams of staff concurrently. He urged the EAC to consider allowing election and counting agents to request for re-inspection of ballot papers which had been counted and not classified as "questionable", especially when the difference in the number of votes received by two candidates was very small, say 30-40 votes.

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25. CEO said that in order to minimize counting errors, it was the usual practice for Presiding Officers to deploy two teams of staff for sorting and counting ballot papers respectively. After a team of staff had carefully sorted and separated the ballot papers according to the choices marked by the electors on the ballot papers and placed them in separate transparent boxes labelled with the chosen candidate number on the counting tables, another team of staff would check the accuracy of the sorting and count the votes in the transparent boxes. The process was highly transparent. She would relay Mr HO's proposal to the EAC for consideration.

26. Prof Patrick LAU said that it had been reported in the 2004 LegCo election that the number of ballot papers issued did not tally with the vote count for a FC election. He asked whether the problem had been dealt with in the proposed amendments to the Regulation. SCMA explained that to ensure fairness in an election, the EAC would announce the voting result only after the vote counts were verified. From time to time a few electors would keep the ballot paper, and as a result the number of ballot papers issued and counted would not tally. The guiding principle was that the ballot papers counted could not exceed the number of ballot papers issued. The existing law provided that a candidate might lodge a petition to the EAC, if there were grounds to substantiate his claim that the return of a Member should be questioned.

Polling/counting station

27. Mr TAM Yiu-chung expressed concern that some of the polling stations for the Hong Kong Island GC for the 2007 LegCo by-election held on 2 December 2007 were different from those for the 2007 DC election held on 18 November 2007, and had caused confusion to electors. He said that the EAC should avoid changing polling station venues for different elections, and avoid changing the counting station before completion of the counting process.

28. SCMA responded that the polling stations for the 405 DC constituencies would be used for the 2008 LegCo election as far as possible. However, if the venue had been booked by other parties on the polling day, the REO would have no choice but to change the polling venue.

29. CEO supplemented that that electors would be allocated to the same polling stations as far as possible. There was a note in the poll card to draw the attention of electors that they might have been allocated to a polling station different from the one to which they had been allocated in the previous election. As regards the proposed amendment on the change of counting station, CEO explained that some of the polling-cum-counting stations would be set up in places (e.g. schools) which needed to be returned to the management of the venue in the early morning following the polling day. In case there was a request for recount, the counting of votes might need to extend to the morning following the polling day. In this

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connection, the REO had proposed to amend the Regulation to allow the EAC to direct the Presiding Officer to take such necessary and reasonable steps to suspend the counting of votes, and in the presence of persons within the counting station, transfer election materials (e.g. ballot papers, ballot boxes, etc.) to another counting station for the counting to continue to take place.

30. Ms Emily LAU said that polling stations should be convenient to electors. She asked whether the Administration had encountered difficulties in renting suitable venues to serve as polling stations. She expressed concern about the risk of losing ballot papers if they had to be transported to another station to continue the count. She asked about the past experience in handling the matter, if any.

31. SCMA responded that given that the REO had established good working relationship with schools and community centres over the years, it had no difficulty in arranging suitable venues for polling stations. Having accumulated experience in handling polling-cum-counting arrangement in the recent 2007 DC election and 2007 LegCo by-election, further improvement would be made by the EAC to ensure smooth operation in the coming election. He explained that the change of counting station would be a last resort, only if counting had to be extended to the morning following the polling day and the venue had to be handed back. In that case, the Presiding Officer would take contingency measures, such as transporting the ballot papers to another station. In the 2004 LegCo election, one/two polling station(s) had to continue the count in another station because of the need for a recount.

