

立法會

Legislative Council

Ref : CB2/PL/CA

LC Paper No. CB(2)2841/07-08

(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting held on Monday, 19 May 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 LEUNG Yiu-chung
- Dr Hon Philip WONG Yu-hong, GBS
- Hon WONG Yung-kan, SBS, JP
- Hon Jasper TSANG Yok-sing, GBS, JP
- Dr Hon YEUNG Sum, JP
- Hon LAU Kong-wah, JP
- Hon Emily LAU Wai-hing, JP
- Hon Timothy FOK Tsun-ting, GBS, 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 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 Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Howard YOUNG, SBS, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon CHEUNG Hok-ming, SBS, JP

Public Officers attending : Items IV

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

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 V

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

Miss Rosalind Cheung
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)1908/07-08 - Minutes of meeting on 18 February 2008)

The minutes of the meeting held on 18 February 2008 were confirmed.

II. Information papers issued since the last meeting

(LC Paper No. CB(2)1670/07-08(01) - Administration's paper on the training manual on counting arrangements for votes of functional constituencies in the 2004 LegCo Election

LC Paper No. CB(2)1676/07-08(01) - Administration's response to the various issues raised on "2008 voter registration campaign" at the Panel meeting on 17 March 2008

IN15/07-08 - Information Note on "Access to the electoral register" prepared by the Research and Library Services Division)

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

III. Items for discussion at the next meeting

(LC Paper No. CB(2)1910/07-08(01) - List of outstanding items for discussion

LC Paper No. CB(2)1910/07-08(02) - List of follow-up actions)

Agenda for the next meeting

3. Secretary for Constitutional and Mainland Affairs (SCMA) said that the Task Group on Constitutional Development under the Commission on Strategic Development (CSD) (the Task Group) had organised a workshop on 29 May 2008. He suggested and members agreed to discuss "Methods for electing the Chief Executive and for forming the Legislative Council in 2012" at the next meeting on 16 June 2008.

4. In response to Ms Emily LAU, SCMA said that the Force Working Group on Electioneering Activities was working on the guidelines which might not be ready before the next meeting. The Chairman said that he would work out with the Clerk on other agenda items after the meeting.

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(*Post-meeting note: At the request of Mr CHEUNG Man-kwong and with the concurrence of the Chairman, the item "Further development of the Political Appointment System" would be discussed at the next meeting.*)

IV. Voter Turnout Publicity Campaign for the 2008 Legislative Council Election

(LC Paper No. CB(2)1910/07-08(03) - Administration's paper on "Voter Turnout Publicity Campaign for the 2008 Legislative Council Election")

5. SCMA said that the coming Legislative Council (LegCo) election would be held on 7 September 2008. The Voter Turnout Publicity Campaign (the Campaign) would run from around mid-July to 7 September 2008. He highlighted the main features of the Campaign set out in the paper.

General

6. Mr Albert HO said that the Electoral Affairs Commission (EAC) should inform the public about the venues of the polling stations at the earliest opportunity.

7. SCMA said that the EAC would decide on the venues for polling stations as soon as practicable. The Chief Electoral Officer (CEO) was required to publish in the gazette a notice on the stations designated for conducting the poll. Except for venues which had already been reserved by other organisations on the polling day, the polling stations for the 2008 LegCo election would be largely the same as those used for the 2007 District Council (DC) election. An elector would be notified of the address of his polling station in the poll card.

8. Mr LEE Cheuk-yan asked whether souvenirs would be distributed on the polling day to promote voter participation. Deputy Secretary for Constitutional and Mainland Affairs informed members that souvenirs would be distributed throughout the Campaign period to promote general awareness of the election and encourage voter turnout. The souvenirs were not meant for voters who had cast their votes on the polling day.