Election advertisements

32. Mr LAU Kong-wah expressed concern about the situation where the expenses incurred by a third party in an advertising campaign to promote the election of a candidate were not counted as election expenses of the candidate concerned. He said that at around 5:00 pm on the polling day of the 2007 LegCo by-election, the Apple Daily News issued a special edition reporting that Mrs Anson CHAN, one of the candidates, was falling behind at the election. Tens of thousands of Apple Daily News special edition were distributed to members of the public. In addition, the Apple Daily News launched a large scale advertising campaign along the MTR line, the Cable TV and Now TV with the headline "I have an appointment with conscience (我和良知有個約會)" a week before the polling day. The practical effect of these activities was to promote the election of Mrs Anson CHAN and prejudice the election of her rival, Mrs Regina IP. Although Mrs CHAN had clarified that she was not involved in these activities, there was evidence showing that these were electioneering activities associated with Mrs CHAN. First, Mr Jimmy LAI, owner of the Apple Daily News, had previously written an article in his newspaper entitled "I have an appointment with conscience" disapproving Mrs Regina IP. Second, the Civic Party and Mrs CHAN's campaign team had assisted in the distribution of the Apple Daily News special edition on the polling day. Mr LAU pointed out that although the

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expenses of the advertising campaign were borne by a third party, it was clear that the campaign was for the purpose of promoting the election of the candidate concerned. He expressed concern whether it was fair for such expenses not to be counted towards the candidate's election expenses. Mr TAM Yiu-chung echoed the view and said that the EAC should introduce measures to prevent recurrence at future elections.

33. Mrs Anson CHAN said that she had complied with the electoral law and guidelines and would prepare a detailed account of the election expenses incurred in the 2007 LegCo by-election. She requested to put on record that she had not asked for any favour from any media organisations. As to how the media chose to report on the by-election, it was a matter not under her control.

34. Mr Albert HO and Dr YEUNG Sum said that some media organisations had reported favourably on certain candidates in the past and the expenses incurred were not counted as election expenses of the candidates concerned. Mr Albert HO held the view that unless there was evidence proving that a news organisation was commissioned by a candidate to promote his election or prejudice the election of other candidates, it was inappropriate to interfere with editorial decisions. Dr YEUNG Sum said that the important thing was that the media should abide by the "equal time" principle.

35. Dr KWOK Ka-ki said that some pro-government newspapers had written articles or news reports to blatantly promote the election of certain candidates or prejudice the election of candidates belonging to the democratic camp in the past. Some newspapers also showed favouritism to candidates who had certain background. He said that the Administration had the responsibility to ensure a level playing field in an election.

36. Mr LEUNG Kwok-hung said that candidates who had strong support from a political party or media would have advantages over other candidates in an election. In his view, one of the ways to address the issue of unfairness in an election was to introduce a political party law to regulate the operation of political parties so that candidates of different backgrounds could compete on a level playing field.

37. SCMA responded that Hong Kong's rating in respect of freedom of the press was among the top in Asia. Dr KWOK Ka-ki's remarks that certain newspapers were manipulated by certain authorities were unacceptable. SCMA further said that irrespective of whether a candidate was affiliated with a political party or an independent candidate, he had to follow the electoral law and the guidelines issued by the EAC in carrying out electioneering activities. As regards the introduction of a political party law suggested by Mr LEUNG Kwok-hung, the Administration maintained the view that at this stage such a law would hinder the development of political parties.

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38. CEO said that the EAC had received the complaint quoted by Mr LAU Kong-wah. The EAC would handle it in accordance with the established procedure.

39. Mr LAU Kong-wah said that a brand new approach of electioneering had emerged in the 2007 LegCo by-election. An extensive campaign, by means of television advertisements, MTR posters and special edition of newspapers had been launched by a news organisation to canvass votes for a candidate. Whether this new approach would be allowed would affect the strategy of election campaign for the 2008 LegCo election. Mr LAU asked whether the EAC's investigation outcome would be released to the public, and whether the electoral guideline would be updated as a result.

40. SCMA said that subject to the result of the EAC's investigation, the Administration would take necessary follow up action. The guidelines would be updated before each election and the Panel would be consulted. CEO supplemented that after investigation, the EAC would give a reply to the complainant. It was the established practice that if there was non-compliance with the guidelines, the EAC would issue warning letters, reprimand or severe reprimand according to relevant circumstances.

Cooling off period

41. Mr LEUNG Yiu-chung said that he had been advocating a cooling off period on the polling day. Given the increasing size of the No Canvassing Zone, canvassing on polling day no longer served any meaningful purpose. Mr LEUNG requested the Administration to conduct an opinion poll to ascertain whether electors supported a cooling off period on the polling day. Dr YEUNG Sum, Dr KWOK Ka-ki and Ms Emily LAU supported Mr LEUNG's view. They said that electors were getting more mature and were not easily swayed by canvassing.