9. Ms Emily LAU expressed concern that the Campaign overlapped with the 2008 Olympic Games (to be held from 8 to 24 August 2008) and Paralympic Games (to start on 6 September 2008). As the publicity for the 2008 LegCo election and the Olympic Equestrian events would employ similar publicity vehicles, including TV and radio announcements of public interests; special TV and radio programmes; advertisements at vantage points such as MTR stations and trains, bus, tram and taxi bodies; banners, billboards and lamppost buntings; and advertisements and featured articles in newspapers and published media, Ms LAU expressed concern that they would compete for display spots. She requested the

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Administration to provide information on display spots available for candidates in the coming LegCo election and advise whether display spots would be substantially reduced due to activities of the Olympic Equestrian events.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(2)2299/07-08(01) on 13 June 2008.)

10. Mr TAM Yiu-chung said that leaflets might be distributed on the polling day with the purpose of canvassing votes for a candidate who was falling behind at the election. Mr TAM asked whether the EAC would require the candidate to provide any evidence about a claim to that effect in the leaflets and what action would be taken if the leaflets contained misleading information.

11. SCMA responded that according to the existing electoral law and guidelines, statements made during election must not contain any misrepresentation. In addition, expenses incurred for publishing leaflets for the purpose of promoting or prejudicing the election of a candidate or a list of candidates at the election would be counted as election expenses. The EAC would investigate into the case according to the above two principles if such a complaint was received.

12. Ms Emily LAU said that the Chairman of EAC had advised that the Administration had intended to recruit about 17 000 civil servants to work on the polling day but so far it was only able to recruit 15 000 civil servants. Given the long working hours and the difficult nature of the job, she asked how the Administration would encourage more participation from civil servants. CEO responded that the recruitment was progressing well and was ongoing.

13. Ms Emily LAU asked whether the Panel would have a chance to discuss the finalised Guidelines issued by the EAC on Election-related Activities in respect of the LegCo Election (the EAC Guidelines) and the guidelines prepared by the Force Working Group on Electioneering Activities before the close of the legislative session.

14. SCMA said that the EAC Guidelines would be issued in mid-July 2008. Given that the last Council meeting would be held on 9 July 2008 and the third term LegCo should stand prorogued on 19 July 2008, the Panel might not be able to discuss the EAC Guidelines before the close of the legislative session. He assured members that the EAC would consider all the views collected in finalising its guidelines.

Voter registration

15. Mr Albert HO asked when the electoral registers would be published for public inspection and how the Registration and Electoral Office (REO) would handle objections to incorrect entries in the register.

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16. CEO informed members that the provisional registers for geographical constituencies (GCs) and functional constituencies (FCs) would be published in mid-June for public inspection. Members of the public could lodge with the REO their objections as regards entries in the relevant provisional register. Cases of objections and claims would be referred to the Revising Officer for consideration. The Revising Officer would rule on each objection or claim and decide on the inclusion, exclusion or correction of the entry concerned in the relevant final register before it was published in mid July 2008.

17. Mr TAM Yiu-chung asked how many people had made applications for voter registration and updating registration particulars respectively and whether the number was within the target of the Administration. He also expressed concern that by the time a person realised that his name was not in the provisional register, the deadline for registration had already lapsed. He asked what action could be taken by that person.

18. SCMA said that as voter registration just ended on 16 May 2008, the REO expected to receive some more applications by mail in the next couple of days. The Administration's target was to receive about 150 000 applications for voter registration and updating of registration particulars in the current exercise and so far, a total of 210 000 application forms were received and about 45% of which were applications for voter registration. The Administration was satisfied with the result. In addition, the REO received about 60 000 application forms between mid-2007 to April 2008 and about 45% of which were applications for voter registration. The Administration would announce the results after the REO had completed the count on the application forms received.

19. CEO said that if the name of a person who had applied for voter registration was not included in the provisional register, he could lodge a claim with the REO. The Revising Officer would rule on the claim and decide on the inclusion or exclusion of the entry concerned in the relevant final register and the REO would inform the person of the outcome accordingly.

20. Ms Audrey EU said that she had received an enquiry from a person residing on Hong Kong Island. The person asked why the REO only promoted voter registration of young people turning 18 with a Chinese last name but not those with an English last name. Ms EU asked whether different approaches were adopted by the REO.

21. CEO said that to encourage more young people to register, the REO had set up registration counters at all Registration of Persons Offices to help young people turning 18 to register when they turned up at these offices to apply for or to collect their adult identity cards. Voter registration forms were also sent to secondary schools and higher education institutions. In addition, voter registration assistants had visited higher education institutions to facilitate eligible students to

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register. According to her understanding, the same approach was adopted to promote voter registration of young people across the board, irrespective of whether the last name of a person was Chinese or otherwise. CEO undertook to verify the matter with her colleagues. However, she would look into the matter to ensure that this would not happen.

Electioneering at buildings

22. Some members, including Ms Emily LAU, Mr LEUNG Kwok-hung, Mrs Anson CHAN, Dr YEUNG Sum and Mr LEUNG Yiu-chung, expressed concern that some management bodies (i.e. owners' corporations (OCs), mutual aid committees, management companies, etc.) of private buildings did not comply with the principle of fair and equal treatment of all candidates/GC lists competing in the same constituency for the purposes of electioneering. For example, a particular candidate/GC list was allowed to conduct electioneering activities at a private building or post election advertisements (EAs) and banners in the common parts of a building but other candidates/GC lists in the same constituency were not allowed to do so.

23. Ms Emily LAU said that management bodies of private buildings should draw lots if more than one candidate/GC list applied to put up posters and banners on the available spots in the common parts of the building. If a management body discriminated against certain candidates, the EAC should immediately publish a public reprimand or censure and post it up at the prominent areas in the building to deter further malpractices. Mr LEUNG Kwok-hung considered that issuing a reprimand or censure was ineffective. He recalled that the chairman of an OC, who was a member of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), had once prohibited him from entering into a building to carry out electioneering activities. He suggested that a law should be put in place to ensure fair and equal treatment for all candidates and non-compliance should result in a fine or imprisonment of the parties concerned. Mrs Anson CHAN said that while it might not be appropriate to make any law to regulate electioneering activities in private buildings, the Administration should remind management bodies of their obligation to provide equal opportunities to all candidates/GC lists competing in the same constituency. Dr YEUNG Sum said that the Administration should monitor the management bodies closely to ensure fairness in an election. Mr LEUNG Yiu-chung said that the problem was not new and the Administration had failed to address it election after election. He urged the Administration to deal with the issue in a proactive manner.

24. Mr James TIEN and Mrs Selina CHOW said that ideally, management bodies of buildings should provide equal opportunities to all candidates/GC lists competing in the same constituency but it was not the case in reality. Mr TIEN expressed concern that candidates running in the 2012 and 2016 LegCo elections for the first time might not be able to reach out to their electors in private premises. He suggested that the Administration should review the power of OCs in handling

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applications for conducting electioneering activities in the premises under their control e.g. whether OCs should have the power to allow certain candidates to place EAs into residents' mail boxes. Mrs Selina CHOW appreciated that OCs would have their own consideration in estate management. For instance, allowing all candidates/GC lists to place EAs into mail boxes might antagonise some residents. However, some office bearers of OCs were affiliated with certain political party and might decide only certain candidates could enter into the estate. Mrs CHOW said that the right of electors to access information should be safeguarded and should not be controlled by the OCs. She said that if the problem could not be resolved in the upcoming LegCo election, it should be addressed in future elections.

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

- (a) the EAC Guidelines required management bodies of buildings to provide equal opportunity to all candidates/GC lists competing in the same constituency for the purpose of electioneering. Since OCs had the statutory power to manage private property, any law which sought to impose parity treatment of candidates by OCs and interfere with the jurisdiction of OCs to manage private property would be subject to challenge;
- (b) the Administration had better control over electioneering activities conducted in premises under the management of the Housing Department and the Hong Kong Housing Society. Citing FC election as an example, Government departments were advised that if they allowed a candidate of a professional FC sector to explain his platform in the office, they should also open the door to other candidates contesting in that FC election;
- (c) if the EAC received a complaint of unfair or unequal treatment of candidates by a management body, and was satisfied that the complaint was justified, it could make a reprimand or censure in a public statement which might include the names of candidates/GC lists favourably or unfavourably treated;
- (d) as Hong Kong continued its democratisation process towards direct election, electors would appreciate the right to receive information about the platforms of each of the contesting candidate so that they could make an informed decision on the choice of candidate. To this end, they would expect OCs to provide fair and equal treatment for all candidates/GC lists;
- (e) the concern raised by Mr James TIEN on how new candidates could infiltrate into the community was a separate issue; and