42. SCMA responded that the Administration maintained the view that canvassing on the polling day would create a better atmosphere for the election. As Hong Kong was developing its electoral system, the present arrangement provided candidates and political parties with the opportunity to canvass votes. In addition, some Members and political parties had expressed support for canvassing on the polling day.

43. Ms Audrey EU said that in the recent DC election, people who were law abiding were aggrieved because no enforcement action was taken against those breaking the law, e.g. canvassing in the No Canvassing Zone. Ms EU also expressed concern that the EAC failed to give a clear answer when clarification was sought on whether an action had breached the law or guidelines. The EAC had simply asked people to interpret the law themselves. She said that canvassing activities on the polling day should only be allowed if law and order could be maintained inside and outside the polling station.

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44. SCMA responded that the EAC would review the electoral arrangements after each election with a view to improving the guidelines before the next election. The EAC would also provide answers to issues raised by candidates on the polling day as far as possible. If certain issues involved a question of law, it would be more appropriate for the candidates concerned to seek legal advice.

VI. Constitutional development

(Report by the Chief Executive of the Hong Kong Special Administrative Region to the Standing Committee of the National People's Congress on the Public Consultation on Constitutional Development and on whether there is a need to amend the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2012

Report on Public Consultation on Green Paper on Constitutional Development

Statement by the Chief Secretary for Administration on two Reports on constitutional development of Hong Kong at the Council meeting on 12 December 2007

Decision of the Standing Committee of the National People's Congress on issues relating to the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region in the year 2012 and on issues relating to universal suffrage

LC Paper No. CB(2)846/07-08(04) - Press releases on the decision by the Standing Committee of the National People's Congress issued on 29 December 2007)

Briefing by the Administration

45. SCMA said that the "Decision of the Standing Committee of the National People's Congress on issues relating to the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region in the year 2012 and on issues relating to universal suffrage" (the NPCSC Decision) was promulgated on 29 December 2007. He made the following salient points -

- (a) on 12 December 2007, the CE submitted the report to the Standing Committee of the National People's Congress (NPCSC) (the CE Report) together with the Report on Public Consultation on Green Paper (the Green Paper Report). The views of the LegCo and DCs,

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results of opinion polls conducted by tertiary institutions and think tanks, and over 18 000 written submissions received from organisations and individuals of different sectors of society on the issue of universal suffrage were faithfully reflected in the CE Report;

- (b) after considering the CE Report, the NPCSC made a decision on 29 December 2007. The Decision had initiated formally the mechanism for amending the two electoral methods for 2012. In coming to its decision, the NPCSC demonstrated clearly that the Central Authorities had attached great importance to the wishes of Hong Kong people for attaining the aim of universal suffrage in accordance with the Basic Law by making clear the timetable for implementing universal suffrage for selecting the CE and for forming LegCo;
- (c) as the NPCSC had made clear the timetable for universal suffrage, this would motivate different political parties and independent Members in the LegCo, as well as different sectors within the community to adopt a rational, pragmatic and accommodating attitude and to work together with the Government of the Hong Kong Special Administrative Region (HKSAR) towards securing a consensus for the electoral methods for 2012 to pave the way for implementing universal suffrage for the CE in 2017 and for LegCo in 2020; and
- (d) the aim of the HKSAR Government was to settle the two electoral methods for 2012 within the tenure of the current-term Government. This could then lay a solid foundation for attaining universal suffrage for the CE in 2017, and for LegCo in 2020.

Discussion

46. Mr LEE Cheuk-yan said that the community had demanded dual universal suffrage in 2012. To delay direct elections for the CE to 2017 and the LegCo to 2020 would mean that some persons might never have the chance to cast a vote for dual elections by universal suffrage in their lifetime. While the aim of the Administration was to settle the two electoral methods for 2012 first, he asked whether consideration would also be given to the final models for attaining universal suffrage during the interim.