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- (f) having regard to members' concerns, the Administration would closely monitor electioneering activities in private premises in the coming election. Any observation made would be reflected in the review to be conducted after the election.

Adm 26. Mr TAM Yiu-chung clarified that not many members of the DAB were office bearers of the OCs and even if they were, they would adhere to the principle of equal treatment for all candidates. Mr TAM said that he himself also encountered difficulties in entering into private premises to carry out electioneering activities. He said that some good practices adopted by certain OCs in the past should be promoted by the Administration. For instance, an OC had designated certain common parts in a private building for candidates to put up posters and banners and the available spots were allocated to applicants by drawing lots; and an OC had designated a day for candidates to distribute leaflets in the building. SCMA said that he would relay the suggestions for the consideration of the Home Affairs Department.

Exit poll

27. Dr YEUNG Sum expressed concern that the EAC had not addressed the issue of exit poll in the Proposed Guidelines on Election-related Activities in respect of the Legislative Council Election (the Proposed Guidelines). He had requested the EAC to clarify whether or not an organisation using exit poll results for the purpose of electioneering before the close of poll would breach the guidelines, but the EAC had not clarified its position. He also expressed concern that while the Proposed Guidelines appealed to the media and organisations concerned to refrain from announcing the results of exit polls or making specific remarks or predictions on the performance of individual candidate or GC list before the close of poll, it had not prohibited the disclosure of exit poll results before the close of poll to any party. In addition, resources deployed by an organisation to conduct exit polls for electioneering purpose were not counted as part of the election expenses.

28. Referring to the recent presidential election in the United States, Mr James TIEN pointed out that some organisations had announced interim exit poll results before the close of poll and it did not appear that any candidate had gained advantages over other candidates as a result of the announcements.

29. SCMA said that he had already conveyed Dr YEUNG's concerns, as expressed at previous meetings, to the EAC. He said that organisations conducting exit polls had not announced the results of exit poll before the close of poll in order to influence the choice of electors at previous elections. As regards how polling organisations would use the exit poll results, it was not regulated under the existing law or guidelines.

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V. Method for forming the Legislative Council in 2012

(LC Paper No. CB(2)1436/07-08 - Papers on "Method for Forming the Legislative Council in 2012" of the Task Group on Constitutional Development of the Commission on Strategic Development for its meeting on 27 March 2008

LC Paper No. CB(2)1694/07-08 - Papers on "Further Discussion on the Method for Forming the Legislative Council in 2012" of the Task Group on Constitutional Development of the Commission on Strategic Development for its meeting on 25 April 2008)

Briefing by the Administration

30. SCMA said that the Task Group held two meetings on 27 March and 25 April 2008 respectively to discuss the method for forming the LegCo in 2012. According to the "Decisions 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 Administration 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" promulgated on 29 December 2007 (the NPCSC Decision), the electoral system of the HKSAR could be further democratised in 2012, with a view to attaining universal suffrage for the Chief Executive (CE) in 2017 and for the LegCo in 2020. Regarding the LegCo election in 2012, the Decision provided that the election of the Fifth LegCo of the HKSAR in the year 2012 should not be implemented by the method of electing all the Members by universal suffrage. The half-and-half ratio between Members returned by FCs and Members returned by GCs through direct elections should remain unchanged.