47. SCMA explained that the Administration aimed to attain universal suffrage by three stages in the next 10-12 years -

- (a) Stage 1 from 2008 to 2012 - the focus of discussion was how to amend the two electoral methods for 2012;

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- (b) Stage 2 from 2012 to 2017 - the focus of discussion was how to attain universal suffrage for the CE in 2017 and how to further democratise the electoral method for the LegCo in 2016; and
- (c) Stage 3 from 2017 to 2020 - the focus of discussion was how to attain universal suffrage for the LegCo.

SCMA said that each stage of work was interrelated and the public was free to give views on models for universal suffrage at any of the stages. For the time being, how to democratise the electoral methods for 2012 was the prime task.

48. Some members, including Mr LEUNG Kwok-hung, Ms Margaret NG, Dr KWOK Ka-ki and Ms Audrey EU, pointed out that the NPCSC Decision was divided into two parts. The first part covered the views of the NPCSC while the second part set out the decision of the NPCSC. They pointed out that while the NPCSC had decided that the election of the CE and LegCo in 2012 should not be implemented by the method of universal suffrage, it only held the view that the election of CE in 2017 could be implemented by the method of universal suffrage. There was a difference between a decision and a view; the latter was not legally binding. The Administration had misled the public by implying that the NPCSC had made a decision to implement universal suffrage for the CE in 2017 and the LegCo thereafter. The Administration had the responsibility to explain to the public the difference between the two parts of the NPCSC Decision.

49. Mr LEUNG Kwok-hung pointed out that the community had asked for dual universal suffrage in 2012. The Administration was trying to trap Hong Kong people to forgo their timetable in exchange for a false timetable. He said that a model for universal suffrage which involved a process for screening candidates could not be regarded as a genuine universal suffrage model. Dr KWOK Ka-ki said that even if universal suffrage was implemented for the CE in 2017, it was doubtful whether an electoral method which imposed a high nomination threshold for CE candidates would comply with international standards.

50. In response to members, SCMA made the following points -

- (a) Mr QIAO Xiaoyang, Deputy Secretary-General of the NPCSC, had made clear that the first part of the NPCSC Decision was the premise for the second part. It was part and parcel of the NPCSC Decision and was legally binding. In the past 20 years, the Central Authorities persisted and followed the basic policies regarding Hong Kong, including the principles of "One Country, Two Systems", Hong Kong people ruling Hong Kong, high degree of autonomy and those enshrined in the Basic Law;

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- (b) the NPCSC Decision was adopted after thorough consideration of the CE Report. The decision on the constitutional development of Hong Kong was a solemn one. With a timetable, there was a clear direction on the attainment of universal suffrage. The Administration had made clear in the Green Paper on Constitutional Development (the Green Paper) that any universal suffrage model should comply with the principles of "universal" and "equal" suffrage. The Administration was obligated to introduce the proposals for the electoral models in 2012, 2016, 2017 and 2020 respectively. The proposals could not be implemented without the support of a two-thirds majority of LegCo Members. The power of LegCo to examine these proposals was substantive; and
- (c) the three options for forming the LegCo by universal suffrage set out in the Green Paper, namely replacing FC seats with district-based seats returned through direct election, retaining FC seats but changing the electoral method, and increasing the number of seats representing DCs in the LegCo, all contained democratic elements and were opened for discussion. The next step for the community was to narrow differences in opinion with a view to reaching consensus. The Administration hoped that the electoral methods for 2012 could be further democratised. In the unfortunate event that the status quo was maintained for the electoral methods for 2012, it would be difficult to implement universal suffrage for the CE in 2017.

51. Ms Margaret NG and Ms Audrey EU asked about the Administration's position on FCs and the transitional arrangements for FCs before universal suffrage was attained. They pointed out that if universal suffrage was implemented in the 2017 CE election, transitional arrangements might be necessary, e.g. to expand the electorate base of FCs, abolish FC seats in phases, and increase the number of DC FC seats in 2012. Ms NG said that the Liberal Party had expressed support for the phased abolition of FCs, the Civic Party and the Democratic Party had advocated the abolition of FCs, and the Democratic Alliance for the Betterment and Progress of Hong Kong had once supported the abolition of FCs. Given that the direction of the various political parties was clear, the Administration should be able to reach consensus on the future of FCs if it tried hard to lobby support.