31. SCMA summarised the discussions of the Task Group on the method for forming the LegCo in 2012 as follows -

- (a) number of seats in LegCo - more members were inclined towards increasing the number of LegCo seats. There was a view that the number should be increased to 70 or 80, which meant the number of seats returned by GCs and FCs would each be increased by 5 or 10. There was a view that new FCs should be established, such as including the women FC, small and medium enterprises FC, Chinese medicine FC, home-makers FC, etc. There was a view that additional FC seats should be allocated to the DC FC;
- (b) electorate base of FCs - there were views that corporate votes should be replaced with director's or individual's votes. There were also other views. The Task Group members held diverse views on the matter; and

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- (c) nationality of Members - regarding the existing arrangement that 20% of the LegCo seats could be taken up by individuals who were not of Chinese nationality or who had the right of abode in foreign countries, some members opined that the arrangement should be maintained while some members opined that the proportion of such seats could be reduced by phases.

Electoral method for LegCo in 2012

32. Mr James TIEN said that he had attended meetings of the Task Group to give views. He summarised the views of the Liberal Party (LP) on the electoral method for forming the LegCo in 2012 -

- (a) the LP was inclined to support maintaining the number of LegCo seats at 60 in 2012, as FCs would be abolished eventually in 2020 when universal suffrage was implemented. However, the LP held no strong view against a proposal to increase the number of LegCo seats in 2012; and
- (b) the LP supported expanding the electorate base of FCs by replacing corporate votes with director's votes or senior executive's votes. The LP did not support replacing corporate votes with individual votes.

33. Mr James TIEN said that in 2005 when the Administration put forth a package of proposals to amend the electoral methods for selecting the CE in 2007 and forming the LegCo in 2008 (the 2005 proposed package), it had proposed to expand the number of DC FC seats in the LegCo by five. As some members of the Task Group had made similar proposal for the LegCo election in 2012 and the Task Group had not discussed the details, Mr TIEN asked how the additional DC FC seats would be returned. For instance, whether they would include both elected and appointed DC members, whether these DC members would cast one vote or five votes in order to elect five Members from among themselves, and whether the proportional representation system would be adopted, etc.

34. Ms Audrey EU said that she was a member of the Task Group and she did not consider the views of the CSD representative of Hong Kong people. For instance, many members of the Task Group supported the proposal to increase the membership size of LegCo in 2012. In her view, retaining appointed DC seats and FC seats would be inconsistent with the principles of universal suffrage. In addition, expanding the LegCo membership did not mean that the electoral method was more democratic. She asked why the Administration considered that creating more district-based seats was conducive to better governance, and would improve the relationship between the Executive and the Legislature.

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35. Mr LEUNG Yiu-chung said that the Neighbourhood and Worker's Service Centre did not support creating more FC seats in 2012.

36. SCMA responded that the Administration had not formed any view on the electoral method for forming the LegCo in 2012. It would listen to views from various sectors of the community at this stage. The 2005 proposed package had provided a framework on how the formation of LegCo could be further democratised. While there had been brief discussions on the electoral method such as the proposal for DC members to elect among themselves DC FC Members, implementation details had not been studied as the 2005 proposed package was not supported by the LegCo. The Administration was open-minded on how this could be attained and would discuss with Members on the implementation details, if Members decided that more DC FC seats should be created in 2012.

37. Ms Emily LAU said that the Panel, rather than the CSD, should be the main forum to discuss constitutional development for Hong Kong. She said that the NPCSC Decision had hurt the feeling of Hong Kong people. The people of Hong Kong had been expecting the implementation of universal suffrage for many years and yet it was not forthcoming in 2012. The Administration had turned a blind eye to the wish of Hong Kong people. Ms LAU said that given that the NPCSC Decision stipulated that the 50:50 ratio between Members returned by FCs and Members returned by GCs through direct elections should remain unchanged before universal suffrage was attained, any increase in GC seats would result in a corresponding increase in FC seats. She supported the view of the LP that the number of LegCo seats should remain unchanged in 2012, as it was easy to create FC seats but difficult to abolish them. Increasing the number of FC seats would only create more barriers for consensus to be reached to abolish all FC seats in future. She suggested that the Administration should gauge public acceptance of the electoral model for the LegCo in 2012 by way of a referendum.

38. SCMA responded that Ms LAU should not turn a blind eye to the views expressed outside the LegCo. He pointed out that opinion polls conducted by tertiary institutions indicated that the 2005 proposed package had received support from over 60% of the public. An opinion poll conducted immediately after the promulgation of the NPCSC Decision also indicated that over 70% of the respondents supported the NPCSC Decision. SCMA further said that the Basic Law did not provide a mechanism for referendum. Under the Basic Law, the Administration had the constitutional duty to propose electoral methods for 2012 and Members had the duty to examine the final proposals. Annexes I and II to the Basic Law provided that any changes to the electoral methods would require tri-partite support, i.e. the endorsement of a two-thirds majority of all LegCo Members, the consent of the CE, and the approval of the NPCSC. As the Government attached importance to the aspiration of the community, the CE had made clear that the proposals should also receive support from at least 60% of the public.

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Universal suffrage model

39. Mr LEE Cheuk-yan said that he had made clear at the Task Group meetings that one could not discuss the electoral method for the LegCo in 2012 without discussing the final model for implementing universal suffrage. Dr YEUNG Sum said that the electoral methods for 2012 (CE and LegCo elections), 2016 (LegCo election), 2017 (CE election) and 2020 (LegCo election) should be discussed in an open and comprehensive manner as they were inter-related. He pointed out that discussing the electoral methods on a fragmented basis would be a waste of internal resources. Although the third term CE and his Government had emphasised that their focus was to settle the two electoral methods in 2012, this should not prevent the third term Government from indicating its position on the electoral methods for 2016, 2017 and 2020.

40. SCMA said that the universal suffrage timetable promulgated by the NPCSC was not empty talk. As the third term Government was committed to take forward constitutional development in accordance with the framework set out in the NPCSC Decision, it had listened and would continue to listen to views on the electoral methods for 2012 and beyond. However, its constitutional responsibility and priority was to put into place the electoral methods for 2012 within its term of office. As regards the electoral methods for 2016, 2017 and 2020, they were the constitutional responsibility of the fourth and fifth term CE.

41. Ms Audrey EU said that the CE had made the electoral pledge in March 2007 that he would resolve the dispute on constitutional development during his term of office. At the time, the CE had specifically pledged to put forth a final proposal with timetable, models and roadmap for universal suffrage which would meet the international standards of universal suffrage. Given that the CE now only intended to deal with the two electoral methods for 2012 during his term of office, Ms EU queried whether the CE had been cheating his electors when he made the electoral pledge.

42. SCMA responded that since the CE had made the electoral pledge to deal with the issue of universal suffrage within his term of office, the CE and his Government had published the Green Paper on Constitutional Development in July 2007 and the CE had submitted his report to the NPCSC on 12 December 2007. The NPCSC Decision, which provided a timetable for implementing universal suffrage, was an important milestone for the constitutional development of Hong Kong. The third term Government would work on the electoral methods for 2012, a midway station en route to universal suffrage for the CE in 2017 and the LegCo in 2020.

43. Mr LEUNG Yiu-chung said that a transitional proposal was different from a final proposal. He regretted that the CE had not provided a specific universal suffrage model as pledged.

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44. Some members, including Mr LEE Cheuk-yan, Ms Emily LAU, Mr Ronny TONG, Mr LEUNG Kwok-hung and Mr Albert HO, expressed concern that in the recent CE's Q&A session, the CE had said that the FC system could be modified to facilitate the implementation of universal suffrage. They wondered how a FC system which provided privileges to certain sectors in the community could be modified to meet the international standards of universal suffrage. Even the LP was in support of the eventual abolition of the FC system when universal suffrage was attained. They asked why the Administration should continue to pursue such an option.

45. In response, SCMA made the following points -

- (a) the CE and his Government had not formed any view on the future of FCs. In the Green Paper on Constitutional Development published in July 2007, the Administration had summarised the proposals received in respect of the model for forming the LegCo by universal suffrage. The options included, among others, replacing FC seats with district-based seats returned through direct election, and retaining FC seats by changing the electoral method; and
- (b) there were views that the electoral method which allowed every voter to vote for FC Members was consistent with the principles of "universal" and "equal" suffrage. However, some people thought otherwise because the right of nominating candidates was unequal. The Administration had not formed any view on the matter and would like to listen to views from different sectors of the community.