52. SCMA said that the Administration had not formed any view on the models for forming the LegCo by universal suffrage or the future of FCs. The Green Paper Report revealed that the views of political parties/groups in the LegCo, independent Members and the community were very diverse on the final model for forming the LegCo by universal suffrage, the retention of FCs or otherwise, and the transitional arrangements to be put in place for attaining universal suffrage in

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phases. The Administration held the view that it was not necessary to make a final decision on the future of FCs at this stage. Given the complexity of the issue, it would take a longer time to discuss and narrow differences before a consensus could be reached. There was ample time between now and the implementation of universal suffrage to discuss the issue. The Administration would listen to the public with a view to exploring the various options.

53. As regards the electoral methods for 2012 before universal suffrage was attained, SCMA said that in accordance with the NPCSC Decision, the 50:50 ratio between Members returned by FCs and Members returned by GCs through direct elections should remain unchanged in 2012. The NPCSC Decision also made clear that appropriate amendments conforming to the principle of gradual and orderly progress could be made to the specific methods for selecting the CE and forming the LegCo in 2012 in accordance with the Basic Law. The Administration hoped that the two electoral methods for 2012 could be further democratised to lay a good foundation for attaining the ultimate aim of universal suffrage. The Administration welcomed views from Members and political parties on how to amend the two electoral methods for 2012.

54. Mrs Anson CHAN considered that the Administration should provide a roadmap and final models for dual universal suffrage to facilitate the community's consideration on whether to accept the proposed transitional arrangements for 2012, and asked whether the Administration would do so.

55. Mr CHEUNG Man-kwong echoed the view of Mrs CHAN. He said that there was a time gap between the timetable provided by the NPCSC Decision and the expectation of the people of Hong Kong. The people of Hong Kong had asked for dual universal suffrage in 2012. Mr QIAO Xiaoyang, in his press conference on 29 December 2007, expressed the view that the NPCSC would not make a decision to implement dual universal suffrage in 2012 because the LegCo could not reach a consensus on such a timetable. In other words, had LegCo Members followed public aspiration for universal suffrage in 2012, the NPCSC would not have made a different decision. Mr CHEUNG said that it took more than mutual trust to accept a democratic proposal for the 2012 electoral methods. Pan-democratic Members were ready to compromise provided that universal suffrage by international standards would truly be implemented for the CE and LegCo elections in 2017 and 2020 respectively. If the Administration was sincere about implementing universal suffrage, it should provide not just the timetable but also the roadmap and the transitional arrangements for the consideration of the LegCo.

56. SCMA said that in the penultimate paragraph of the NPCSC Decision, the NPCSC provided a framework leading to the implementation of universal suffrage for the CE. The paragraph suggested that the nominating committee could be formed with reference to the current provisions regarding the Election Committee in Annex I to the Basic Law. The nominating committee should in accordance

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with democratic procedures nominate a certain number of candidates for the office of the CE, who was to be elected through universal suffrage by all registered electors of the HK. In this connection, there were opportunities for Members to discuss the composition of Election Committee for 2012 and the nomination procedure with a view to transforming the Election Committee into a nominating committee in 2017. The Administration was confident that progress would be made on the 2012 electoral methods as there was ample time to discuss and consult the matter with the LegCo, different sectors of the community and the public. In this regard, a task group on constitutional development under the Commission on Strategic Development (CSD) would be formed to focus on studying the relevant issues.

57. Mrs Anson CHAN asked about the membership size of the task group, background of its members, and when it would commence work. SCMA responded that the task group would be formed after the Chinese New Year to discuss the two electoral methods for 2012 under the framework set out by the NPCSC Decision. Members of the task group would comprise representatives from various sectors, political parties, different organisations, etc. to ensure that it was broadly representative. Hopefully, the task group would conclude discussions around the middle of this year, so that the Government could consolidate options for amending the two electoral methods for 2012 in the fourth quarter of this year, and conduct another round of public consultation as early as possible.

58. Mr LEUNG Yiu-chung held the view that according to paragraph 6 of the Administration's paper regarding the HKSAR Government's position towards the NPCSC Decision, the possibility of implementing universal suffrage in 2012 had not been ruled out. In his view, implementing universal suffrage in 2012 conformed to the principle of gradual and orderly progress and complied with Annex I and Annex II to the Basic Law which provided for the need to amending the two electoral methods "subsequent to the year 2007". He pointed out that the NPCSC would breach the principle of gradual and orderly progress if its Decision precluded the implementation of universal suffrage in 2012.