46. Mr LEE Cheuk-yan said that Professor Albert CHEN Hung-yeek had expressed the view that the retention of FCs would be inconsistent with the international standards of universal suffrage. Mr Alan HOO had also asked the Administration to clarify the matter from the legal point of view. Mr LEE said that the Administration should seek legal advice from the Department of Justice if it was uncertain whether retaining FCs was consistent with the principles of universal suffrage.

47. SCMA said that the Administration would seek legal advice from the Department of Justice when there was a need to do so and the advice provided would serve as an internal reference. In paragraph 2.24 of the Green Paper on Constitutional Development, the Administration had made clear that the concept of universal suffrage included the principles of "universal" and "equal" suffrage. Universal suffrage system commonly adopted in overseas jurisdictions was a one-person-one-vote system which could take the form of direct or indirect election.

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48. Some members, including Mr LEE Cheuk-yan, Ms Emily LAU, Mr Ronny TONG, Mr LEUNG Kwok-hung, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung and Mr Albert HO, was dissatisfied that the Administration did not clarify its position on whether FCs would continue to exist when universal suffrage was implemented for the LegCo in 2020. They could not accept the view that the retention of FC seats in some form in the model for forming the LegCo by universal suffrage could be regarded as complying with the principles of universal suffrage. They asked the Administration to give an undertaking that the universal suffrage models for the CE election in 2017 and the LegCo election in 2020 would comply with the principles of "universal" and "equal" suffrage.

49. Ms Emily LAU said that the provision of a universal suffrage timetable in the NPCSC Decision did not mean that universal suffrage would be achieved. The Administration was cheating the people of Hong Kong if the universal suffrage model for the LegCo in 2020 did not comply with the principles of "universal" and "equal" suffrage.

50. Mr Ronny TONG said that the Administration was hypocritical. On the one hand, it had said that it had not formed any view on the universal suffrage model for the LegCo election. On the other hand, it had put forth a proposal to achieve universal suffrage by changing the electoral method for returning FC Members. As a responsible Government, the Administration should not put forth a proposal which did not comply with the international standards of universal suffrage for Members' consideration in the first place. The Administration was giving supporters of the FC system false hope and was wasting internal resources in discussing the proposal. In his view, the retention of FCs was inconsistent with Article 39 of the Basic Law and Article 25 of the International Covenant on Civil and Political Rights which provided, among others, that every citizen should have the right and opportunity to vote and be elected at genuine periodic elections.

51. Mr CHEUNG Man-kwong said that the international standards of universal suffrage provided every citizen with the right to nominate candidates, right to be elected and right to vote. Although the modified electoral method for returning FC Members quoted by SCMA allowed three million registered electors to vote, it did not provide them with the equal right to nominate and be elected. A timetable without a genuine model for universal suffrage would only lead to heated debates on the future of FCs in the community.

52. Mr Albert HO sought clarification from the Administration as to whether a modified electoral method involving three million electors for returning FC Members was regarded as a FC system. If so, he asked whether the NPCSC would allow the electorate base of FCs to be expanded to three million electors in 2012.

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53. Mr LEUNG Kwok-hung said that given that the NPCSC Decision stipulated that LegCo Members "may be" and not "shall be" elected by universal suffrage in 2020, the Administration was misleading the public into believing that universal suffrage for the LegCo would be implemented in 2020.