59. SCMA said that the NPCSC Decision clearly stated that the election of the fourth CE in 2012 and the election of the fifth term LegCo in 2012 should not be implemented by the method of universal suffrage. Since the promulgation of the Basic Law in 1990, the constitutional development of Hong Kong had followed the principle of gradual and orderly progress. The NPCSC Interpretation in 2004 and the NPCSC Decision in 2007 both complied with the Basic Law.

60. Mr LAU Kong-wah held the view that the NPCSC Decision was appropriate to the actual situation in the HKSAR and the timetable provided had addressed public aspiration. An opinion poll conducted recently indicated that over 70% of the respondents supported the NPCSC Decision. Mr LAU said that he appreciated the view expressed by Mrs Anson CHAN in Radio Television Hong

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Kong's Letter to Hong Kong. Mrs CHAN had said that she was prepared to accept some compromise on the issue of universal suffrage in the short term, if this helped to build consensus and if she could be sure that Hong Kong was taking at least two steps forward for every one step back. Mr LAU urged Members to adopt a pragmatic and accommodating attitude to work together towards securing a consensus for implementing universal suffrage based on the framework of the NPCSC Decision. He cautioned that the ambition to achieve universal suffrage in one go might result in stalling the pace of constitutional development, as evident from the experience in 2005 when the Administration put forth a package of proposals to amend the two electoral methods for 2007/2008 to enhance their democratic elements (the 2005 proposed package).

61. Mr LAU Kong-wah sought clarification from the Administration on the consequence if the electoral proposal for the 2012 was not passed in the LegCo and whether the Administration would re-introduce the 2005 proposed package as the electoral proposal for 2012. Mr Howard YOUNG said that pan-democratic Members had expressed support for the 2005 proposed package provided that a roadmap and timetable were provided. As the NPCSC Decision had now provided a timetable, Mr YOUNG asked whether in discussing the 2012 electoral methods, the task force would continue on the basis of the 2005 proposed package or start afresh.

62. SCMA said that the Administration had not formed any view on the 2012 electoral methods. Since the introduction of the 2005 proposed package, the political situation had changed and views of Members and political parties/groups might have adjusted. Past discussions of Members and the public on the 2005 proposed package and deliberations of CSD on constitutional development would be useful reference for the discussion on the 2012 electoral methods. He pointed out that the situation now was more mature and favourable than the time in 2005, as a timetable for universal suffrage had already been provided in the NPCSC Decision. The public would expect that Members and the Government would work together to make progress on constitutional development.

63. Ms Emily LAU said that implementation of universal suffrage in 10 years from now was considered too long. Pan-democratic Members were not given the opportunity to discuss the issue of universal suffrage with the CE and the Mainland authorities. In the absence of any dialogue and guarantee, Ms LAU expressed concern whether the implementation of universal suffrage in 2017 and 2020 respectively was a sham, and whether the universal suffrage models to be adopted would meet the international standards. She considered that if universal suffrage was not to be achieved in one go, the Administration should at least inform members of the transitional arrangements.

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64. SCMA responded that the Administration had striven hard to take forward constitutional development in the past and would continue to do so. Had the opposition camp supported the 2005 proposed package, constitutional development would have moved forward in 2007/2008 and the relationship with the Central Authorities would have been improved as the CE had arranged a visit for all LegCo Members to visit the Pearl River Delta in 2005. SCMA said that the opposition camp should be consistent on its words and deeds. It had advocated the early provision of a timetable for universal suffrage for many years and when the NPCSC Decision provided such a timetable, Ms LAU considered that the timetable was no good. He pointed out that although the timetable for implementing universal suffrage in the NPCSC Decision was neither 2007/2008 nor 2012, attaining universal suffrage for the CE in 2017 and for LegCo in 2020 was practicable.

Motions proposed by members

65. Mr LAU Kong-wah moved a motion urging members to support the NPCSC Decision. Wording of his motion is as follows -

"本委員會支持《全國人民代表大會常務委員會關於香港特別行政區 2012 年行政長官和立法會產生辦法及有關普選問題的決定》並呼籲社會各方共同努力，謀求共識，推動 2012 年行政長官和立法會的選舉進一步民主化，落實 2017 年普選行政長官及 2020 年普選立法會。"

(English translation: "That this Panel supports the Decision of the Standing Committee of the National People's Congress on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2012 and on Issues Relating to Universal Suffrage, and calls upon different sectors of the community to work together to strive for consensus, so as to further democratise the CE and LegCo elections in 2012 and implement universal suffrage for the CE in 2017 and for LegCo in 2020.")

66. Mr LEUNG Kwok-hung moved a motion urging for the withdrawal of the NPCSC Decision. Wording of his motion is as follows -

"本委員會呼籲全國人大代表(包括港方委員)反對人大常委在去年 12 月 29 日所作有關香港政制發展的錯誤決定，並予以撤銷，並就如何在 2012 年在港實行雙普選討論，盡快提出明確符合《聯合國公民權利和政治權利國際公約》規定的方案，以供香港立法會及政府參考，展開實質工作，以求在 2012 年還政於民，實現'高度自治'承諾。"

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(English translation: "That this Panel calls upon deputies to NPC (including Hong Kong deputies) to oppose to the wrong decision relating to constitutional development in Hong Kong made by NPCSC on 29 December last year, withdraw the decision, hold discussions on how dual universal suffrage should be implemented in 2012 in Hong Kong, and put forth expeditiously a proposal which clearly complies with the provisions of the United Nations International Covenant on Civil and Political Rights, for the reference of LegCo and the Government of Hong Kong which will commence practical work, with a view to returning the political power to the people of Hong Kong in 2012 and fulfilling the undertaking of 'a high degree of autonomy'.")

67. Mr CHEUNG Man-kwong moved a motion to amend the motion proposed by Mr LAU Kong-wah by deleting everything after "本委員會支持". Wording of Mr CHEUNG's motion is as follows -

"本委員會支持 2012 年雙普選，並以此共識要求特首向全國人民代表大會常務委員會提交報告，建議香港可以在 2012 年實現雙普選。"

(English translation: " That this Panel supports the implementation of dual universal suffrage in 2012 and, on the basis of this consensus, requests that the Chief Executive should submit a report to the Standing Committee of the National People's Congress to propose that dual universal suffrage can be implemented in Hong Kong in 2012.")

68. In response to members, Senior Assistant Legal Adviser 2 explained that the Panel should first vote on Mr CHEUNG Man-kwong's amendment. The Panel would then vote on Mr LAU Kong-wah's original motion or his motion as amended. If Mr LAU Kong-wah's motion was passed with or without the amendment, the Panel would need to consider whether the wording of LEUNG Kwok-hung's motion was consistent with the motion that had been passed. If Mr LEUNG's motion as a whole was inconsistent with the motion that had been passed, Mr LEUNG's motion would not be voted upon. If only part of Mr LEUNG's motion was inconsistent with the motion that had been passed, Mr LEUNG could revise the wording of his motion to ensure that it was consistent with the motion that had been passed. The Panel would then proceed to vote on Mr LEUNG Kwok-hung's revised motion.

69. The Chairman put Mr CHEUNG Man-kwong's amendment to vote. Seven members voted for the amendment and 18 members voted against the amendment. The Chairman declared that the amendment was negatived.

70. The Chairman put Mr LAU Kong-wah's original motion to vote. 20 members voted for the motion and seven members voted against the motion. The Chairman declared that the motion was carried.

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71. The Chairman asked Mr LEUNG Kwok-hung whether he wished to revise the wording of his motion to remove any inconsistency with Mr LAU Kong-wah's motion that had been passed. Mr LEUNG Kwok-hung expressed dissatisfaction with the voting procedure which, in his view, should allow his motion to be voted upon before Mr LAU's motion. He declined to revise the wording of his motion. The Chairman ruled that Mr LEUNG's motion would not be voted upon as it was inconsistent with Mr LAU Kong-wah's motion that had been passed.

72. The meeting ended at 5:40 pm.

Council Business Division 2
Legislative Council Secretariat
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