54. SCMA said that he could not accept members' accusations that the Administration was cheating or misleading the public. The Administration indeed had not formed any view on the universal suffrage model for the LegCo election in 2020. The Administration had merely put forth options collected during public consultation to facilitate and encourage public discussion. He made the following points -

- (a) the Administration accepted the concept of universal suffrage, as generally understood internationally, should include the principles of "universal" and "equal" suffrage. The Administration would pursue constitutional development in Hong Kong in accordance with the principles;
- (b) the existing FC system, which comprised an electorate base of about 200 000 electors, did not comply with the principles of "universal" and "equal" suffrage;
- (c) the Administration had acted in a responsible manner and had promoted discussion on the electoral methods since 2004. There were indeed divergent views in the community on whether FCs should be retained. The Administration considered that the public could propose any models for forming the LegCo by universal suffrage at this stage. The Administration and the LegCo should adopt an open attitude in listening to different views in the community;
- (d) there were dissenting views on whether an electoral method which allowed every eligible voter to vote and return FC Members was consistent with the principles of universal suffrage. The Administration had not formed any view on the matter and would like to listen to more views;
- (e) as the NPCSC Decision had provided a timetable for implementing universal suffrage, the public would expect that Members and the Government would work together to make progress on constitutional development. The goal of the Government was to implement universal suffrage for the LegCo in 2020. In other words, the electoral methods for the LegCo could be democratised progressively in the next three LegCo terms.

Action

55. Some members, including Mr LEE Cheuk-yan, Ms Emily LAU, Mr Ronny TONG, Mr LEUNG Kwok-hung, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung and Mr Albert HO, expressed dissatisfaction that the Administration had refused to give a direct answer to a simple question regarding the basic principles of universal suffrage. Given that the Administration could not state unequivocally that the universal suffrage models for the CE election in 2017 and the LegCo election in 2020 would not contain any form of FCs, the timetable provided in the NPCSC Decision was a sham. They pointed out that Members were aware that there were divergent views in the community regarding the future of FCs, but the principles of "universal" and "equal" suffrage per se were not controversial. They maintained the view that FC seats should be abolished and all LegCo seats should be returned by direct elections when universal suffrage was implemented.

56. SCMA said that the opposition camp had hoped that a conclusion could be drawn on the universal suffrage model for the LegCo election in 2020 at this meeting and this was not possible. There were indeed divergent views in the community as to whether FCs should be retained. As the issue required more discussions in the community to narrow differences, it was inappropriate for the third term Government to make a decision on the matter. It was the duty of the fourth CE elected in 2012 to work with the Fifth LegCo on the implementation of universal suffrage for the 2017 CE election; and the duty of the fifth term CE elected by universal suffrage to work with the Sixth LegCo on the arrangement for implementing universal suffrage for the 2020 LegCo election. The current term CE would focus on dealing with issues relating to the electoral methods for 2012, although it would listen to views relating to constitutional development.

Motion moved by members

57. Mr LEE Cheuk-yan and Ms Emily LAU moved a motion urging the CE to state clearly that all FC seats should be abolished in the model for forming the LegCo by universal suffrage. Wording of the motion is as follows -

"本委員會強烈要求行政長官清楚表明在全面普選模式下應完全廢除功能組別。"

(Translation : "That this Panel strongly requests the Chief Executive to state clearly that functional constituencies should be abolished entirely in the model for universal suffrage.")

58. Mr Albert HO expressed support for the motion. He expressed disappointment that the Administration had failed to state clearly that a universal suffrage model should not contain any form of FCs.

Action

59. SCMA said that this was not the time to decide on the universal suffrage model for the LegCo election in 2020. The opposition camp had jumped the gun to vote on a motion which should be decided by Members of the Sixth LegCo. Given that Hong Kong was a diversified society, the electoral method for 2020 would require more discussions in the community before a consensus could be reached. The motion, if passed, could only serve as a reference and was not binding on Members of the Sixth LegCo.

60. Mr TAM Yiu-chung said that the various sectors of the community had diverse views on the method for forming the LegCo by universal suffrage and the abolition of FC seats altogether. The issue was a complicated one and would need to be further studied. He did not support the motion.

61. The Chairman put the motion to vote. 13 members voted for and six members voted against the motion. The Chairman declared that the motion was carried.

62. The meeting ended at 5:23 pm.

Council Business Division 2
Legislative Council Secretariat
30 September 2008